COMPILATION OF PROVISIONS OF THE KANSAS STATUTES ANNOTATED RELATED TO HEALTH CARE PROVIDERS

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CHAPTER 8. AUTOMOBILES AND OTHER VEHICLES
ARTICLE 10. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS; RELATED PROVISIONS

8-1001. Tests for alcohol or drugs; request by officer, grounds; consent implied; administration of tests, when; procedures; immunity from liability; warning statement; search warrant, admissibility of test; availability of test result; remedial nature of law.

(a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests, including but not limited to, a preliminary screening test pursuant to K.S.A. 8-1012, and amendments thereto, of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (2) the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow the withdrawal of blood under this section, the person authorized herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) Before a test or tests are administered under this section, the person shall be given oral and written notice that:

(A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both;

(B) the opportunity to consent to or refuse a test is not a constitutional right;

(C) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first occurrence, two years for the second occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth or subsequent offense;

(E) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence, one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent offense;

(F) if the person is less than 21 years of age at the time of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended up to one year;

(G) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both;

(H) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

(I) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities and physicians.

(g) If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has reasonable grounds to believe that the person has been driving or attempting to drive a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

(h) After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe that the person, while under the influence of alcohol or drugs, or both, has operated a vehicle in such a manner as to have caused the death of or serious injury to another person. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

(i) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

(j) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

(k) An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.

(l) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(m) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(n) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

(o) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(p) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(r) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

HISTORY: L. 1955, ch. 61, § 1; L. 1967, ch. 60, § 1; L. 1973, ch. 41, § 1; L. 1977, ch. 38, § 4; L. 1978, ch. 36, § 1; L. 1982, ch. 144, § 3; L. 1985, ch. 48, § 3; L. 1985, ch. 50, § 1; L. 1986, ch. 40, § 2; L. 1988, ch. 47, § 13; L. 1990, ch. 47, § 1; L. 1991, ch. 36, § 18; L. 1993, ch. 259, § 1; L. 1993, ch. 275, § 1; L. 1994, ch. 353, § 9; L. 1999, ch. 169, § 1; L. 2001, ch. 200, § 12; July 1.

CHAPTER 8. AUTOMOBILES AND OTHER VEHICLES
ARTICLE 14. UNIFORM ACT REGULATING TRAFFIC; DEFINITIONS

8-1404. "Authorized emergency vehicle" defined; exemptions. "Authorized emergency vehicle" means such fire department vehicles or police bicycles or police vehicles which are publicly owned; motor vehicles operated by ambulance services permitted by the emergency medical services board under the provisions of K.S.A. 65-6101 et seq., and amendments thereto; wreckers, tow trucks or car carriers, as defined by K.S.A. 66-1329, and amendments thereto, and having a certificate of public service from the state corporation commission; and such other publicly or privately owned vehicles which are designated as emergency vehicles pursuant to K.S.A. 8-2010, and amendments thereto.

HISTORY: L. 1974, ch. 33, § 8-1404; L. 1975, ch. 427, § 19; L. 1992, ch. 141, § 3; L. 1993, ch. 199, § 1; L. 1996, ch. 180, § 1; L. 2003, ch. 61, § 2; July 1.

CHAPTER 8. AUTOMOBILES AND OTHER VEHICLES
ARTICLE 15. UNIFORM ACT REGULATING TRAFFIC; RULES OF THE ROAD
OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

8-1506. Authorized emergency vehicles; rights, duties and liability of drivers thereof.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this article;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as such driver does not endanger life or property;

(4) Disregard regulations governing direction of movement or turning in specified directions; and

(5) Proceed through toll booths on roads or bridges without stopping for payment of tolls, but only after slowing down as may be necessary for safe operation and the picking up or returning of toll cards.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal meeting the requirements of K.S.A. 8-1738 and visual signals meeting the requirements of K.S.A. 8-1720, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of reckless disregard for the safety of others.

HISTORY: L. 1974, ch. 33, § 8-1506; L. 1977, ch. 43, § 1; July 1.

8-1541. Pedestrians must yield right-of-way to authorized emergency vehicle.

(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of subsection (d) of K.S.A. 8-1738 and visual signals meeting the requirements of K.S.A. 8-1720, or of a police vehicle properly and lawfully making use of an audible signal only, every pedestrian shall yield the right-of-way to the authorized emergency vehicle.

(b-) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

HISTORY: L. 1974, ch. 33, § 8-1541; July 1.

CHAPTER 8. AUTOMOBILES AND OTHER VEHICLES
ARTICLE 17. UNIFORM ACT REGULATING TRAFFIC; EQUIPMENT OF VEHICLES
LAMPS AND OTHER LIGHTING EQUIPMENT

8-1720. Lamps and lights on authorized emergency vehicles; alternately or simultaneously flashing head lamps.

(a) Except as provided in subsection (b), every authorized emergency vehicle, in addition to any other equipment required by this act, shall be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, or in lieu thereof, any such authorized emergency vehicle shall be equipped with at least one rotating or oscillating light, which shall be mounted as high as practicable on such vehicle and which shall display to the front and rear of such vehicle a flashing red light or alternate flashes of red and white lights or red and blue lights in combination. All lights required or authorized by this subsection shall have sufficient intensity to be visible at 500 feet in normal sunlight. Every authorized emergency vehicle may, but need not, be equipped with head lamps which alternately flash or simultaneously flash.

(b) A police vehicle when used as an authorized emergency vehicle may, but need not, be equipped with:

(1) Head lamps which alternately flash or simultaneously flash;

(2) flashing lights specified in subsection (a), but any flashing lights, used on a police vehicle, other than the flashing lights specified in K.S.A. 8-1722, and amendments thereto, rotating or oscillating lights or alternately flashing head lamps or simultaneously flashing head lamps, shall be red in color; or

(3) rotating or oscillating lights, which may display a flashing red light or alternate flashes of red and blue lights in combination.

HISTORY: L. 1974, ch. 33, § 8-1720; L. 1975, ch. 39, § 21; L. 1989, ch. 43, § 1; L. 1991, ch. 41, § 1; July 1.

8-1738. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or whistle. The driver of a motor vehicle when reasonably necessary to insure safe operation shall give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.

(c) Any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Such a theft alarm signal device may use a whistle, bell, horn or other audible signal but shall not use a siren.

(d) Every authorized emergency vehicle shall be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the secretary of transportation, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

HISTORY: L. 1974, ch. 33, § 8-1738; L. 1975, ch. 427, § 40; Aug. 15.

CHAPTER 9. BANKS AND BANKING; TRUST COMPANIES
ARTICLE 14. BANKING CODE; DEPOSIT OF PUBLIC MONEYS

9-1401. Designation of depositories for municipal and quasi-municipal funds; duty of public officers; eligible depositories.

(a) The governing body of any municipal corporation or quasi-municipal corporation shall designate by official action recorded upon its minutes the banks, savings and loan associations and savings banks which shall serve as depositories of its funds and the officer and official having the custody of such funds shall not deposit such funds other than at such designated banks, savings and loan associations and savings banks. The banks, savings and loan associations and savings banks which have main or branch offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located shall be designated as such official depositories if the municipal or quasi-municipal corporation can obtain satisfactory security therefor. For purposes of this subsection, banks, savings and loan associations or savings banks organized under the laws of the United States or another state which do not have a main office in this state, may be designated as depositories of such municipal corporation's or quasi-municipal corporation's funds in accordance with this subsection, if such banks, savings and loan associations and savings banks have branch offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located, except that such banks, savings and loan associations or savings banks shall not be eligible to receive deposits except in accordance with subsection (c).

(b) Every officer or person depositing public funds shall deposit all such public funds coming into such officer or person's possession in their name and official title as such officer. If the governing body of the municipal corporation or quasi-municipal corporation fails to designate an official depository or depositories, the officer thereof having custody of its funds shall deposit such funds with one or more banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located if satisfactory security can be obtained therefor and if not then elsewhere, but upon so doing shall serve notice in writing on the governing body showing the names and locations of such banks, savings and loan associations and savings banks where such funds are deposited, and upon so doing the officer having custody of such funds shall not be liable for the loss of any portion thereof except for official misconduct or for the misappropriation of such funds by such officer.

(c) If eligible banks, savings and loan associations or savings banks under subsections (a) or (b) cannot or will not provide an acceptable bid, which shall include services, for the depositing of public funds under this section, then banks, savings and loan associations or savings banks organized under the laws of the United States or another state which do not have a main office in this state, may receive deposits of such municipal corporation or quasi-municipal corporation, if such banks, savings and loan associations or savings banks have been designated as official depositories under subsection (a), have branch offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located and the municipal corporation or quasi-municipal corporation can obtain satisfactory security therefor.

HISTORY: L. 1947, ch. 102, § 63; L. 1957, ch. 74, § 2; L. 1967, ch. 447, § 30; L. 1972, ch. 35, § 1; L. 1982, ch. 52, § 1; L. 1983, ch. 47, § 2; L. 1986, ch. 76, § 1; L. 1989, ch. 48, § 41; L. 1997, ch. 180, § 3; May 29.

9-1402. Securing the deposits of public funds; acceptable items; items not acceptable; expenses.

(a) Before any deposit of public moneys or funds shall be made by any municipal corporation or quasi-municipal corporation of the state of Kansas with any bank, savings and loan association or savings bank, such municipal or quasi-municipal corporation shall obtain security for such deposit in one of the following manners prescribed by this section.

(b) Such bank, savings and loan association or savings bank may give to the municipal corporation or quasi-municipal corporation a personal bond in double the amount which may be on deposit at any given time.

(c) Such bank, savings and loan association or savings bank may give a corporate surety bond of some surety corporation authorized to do business in this state, which bond shall be in an amount equal to the public moneys or funds on deposit at any given time less the amount of such public moneys or funds which is insured by the federal deposit

insurance corporation or its successor and such bond shall be conditioned that such deposit shall be paid promptly on the order of the municipal corporation or quasi-municipal corporation making such deposits.

(d) Such bank, savings and loan association or savings bank may deposit, maintain, pledge, assign, and grant a security interest in, or cause its agent, trustee, wholly-owned subsidiary or affiliate having identical ownership to deposit, maintain, pledge, assign, and grant a security interest in, for the benefit of the governing body of the municipal corporation or quasi-municipal corporation in the manner provided in this act, securities, security entitlements, financial assets and securities accounts owned by the depository institution directly or indirectly through its agent or trustee holding securities on its behalf, or owned by the depository institutions wholly-owned subsidiary or by such affiliate, the market value of which is equal to 100% of the total deposits at any given time, and such securities, security entitlements, financial assets and securities accounts, may be accepted or rejected by the governing body of the municipal corporation or quasi-municipal corporation and shall consist of the following and security entitlements thereto:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations, including but not limited to letters of credit, and securities of United States sponsored corporations which under federal law may be accepted as security for public funds;

(2) bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America;

(3) bonds of the state of Kansas;

(4) general obligation bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas;

(5) revenue bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas if approved by the state bank commissioner in the case of banks and by the savings and loan commissioner in the case of savings and loan associations or federally chartered savings banks;

(6) temporary notes of any municipal corporation or quasi-municipal corporation of the state of Kansas which are general obligations of the municipal or quasi-municipal corporation issuing the same;

(7) warrants of any municipal corporation or quasi-municipal corporation of the state of Kansas the issuance of which is authorized by the state board of tax appeals and which are payable from the proceeds of a mandatory tax levy;

(8) bonds of either a Kansas not-for-profit corporation or of a local housing authority that are rated at least Aa by Moody's Investors Service or AA by Standard & Poor's Corp.;

(9) bonds issued pursuant to K.S.A. 12-1740 et seq., and amendments thereto, that are rated at least MIG-1 or Aa by Moody's Investors Service or AA by Standard & Poor's Corp.;

(10) notes of a Kansas not-for-profit corporation that are issued to provide only the interim funds for a mortgage loan that is insured by the federal housing administration;

(11) bonds issued pursuant to K.S.A. 74-8901 through 74-8916, and amendments thereto;

(12) bonds issued pursuant to K.S.A. 68-2319 through 68-2330, and amendments thereto;

(13) commercial paper that does not exceed 270 days to maturity and which has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm; or

(14)(A) negotiable promissory notes together with first lien mortgages on one to four family residential real estate located in Kansas securing payment of such notes when such notes or mortgages:

(i) Are underwritten by the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration or the veterans administration standards; or are valued pursuant to rules and regulations which shall be adopted by both the state bank commissioner and the savings and loan commissioner after having first being submitted to and approved by both the state banking board under K.S.A. 9-1713, and amendments thereto, and the savings and loan board. Such rules and regulations shall be published in only one place in the Kansas administrative regulations as directed by the state rules and regulations board;

(ii) have been in existence with the same borrower for at least two years and with no history of any installment being unpaid for 30 days or more; and

(iii) are valued at not to exceed 50% of the lesser of the following three values: Outstanding mortgage balance; current appraised value of the real estate; or discounted present value based upon current federal national mortgage association or government national mortgage association interest rates quoted for conventional, federal housing administration or veterans administration mortgage loans.

(B) Securities under (A) shall be taken at their value for not more than 50% of the security required under the provisions of this section.

(C) Securities under (A) shall be withdrawn immediately from the collateral pool if any installment is unpaid for 30 days or more.

(D) A status report on all such loans shall be provided to the investing governmental entity by the financial institution on a quarterly basis.

(e) No such bank, savings and loan association or savings bank may deposit and maintain for the benefit of the governing body of a municipal or quasi-municipal corporation of the state of Kansas, any securities which consist of:

(1) Bonds secured by revenues of a utility which has been in operation for less than three years; or

(2) bonds issued under K.S.A. 12-1740 et seq., and amendments thereto, unless such bonds have been refunded in advance of their maturity as provided in subsection (d) or such bonds are rated at least Aa by Moody's Investors Service or AA by Standard & Poor's Corp.

(f) Any expense incurred in connection with granting approval of revenue bonds shall be paid by the applicant for approval.

HISTORY: L. 1947, ch. 102, § 64; L. 1965, ch. 76, § 1; L. 1968, ch. 236, § 1; L. 1970, ch. 63, § 1; L. 1973, ch. 48, § 1; L. 1976, ch. 79, § 1; L. 1978, ch. 45, § 1; L. 1980, ch. 47, § 1; L. 1982, ch. 52, § 2; L. 1983, ch. 49, § 17; L. 1983, ch. 47, § 3; L. 1983, ch. 49, § 18; L. 1985, ch. 58, § 1; L. 1985, ch. 58, § 2; L. 1986, ch. 76, § 2; L. 1986, ch. 76, § 3; L. 1987, ch. 56, § 1; L. 1989, ch. 48, § 42; L. 1989, ch. 209, § 18; L. 1992, ch. 146, § 25; L. 1994, ch. 74, § 1; L. 1997, ch. 180, § 4; May 29.

CHAPTER 12. CITIES AND MUNICIPALITIES
ARTICLE 1. GENERAL PROVISIONS

12-183. Hospitals; maintenance and improvement; tax levies, use of proceeds. The governing body of any city which has established a city hospital is hereby authorized to levy an annual tax upon all taxable tangible property in the city for the purpose of equipping, operating, maintaining, repairing and improving such hospital and to pay a portion of the principal and interest on bonds issued by such city under the authority of K.S.A. 12-1774, and amendments thereto.

HISTORY: L. 1975, ch. 494, § 18; L. 1979, ch. 52, § 31; July 1.

12-1615.Donations of property for hospital purposes; board of trustees, membership, terms of office, vacancies; pension and deferred compensation plans for employees; contracts insuring employees and dependents; expenditure of funds for recruitment or retention of professional staff.

(a) As used in this section, the term "hospital" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto and includes within its meaning any clinic, school of nursing, long-term care facility and child-care facility operated in connection with the operation of the medical care facility.

(b) Any person desiring to make donations of money, personal property or real estate, or to bequeath or devise any such property, for the purpose of founding, establishing, building, furnishing or maintaining a hospital shall have the right to vest the title to the money or property so donated, bequeathed or devised in the board of directors or trustees of any city hospital that may be provided for by law or to vest such title in any city of this state, and when such gift, bequest or devise shall be to any city, if there is no public hospital belonging to or under the control of such city, then the mayor of such city with the consent of the council, or the commissioners of any city under commission government, shall immediately name a five member board of trustees for such hospital, and upon qualification of such trustees, the title shall vest in such trustees, and in any such case, the title shall thereafter be held and controlled by such board according to the terms of the deed, gift, devise or bequest of such property; and as to such property, such board shall be held and considered to be special trustee. At any time subsequent to the initial appointment of a five member board of trustees, the governing body by resolution may increase the number of trustees to serve on the board to seven or nine members. In the event the governing body does not increase by resolution the number of members to serve on the board of trustees, the board of trustees shall consist of five members.

(c) The members of the first board shall hold office for one, two, three, four and five years respectively. Each year the term of one member shall expire and a successor shall be appointed for a term of five years. In case of a vacancy occurring other than by expiration of term of office a successor shall be appointed for the unexpired term. All appointments shall be made in the same manner as original appointments.

(d) Whenever the number of members of an existing board of trustees is increased by resolution of the governing body of the city, the governing body shall provide by resolution for the expiration of the terms of the members appointed to the new positions on the board of trustees to coincide with the expiration of the terms of the members serving on the board of trustees at the time of the creation of the new positions so that no more than a simple majority of the members of the board of trustees is appointed at the same time. Upon the expiration of the terms of those originally appointed pursuant to this subsection, their successors shall be appointed for terms of five years.

(e) Any such board of hospital trustees shall be authorized to establish and fund pension and deferred compensation plans for hospital employees and to procure contracts insuring hospital employees, their dependents, or any class or classes thereof under a policy or policies of life, disability income, health, accident, accidental death and dismemberment, and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee so to do. The board may also expend funds deemed necessary in the recruitment or retention of professional staff including, but not limited to, the purchase of professional liability insurance for such staff.

(f) The person making a deed or gift, or the testator, may provide for an advisor or advisory board not exceeding five persons in number to advise and aid in carrying out the wishes of the donor or testator, but such advisor or advisors shall have no vote on the board of trustees unless a legal member thereof.

HISTORY: L; 1913, ch; 203, § 1; R.S. 1923, § 12-1615; L; 1971, ch; 49, § 1; L; 1972, ch; 44, § 1; L; 1978, ch; 63, § 1; L; 1984, ch; 71, § 1; L. 1991, ch. 66, § 1; July 1.

12-1675.Investment of public moneys by governmental subdivisions, units and entities; conditions and limitations.

(a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit;

(2) in time deposit, open accounts, certificates of deposit or time certificates of deposit with maturities of not more than two years:

(A) In banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit; or

(B) if no main or branch office of a bank, savings and loan association or savings bank is located in such investing governmental unit, then in banks, savings and loan associations and savings banks, which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located;

(3) in repurchase agreements with:

(A) Banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or

(B) (i) if no main or branch office of a bank, savings and loan association or savings bank, is located in such investing governmental unit; or

(ii) if no such bank, savings and loan association or savings bank having a main or branch office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located; or

(C) if no bank, savings and loan association or savings bank, having a main or branch office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks;

(4) in United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with banks, savings and loan associations and savings banks; the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto;

(5) in the municipal investment pool fund established in K.S.A. 12-1677a, and amendments thereto;

(6) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 12-1677b, and amendments thereto; or

(7) in multiple municipal client investment pools managed by the trust departments of banks which have main or branch offices located in the county or counties where such investing governmental unit is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with banks which have main or branch offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by K.S.A. 12-1677a, and amendments thereto.

(c) The investments authorized in paragraphs (4), (5), (6) or (7) of subsection (b) shall be utilized only if the banks, savings and loan associations and savings banks eligible for investments authorized in paragraph (2) of subsection

(d), cannot or will not make the investments authorized in paragraph (2) of subsection (b) available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a.

(e) In selecting a depository pursuant to paragraph (2) of subsection (b), if a bank, savings and loan association or savings bank eligible for an investment deposit thereunder has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit shall select for such deposits one or more eligible banks, savings and loan associations or savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and which otherwise qualify for such deposits.

(f) (1) All security purchases and repurchase agreements shall occur on a delivery versus payment basis.

(2) All securities, including those acquired by repurchase agreements, shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third-party custodian which may be the state treasurer.

HISTORY: L. 1968, ch. 217, § 1; L. 1969, ch. 80, § 1; L. 1973, ch. 63, § 6; L. 1975, ch. 68, § 1; L. 1976, ch. 79, § 2; L. 1977, ch. 55, § 1; L. 1982, ch. 52, § 6; L. 1983, ch. 47, § 7; L. 1986, ch. 76, § 7; L. 1989, ch. 48, § 66; L. 1992, ch. 146, § 3; L. 1993, ch. 207, § 2; L. 1994, ch. 104, § 2; L. 1997, ch. 180, § 14; May 29.

12-1675a. Definitions. As used in K.S.A. 12-1675, 12-1676, 12-1677, 12-1677a and 12-1677b, and amendments thereto:

(a) "Bank" means any bank incorporated under the laws of this state, or organized under the laws of the United States and which has a main office in this state;

(b) "savings and loan association" means any savings and loan association incorporated under the laws of this state, or organized under the laws of the United States and which has a main office in this state;

(c) "savings bank" means any savings bank organized under the laws of the United States and which has a main office in this state;

(d) "municipality" includes each investing governmental unit under K.S.A. 12-1675, and amendments thereto;

(e) "main office" means the place of business specified in the articles of association, certificate of authority or similar document, where the business of the institution is carried on and which is not a branch;

(f) "branch" means any office, agency or other place of business within this state, other than the main office, at which deposits are received, checks paid or money lent with approval of the appropriate regulatory authorities. Branch does not include an automated teller machine, remote service unit or similar device; and

(g-) "investment rate" means a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. The 0-90 day rate shall be computed on the average effective federal funds rate as published by the federal reserve system for the previous week.

HISTORY: L. 1997, ch. 180, § 13; May 29.

12-1676.Inapplicability of act to certain moneys; rates. Except as otherwise provided in K.S.A. 12-1678a, and amendments thereto, the provisions of this act authorizing the investment of moneys shall not apply to moneys collected or received by a county for apportionment, credit or distribution to the state or any political subdivision thereof. Interest paid by eligible banks, savings and loan associations and savings banks on time deposit, open accounts, time certificates of deposit and certificates of deposit of investing governmental units shall be at rates agreed upon by the governmental units and the eligible banks, savings and loan associations or savings banks.

HISTORY: L. 1968, ch. 217, § 2; L. 1973, ch. 63, § 7; L. 1973, ch. 64, § 1; L. 1974, ch. 394, § 2; L. 1975, ch. 68, § 2; L. 1976, ch. 79, § 3; L. 1982, ch. 52, § 7; L. 1983, ch. 47, § 8; L. 1986, ch. 76, § 8; L. 1989, ch. 48, § 67; L. 1997, ch. 180, § 15; May 29.

12-1677.Investment of public moneys by governmental entities, units and subdivisions; use of income; records; quarterly report.

(a) Except as otherwise required by state or federal law, all moneys earned and collected from investments by counties, area vocational-technical schools and quasi-municipal corporations authorized in this act shall be credited to the general fund of such county, area vocational-technical school or quasi-municipal corporation by the treasurer thereof, and all moneys earned and collected from investments by school districts authorized in this act shall be credited in accordance with the provisions of K.S.A. 72-6427, and amendments thereto.

(b) The treasurer of each county, school district, area vocational-technical school or quasi-municipal corporation shall maintain a complete record of all investments authorized in this act and shall make a quarterly written report of such record to the governing body of such county, school district, area vocational-technical school or quasi-municipal corporation.

HISTORY: L. 1968, ch. 217, § 3; L. 1969, ch. 80, § 2; L. 1973, ch. 63, § 8; L. 1975, ch. 68, § 3; L. 1992, ch. 280, § 50; July 1.

12-1677a. Municipal investment pool fund; investments; requirements; rules and regulations.

(a) Moneys deposited by any municipality with the state treasurer for investment authorized in paragraph (5) of subsection (b) of K.S.A. 12-1675, and amendments thereto, shall be deposited in the municipal investment pool fund which is hereby created in the state treasury. The state treasurer shall provide the board a monthly record of the deposits and withdrawals of municipalities. Such record may include the amount of the deposit, the date of the deposit and such other information as the pooled money investment board may require.

(b) The director of investments may invest and reinvest moneys in the municipal investment pool fund in accordance with investment policies established by the pooled money investment board under K.S.A. 75-4232, and amendments thereto, and in accordance with K.S.A. 75-4234 and 75-4209, and amendments thereto.

(c) The director of investments shall apportion earnings and losses among the accounts of the depositors in the various investment options of the municipal investment pool in accordance with policies approved and published by the board. A

statement for each municipality participating unit account showing deposits, withdrawals, earnings and losses distributions shall be provided monthly to the municipality. The director of investments shall make comprehensive reports monthly to those municipalities participating in the municipal investment pool fund and to other interested parties requesting such reports. Such reports shall include a summary of transactions for the month, the current market value of the pooled money investment portfolio investments, the weighted average maturity of the portfolio, the original costs of the investments in the portfolio, including any fees associated with such investments and such other relevant information the director of investments may wish to include in such report.

(d) The municipal investment pool reserve fund is abolished effective July 1, 1996, and any unencumbered balance remaining therein shall be applied to net losses in the municipal investment pool fund. The municipal investment pool fund fee fund is abolished on July 1, 1997, and any unencumbered balance remaining therein shall be transferred to the pooled money investment portfolio fee fund and such amounts shall be applied to net losses, as of July 1, 1996, in the municipal investment pool fund.

(e) The pooled money investment board may adopt rules and regulations necessary for the administration and operation of the municipal investment pool fund and may enter into agreements with any municipality as to methods of deposits, withdrawals and investments.

(f) Deposits in the municipal investment pool fund: (1) May only be made for the same maturity as the maturity which is offered under paragraph (2) of subsection (b) of K.S.A. 12-1675 and amendments thereto; and (2) upon the maturity of such deposits, such moneys shall be offered for investment under paragraph (2) of subsection (b) of K.S.A. 12-1675, and amendments thereto, and may be reinvested in such fund only if the conditions contained in subsection (c) of K.S.A. 12-1675, and amendments thereto, have been satisfied.

(g) Moneys and investments in the municipal investment pool fund shall be managed by the pooled money investment board in accordance with investment policies provided for in K.S.A. 75-4209, and amendments thereto. A copy of such published policies shall be distributed to all municipalities participating in the municipal investment pool fund and to other interested persons requesting a copy of such policies. The pooled money investment board shall not contract for management of investments by a money manager.

HISTORY: L. 1992, ch. 146, § 1; L. 1993, ch. 207, § 3; L. 1995, ch. 194, § 1; L. 1996, ch. 254, § 4; L. 1997, ch. 180, § 16; May 29.

12-1677b. Direct investments by cities and counties, when; requirements; forfeiture of investment rights, when.

(a) The governing body of any city or county which has a written investment policy approved by the governing body of such city or county and approved by the pooled money investment board may invest and reinvest pursuant to the approved investment policy in the following investments, as authorized under paragraph (6) of subsection (b) of K.S.A. 12-1675, and amendments thereto:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds, except that such investments shall not be in mortgage-backed securities;

(2) interest-bearing time deposits in any banks, savings and loan associations and savings banks; or

(3) repurchase agreements with banks, savings and loan associations and savings banks, or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds.

(b) The investment policy of any city or county approved by the pooled money investment board under this section shall be reviewed and approved at least annually by such board or when such city or county makes changes in such investment policy.

(c) City and county investment policies shall address liquidity, diversification, safety of principal, yield, maturity and quality, and capability of investment management staff.

(d) (1) All security purchases shall occur on a delivery versus payment basis.

(2) All securities shall be perfected in the name of the city or county and shall be delivered to the purchaser or a third party custodian which may be the state treasurer.

(3) Investment transactions shall only be conducted with banks, savings and loan associations and savings banks; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York; or any broker-dealer which is registered in compliance with the requirements of section 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto.

(4) The maximum maturity for investments under subsection (a) shall be four years.

(e) Investments in securities under paragraph (1) of subsection (a) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities. For purposes of this subsection, "interest rate risk" means market value changes due to changes in current interest rates.

(f-) A city or county which violates subsection (c) or (d) of K.S.A. 12-1675 and amendments thereto or the rules and regulations of the pooled money investment board shall forfeit its rights under this section for a two year period and shall be reinstated only after a complete review of its investment policy as provided for in subsection (b). Such forfeiture shall be determined by the pooled money investment board after notice and opportunity to be heard in accordance with the Kansas administrative procedure act.

HISTORY: L. 1992, ch. 146, § 2; L. 1993, ch. 207, § 4; L. 1996, ch. 254, § 5; L. 1997, ch. 180, § 17; May 29.

CHAPTER 13. CITIES OF THE FIRST CLASS
PART I. GOVERNMENT BY MAYOR AND COUNCIL AND GENERAL LAWS
ARTICLE 14B. HOSPITALS

13-14b02. Same; board of trustees authorized; lease or rental. Upon the establishment and building of a hospital by a city of the first class, the governing body of said city may provide for the management, authority and control of said hospital by a board of trustees as hereinafter provided, or said governing body shall have the power by resolution to rent, lease, or let said hospital to any person, persons, corporation or society upon such terms and conditions as the governing body of said city may deem to the best interest of said city; and upon the expiration of the lease so made, the governing body of said city at the time of the expiration of such lease shall have the power to make and execute a new lease to any person, persons, corporation or society upon such terms and conditions as the governing body may deem to the best interests of said city.

HISTORY: L. 1945, ch. 127, § 2; L. 1949, ch. 149, § 1; Feb. 19.

13-14b03. Same; federal aid and donations or gifts. The governing body of cities of the first class are hereby authorized and empowered to accept and secure any benefits of federal aid in the construction, improvement, or maintenance of such hospital and further to accept any grants, donations or gifts from any source whatsoever.

HISTORY: L. 1945, ch. 127, § 3; June 28

13-14b05. Same; eminent domain. If the governing body of a city of the first class and the owner of any property desired by said city for hospital purposes cannot agree as to the price to be paid therefor, the city shall have the authority to institute condemnation proceedings and prosecute said suit in the name of the city by the city attorney under the provisions of the law on similar cases.

HISTORY: L. 1945, ch. 127, § 5; June 28.

13-14b06. Same; plans for hospital buildings. No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and approved by the planning commission and the governing body of the city and bids advertised for according to law for other public buildings.

HISTORY: L. 1945, ch. 127, § 6; June 28.

13-14b07. Same; training school for nurses. A training school for nurses may be established and maintained in connection with such hospital and as a part of same.

HISTORY: L. 1945, ch. 127, § 7; June 28.

13-14b08. Same; additional bonds; election; limitation laws inapplicable. The governing body of any city of the first class which has authorized the issuance of bonds under the provisions of K.S.A. 13-14b01 to 13-14b07, and acts amendatory thereto, for the purpose of purchasing a site within or without the corporate limits of such city and building and equipping a hospital thereon and for other purposes as specified in said sections, is hereby authorized to issue additional bonds of such city, for such purposes, and for the further purpose of building and constructing an addition to the hospital and furnishing and equipping the same: Provided, That before any such bonds shall be issued the question of issuing the same shall be submitted to a vote of the people in the manner set out in K.S.A. 13-14b01, or acts amendatory thereto: And provided further, That all bonds authorized by this section shall be issued, sold, delivered and retired as provided in K.S.A. 13-14b01, or acts amendatory thereto. Such bonds shall not be subject to, nor included in any restrictions or limitations upon the amount of bonded indebtedness of said city contained in any other law.

HISTORY: L. 1947, ch. 144, § 2; L. 1963, ch. 102, § 1; July 1.

13-14b09. Management of hospital by board of trustees; membership; appointment; terms; vacancies.

(a) In the event the governing body shall determine that the management and control of said hospital shall be vested in a board of trustees, said governing body shall appoint five (5) trustees. Said trustees shall be residents of the city but no more than one physician shall be appointed.

(b) At any time subsequent to the initial appointment of a five (5) member board of trustees, the governing body by resolution may increase the number of trustees to serve on the board to seven (7) or nine (9) members. In the event the governing body does not increase by resolution the number of members to serve on the board of trustees, said board of trustees shall consist of five (5) members.

(c) The members of the first board shall be appointed one for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years and two for a term of four (4) years, and upon the expiration of the terms of those originally appointed their successors shall be appointed for terms of four (4) years. In case of a vacancy a successor shall be appointed for the unexpired term.

(d) Whenever the number of members of an existing board of trustees is increased by resolution of the governing body, said governing body shall provide by resolution for the expiration of the terms of the members appointed to the new positions on the board of trustees to coincide with the expiration of the terms of the members serving on the board of trustees at the time of the creation of said new positions so that no more than a simple majority of the members of said

board of trustees is appointed at the same time. Upon the expiration of the terms of those originally appointed pursuant to this subsection (d) their successors shall be appointed for terms of four (4) years.

HISTORY: L. 1949, ch. 149, § 2; L. 1971, ch. 59, § 1; L. 1978, ch. 63, § 2; July 1.

13-14b10. Same; oath of trustees; officers; bond of treasurer. Within ten (10) days after their appointment, the trustees shall qualify by taking the oath of civil officers, and shall organize by electing one of their number chairman, and electing such other officers as they shall deem necessary. Said board of trustees shall appoint a treasurer who shall give bond in such amount as the board shall determine, which bond shall be approved by the governing body of the city. All funds heretofore or hereafter collected for the maintenance and operation of the hospital shall be placed in the custody of said treasurer.

HISTORY: L. 1949, ch. 149, § 3; Feb. 19.

13-14b11. Same; rules and regulations; employee benefit plans; investments in certain mutual insurance companies; expenditures for recruitment or retention of professional staff; board members serve without compensation; annual reports. The board of trustees shall have exclusive control of the management and operation of the hospital and shall make and adopt such rules and regulations for the government of the hospital as may be deemed expedient for the economical and proper conduct thereof. The board of hospital trustees is authorized to establish and fund pension and deferred compensation plans for hospital employees and to procure contracts insuring hospital employees, their dependents, or any class or classes thereof under a policy or policies of life, disability income, health, accident, accidental death and dismemberment, and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee. The board is authorized to invest in any mutual insurance company organized by an association of health care providers to which the hospital belongs, enter into contracts with such company, pay any assessments pursuant to such contracts and arrange for the issuance of a letter of credit by any bank chartered by this state or which is a member bank of the federal reserve system. The board may also expend funds deemed necessary in the recruitment or retention of professional staff including, but not limited to, the purchase of professional liability insurance for such staff. No member of the board of trustees shall receive any compensation for services. On or before July 15 each year, the board shall file with the governing body of the city a written report of the management of the hospital, together with a statement of all receipts and expenditures during the year ending June 30.

HISTORY: L. 1949, ch. 149, § 4; L. 1971, ch. 49, § 2; L. 1972, ch. 44, § 2; L. 1988, ch. 147, § 10; L. 1991, ch. 66, § 2; July 1.

13-14b12. Creation of board of trustees; tax levy, use of proceeds; special improvement fund. Upon and after the creation of a board of trustees to manage and control a hospital, the governing body of the city shall levy annually, in addition to other taxes provided by law, a tax on all tangible taxable property within the limits of said city, for the purpose of equipping, operating, maintaining and improving such hospital and to pay a portion of the principal and interest on bonds issued by such city under the authority of K.S.A. 12-1774, and amendments thereto.

The board may transfer annually such amounts as it deems advisable to a special improvement fund to be used for the purpose of purchasing major items of equipment and making capital improvements to the hospital. The amount on hand in such fund shall at no time exceed two hundred fifty thousand dollars ($ 250,000) and such fund shall not be subject to the provisions of K.S.A. 79-2925 and 79-2937 or acts amendatory thereof or supplemental thereto except that in making the budget of the city the amounts credited to, and the amount on hand in such special fund and the amount expended therefrom shall be shown for the information of the taxpayers of the city.

HISTORY: L. 1949, ch. 149, § 5; L. 1951, ch. 160, § 1; L. 1957, ch. 118, § 1; L. 1970, ch. 77, § 7; L. 1975, ch. 494, § 19; L. 1979, ch. 52, § 63; July 1.

13-14b13. Hospital maintenance and operation; emergency warrants. During the year in which any such hospital is completed and for which no tax levy has been made under the provisions of K.S.A. 13-14b12, the governing body of the city is hereby authorized to issue emergency warrants in a total amount of not more than fifty thousand dollars ($ 50,000) for the purpose of raising funds to operate and maintain said hospital during such year. Such warrants shall draw interest at a rate of not more than the maximum rate of interest prescribed by K.S.A. 10-1009 and may be issued only for the purpose of paying the operating costs of the hospital during the year. The governing body of the city shall each year, at the time of fixing the rate of levy for such city, make provisions therein for raising sufficient money to pay not less than twenty percent (20%) of the total amount of warrants issued hereunder until all of said warrants have been paid.

HISTORY: L. 1949, ch. 149, § 6; L. 1970, ch. 64, § 35; March 21.

13-14b14. Investment of special improvement funds. The board of trustees of a hospital of any city of the first class is hereby authorized and empowered to invest any portion of any special improvement fund created under the provisions of K.S.A. 13-14b12, and any acts amendatory thereof or supplemental thereto, in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein, or in direct obligations of the United States government, which mature or are redeemable without loss of principal within one year of date of purchase, the principal and interest whereof are guaranteed by the government of the United States. All interest received on any such investment shall upon receipt thereof be placed in the special improvement fund authorized by K.S.A. 13-14b12.

HISTORY: L. 1951, ch. 161, § 1; L. 1977, ch. 54, § 15; July 1.

13-14b15. Bonds for addition to hospital and improvements; election, when. The governing body of any city of the first class which owns and operates a hospital is hereby authorized to issue general obligation bonds of such city in an amount not exceeding one million dollars ($ 1,000,000) for the purpose of paying the cost of constructing an addition to the hospital owned by such city and furnishing and equipping the same, and otherwise improving said hospital and the facilities thereof: Provided, That no such bonds shall be issued until the question of their issuance shall have been submitted to a vote of the electors of such city at a regular city election or a special election called for such purpose and a majority of the legal electors voting on the question shall have voted in favor of their issuance: Provided further, That if the governing body of any such city shall have submitted such a question to a vote of the electors of such city prior to the effective date of this act, with or without authority of law, and a majority of the legal electors voting on the question shall have voted in favor of the issuance of the bonds, said city may issue bonds for such purposes in an amount not exceeding the amount voted at such election without submitting the question at another election and said election and all proceedings in connection therewith are hereby validated and confirmed. Said bond election shall be called, held, conducted and canvassed and all bonds issued under the authority of this act shall be issued, registered, sold, delivered and retired as provided by the general bond law.

HISTORY: L. 1955, ch. 116, § 1; March 10.

CHAPTER 14. CITIES OF THE SECOND CLASS
PART I. GOVERNMENT BY MAYOR AND COUNCIL AND GENERAL LAWS APPLICABLE TO CITIES OF THE SECOND CLASS
ARTICLE 6. HOSPITALS

14-601c. Participation in cost of establishing hospital; bond election. Whenever, in any city of the second class which does not have adequate hospital facilities for the residents of such, a nonprofit corporation, a charitable or religious organization proposes to construct and equip a suitable hospital in said city at a cost of not less than $ 200,000 in accordance with plans and specifications acceptable to the governing body of such city, and obligates itself to operate and maintain such hospital in a manner acceptable to the governing body of such city, the city is authorized and empowered to participate in the cost of constructing and equipping said hospital in an amount not to exceed $ 100,000. Such amount may be paid from the proceeds of bonds issued and sold for that purpose: Provided, That before any bonds are issued for such purpose, the governing body of the city shall submit the question of the city participating in the cost of constructing and equipping a hospital and the amount thereof to the qualified electors of the city at a regular city election or a special election called for that purpose as provided by law, and the majority of those voting on the proposition shall have declared by their votes to be in favor of the city participating in the construction and equipping of such hospital. All bonds issued under the provisions of this section shall be issued, registered, sold and retired in accordance with the provisions of the general bond law.

HISTORY: L. 1947, ch. 164, § 1; March 8.

14-602. Hospital site and building; tax levy, use of proceeds; petition and election. The governing body of any city of the second class may levy a tax on each dollar of assessed valuation of all property in the city, for the purpose of acquiring a site and building a hospital in the city and paying a portion of the principal and interest on bonds issued by such city under the authority of K.S.A. 12-1774 and amendments thereto. Before such tax is levied, a petition fixing the amount of the levy, the cost of the site, and the cost of the building, signed by not less than 40% of the electors of such city, as shown by the official vote cast at the last preceding general election in the city, shall be presented to such governing body, asking that such a tax be levied for such purpose. Upon receipt and approval of the petition by the governing body thereof, the governing body shall pass a resolution approving such petition, declaring such hospital to be a public benefit and ordering that the levy of the tax be made.

The resolution shall be published once each week for two consecutive weeks in the official newspaper published in the city. If a petition signed by at least 40% of the electors of the city and protesting the acquisition of the site, the building of the hospital and the levying of the tax is presented to the governing body within 60 days from the date of the passage of the resolution, the governing body shall submit the proposition to make such levy, stating the amount of such levy, to a vote of the qualified electors of the city at an election called for that purpose. The election shall be held at a date not more than 90 days from the date of the filing of the protest petition. If a majority of the qualified voters of the city voting at such election vote in favor of the levying of the tax, the governing body shall at once proceed to make the levy.

HISTORY: L. 1917, ch. 104, § 1; R.S. 1923, § 14-602; L. 1975, ch. 494, § 24; L. 1979, ch. 52, § 70; L. 1981, ch. 173, § 46; July 1.

14-604. Board of trustees; membership; term; election. A hospital having been established, the governing body shall proceed at once to appoint three trustees, chosen from the citizens of the city with reference to their fitness for such office, who shall constitute a board of trustees for said hospital. The said trustees shall hold their offices until the next following city election, when three trustees shall be elected and hold their offices, one for one year, one for two years and one for three years. At each subsequent city election, the trustee whose term is about to expire shall be filled by the nomination and election of hospital trustee in the same manner as other officers are elected, none of whom shall be physicians. In any city in which a regular city election as provided by law may be held only once every two years, then there shall be elected one trustee for a two-year term of office and one trustee for a four-year term of office or until their successors shall have been respectively elected and qualified, and the person receiving the greater number of votes shall be deemed elected to the four-year term of office. Any trustee now holding office whose term will expire in an even-numbered year shall hold over and continue in office until a successor shall be duly elected and qualified as provided herein.

Notwithstanding the foregoing provisions to the contrary, from and after the effective date of this act the governing body by resolution may increase the number of trustees to serve on the board to five (5) or seven (7) members. In the event the governing body does not increase by resolution the number of members to serve on the board of trustees, said board of trustees shall consist of three (3) members. Whenever the number of members of an existing board of trustees is increased by resolution of the governing body, said governing body shall provide by resolution for the initial appointment or election of the new members. The governing body shall also provide by resolution for the expiration of the terms of the members initially appointed or elected to new positions on the board of trustees.

HISTORY: L. 1917, ch. 104, § 3; R.S. 1923, § 14-604; L. 1949, ch. 167, § 1; L. 1978, ch. 63, § 3; July 1.

14-605. Same; organization, oath and compensation; powers and duties of board; employees, appointment and benefits; expenditures for recruitment or retention of professional staff; board meetings; examination of hospital; reports to governing body. The trustees shall, within 10 days after their appointment or election, qualify by taking the oath of civil officers, and organize a board of hospital trustees by the election of one of their number as chairperson, one as secretary and one as treasurer; but no bond shall be required of any of them except the treasurer, who, before entering upon the treasurer's duties, shall give an official bond, to be approved by the governing body, in a sum approximating: If a personal bond, twice the amount of the funds that may be confided in such treasurer's care at any one time; or if a corporate surety bond issued by a surety company authorized to do business in this state, the highest amount of the funds that may be confided to such treasurer's care at any one time; signed by sureties approved by the governing body, and filed in the office of the city clerk.

The treasurer shall receive and pay out all the moneys under the control of the board as ordered by it, but shall receive no compensation from such board. No trustee shall receive any compensation for such trustee's services performed, but a trustee may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and money paid out shall be made under oath by each of such trustees and filed with the secretary, and allowed only by the affirmative vote of a majority of the board.

The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economical and proper conduct thereof not inconsistent with this act and the ordinances of the city. They shall have the exclusive control of the expenditure of all moneys collected to the credit of the hospital fund and the purchase of site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased or set apart for that purpose. All money received for such hospital shall be deposited in the treasury of the board of trustees and paid out only by claims and warrants or warrant checks as provided by K.S.A. 10-801 to 10-806 inclusive, 12-105a and 12-105b, and amendments thereto. The board is authorized to invest in any mutual insurance company organized by an association of health care providers to which the hospital belongs, enter into contracts with such company, pay any assessments pursuant to such contracts and arrange for the issuance of a letter of credit by any bank chartered by this state or which is a member bank of the federal reserve system. The board of hospital trustees shall have power to appoint a suitable administrator and necessary assistants, and fix their compensation, and shall have power to remove such appointees, and to do all and everything necessary to properly conduct such hospital. The board of hospital trustees is authorized to establish and fund pension and deferred compensation plans for hospital employees and to procure contracts insuring hospital employees, their dependents, or any class or classes thereof under a policy or policies of life, disability income, health, accident, accidental death and dismemberment, and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee. The board may also expend funds deemed necessary in the recruitment or retention of professional staff including, but not limited to, the purchase of professional liability insurance for such staff.

Such board of hospital trustees shall hold meetings at least once each month and shall keep a complete record of all its proceedings. One of such trustees shall visit and examine the hospital at least twice each month, and the board shall, during the first week in January of each year, file with the governing body of the city, a report of the proceedings with reference to such hospital and a statement of all receipts and expenditures during the year, and shall at such time, certify the amount necessary to maintain, equip and improve the hospital for the ensuing year.

HISTORY: L. 1917, ch. 104, § 4; R.S. 1923, § 14-605; L. 1943, ch. 119, § 1; L. 1968, ch. 375, § 13; L. 1971, ch. 49, § 3; L. 1972, ch. 44, § 3; L. 1988, ch. 147, § 11; L. 1991, ch. 66, § 3; July 1.

14-606. Same; vacancies. Vacancies in the board of trustees, occasioned by removals, resignations or otherwise, shall be reported to the governing body, and be filled in like manner as original appointments, appointees to hold office until the next following city election, when such vacancies shall be filled by election in the usual manner.

HISTORY: L. 1917, ch. 104, § 5; April 3; R.S. 1923, § 14-606.

14-607. Same; eminent domain. If the board of hospital trustees and the owner of any property desired by them for hospital purposes cannot agree as to the price to be paid therefor, they shall report the facts to the governing body, and condemnation proceedings shall be instituted by the governing body, and prosecuted in the name of the city by the city attorney under the provisions of the law in similar cases.

HISTORY: L. 1917, ch. 104, § 6; April 3; R.S. 1923, § 14-607.

14-608. Same; plans. No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other public buildings.

HISTORY: L. 1917, ch. 104, § 7; April 3; R.S. 1923, § 14-608.

14-609. Same; use of hospital; fees; regulations. Every hospital established under this act shall be for the benefit of all the inhabitants of said city, and of any person falling sick or being injured or maimed within its limits, but every such inhabitant or person who is not a pauper shall pay to the board of hospital trustees, or such officer as it shall designate for such city hospital, a reasonable compensation for occupancy, nursing, care, medicine or attendants, according to the rules and regulations prescribed by said board, such hospital always being subject to such reasonable rules and regulations as said board shall adopt in order to render the use of such hospital of the greatest benefit to the greatest number. And said board may exclude from the use of such hospital any and all inhabitants and persons who shall willfully violate such rules and regulations; and said board may extend the privileges and use of such hospital to persons residing outside of such city upon such terms and conditions as said board may from time to time by its rules and regulations prescribe.

HISTORY: L. 1917, ch. 104, § 8; April 3; R.S. 1923, § 14-609.

14-610. Same; rules and regulations. When such hospital is established, the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within said hospital, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said board may prescribe.

HISTORY: L. 1917, ch. 104, § 9; April 3; R.S. 1923, § 14-610.

14-611. Same; donations. Any person or persons, firm, organization, corporation or society, desiring to make a donation of money, personal property or real estate for the benefit of such hospital, shall have the right to vest title of the money or real estate so donated in said city, to be controlled when accepted by the board of hospital trustees according to the terms of the deed, gift, devise or bequest of such property.

HISTORY: L. 1917, ch. 104, § 10; April 3; R.S. 1923, § 14-611.

14-612. Same; physicians; rights of patients. In the management of such hospital no discrimination shall be made against practitioners of any school of medicine or healing recognized by the laws of Kansas, and all such legal practitioners shall have equal privileges in treating patients in said hospital. The patient shall have the absolute right to employ, at his or her own expense, his or her own physician, and when acting for any patient in such hospital the physician employed by such patient shall have exclusive charge of the care and treatment of such patient, and nurses therein shall, as to such patient, be subject to the directions of such physician, subject always to such general rules and regulations as shall be established by the board of trustees under the provisions of this act.

HISTORY: L. 1917, ch. 104, § 11; April 3; R.S. 1923, § 14-612.

14-613. Same; training school for nurses. The board of trustees of such city hospital may establish and maintain in connection therewith, and as a part of said city hospital, a training school for nurses.

HISTORY: L. 1917, ch. 104, § 12; April 3; R.S. 1923, § 14-613.

14-614. Same; fees; account of receipts. The board of hospital trustees shall have power to determine whether or not patients presented at said city hospital for treatment are subjects of charity, and shall fix such prices for compensation for patients, other than those who may be able to assist themselves, as the said board deems proper, the receipts therefor to be paid to the treasurer of said board and credited by the treasurer to the hospital funds.

HISTORY: L. 1917, ch. 104, § 13; April 3; R.S. 1923, § 14-614.

14-633. Bonds for acquiring site, building and equipment in certain cities between 5,000 and 8,000; limitation; election. The governing body of any city of the second class having a population of not less than five thousand nor more than eight thousand and located in a county having a population of not less than eleven thousand nor more than fourteen thousand is hereby authorized and empowered to issue bonds of said city in an amount not exceeding one hundred thousand dollars for the purpose of acquiring a site, building and equipping a hospital: Provided, That before any such bonds shall be issued the question of issuing the same shall be submitted to a vote of the people at a regular city primary or city election or at a special election called for the purpose of submitting said question, and no bonds shall be issued until a majority of the qualified electors who shall vote on the question at such election shall declare by their votes in favor of issuing said bonds. All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated, and amendments thereto.

HISTORY: L. 1941, ch. 157, § 1; Feb. 19.

14-634. Same; lease of hospital. Upon the establishment and building of a hospital in said city of the second class, the governing body of said city shall have the power by resolution to rent, lease or let said hospital unto any person, persons, corporation or society upon such terms and conditions as the governing body of said city may deem to the best interests of said city; and upon the expiration of the lease so made, the governing body of said city at the time of the expiration of such lease shall have the power to make and execute a new lease to any person, persons, corporation or society upon such terms and conditions as said governing body may deem to the best interests of said city.

HISTORY: L. 1941, ch. 157, § 2; Feb. 19.

14-635. Same; federal aid. The governing bodies of such cities of the second class are hereby authorized and empowered to accept and secure any benefits of federal aid in the construction of any such hospital.

HISTORY: L. 1941, ch. 157, § 3; Feb. 19.

14-640d. Hospital maintenance and improvements; tax levy, use of proceeds. Whenever any city of the second class shall have heretofore established a hospital in such city and issued bonds pursuant to the provisions of K.S.A. 14-636 and 14-637, the governing body of such city may levy annually a tax for the purpose of equipping, maintaining and improving such hospital on all taxable tangible property within the limits of said city and to pay a portion of the principal and interest on bonds issued by such city under the authority of K.S.A. 12-1774, and amendments thereto.

HISTORY: L. 1963, ch. 115, § 1; L. 1970, ch. 81, § 4; L. 1975, ch. 494, § 25; L. 1979, ch. 52, § 71; July 1.

14-641. Bonds for acquiring site, building and equipment of hospital and training school for nurses in certain cities of 12,000 or over; limitation; election; war memorial; federal and state aid. The governing body of any city of the second class having a population of not less than twelve thousand and having an assessed valuation exceeding nine million dollars is hereby authorized and empowered to issue the bonds of such city in an amount not exceeding three hundred fifty thousand dollars for the purpose of acquiring a site, building and equipping a hospital and training school for nurses. Before any of such bonds shall be issued, the question of issuing same shall be submitted to the vote of the people at the next city election or at an election called for that purpose, and no bonds shall be issued until a majority of the qualified electors who shall vote on the question at such an election shall have declared by their votes in favor of issuing said bonds.

Such proposal to vote bonds may be submitted to the electors of such city as a proposal to make such hospital a war memorial municipal hospital to the inhabitants of such city who have served in the armed forces of the United States, and may be named on the ballots as such, and the cost thereof may include funds for the purpose of acquiring, erecting and the placing of plaques or tablets setting out the names of those citizens who gave their lives in the service of their country. All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article one of chapter 10 of the Kansas Statutes Annotated and amendments thereto, and none of the debt limitations provided by law shall apply to bonds issued under this act. Such city is hereby authorized and empowered to receive and use the benefits of any federal or state aid, or both, in the construction of such hospital and training school, or the acquiring of a site, which aid may be in addition to the proposed bond issue.

HISTORY: L. 1941, ch. 159, § 1; L. 1945, ch. 137, § 1; Feb. 23.

14-644. Governing body of city vested with control of hospital; management by city governing body; expenditures for recruitment or retention of professional staff; administrator; assistants; pension and deferred compensation plans for employees; contracts insuring employees and dependents; lease of buildings, furnishings and equipment by certain cities, election. The governing body of such city shall be vested with the power, authority and control of the hospital and nurses training school. The governing body shall have exclusive control of the expenditure of all moneys collected to the credit of the hospital and training school fund or the fund of either of them and the purchase of site or sites, the purchase or construction of any hospital or training school building or buildings, and the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased or set apart for that purpose. The governing body may also expend such funds as deemed necessary in recruitment or retention of professional staff including, but not limited to, the purchase of professional liability insurance for such staff. The governing body shall have power to appoint a suitable administrator and necessary assistants and fix their compensation and shall have power to remove such appointees and to do all things necessary to properly conduct the hospital and training school. The board of hospital trustees is authorized to establish and fund pension and deferred compensation plans for hospital employees and to procure contracts insuring hospital employees, their dependents, or any class or classes thereof, under a policy or policies of life, disability income, health, accident, accidental death and dismemberment and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee. The governing body of any city of the second class having a population of more than 12,500 located in a county having a population of not less than 30,000 nor more than 37,000, notwithstanding the provisions of this section, may lease to any person, persons, corporation or other legally organized society or association any hospital buildings, furnishings and equipment upon such terms and conditions as it may by ordinance declare. Before such ordinance may be enacted by the governing body, the decision to lease shall first be approved by a majority of the qualified electors residing within the city limits who shall vote at any general or special election where such proposition

to lease appears on the ballot. Preceding such proposition on the ballot shall be a summary of the material terms and conditions of the proposed lease.

HISTORY: L. 1941, ch. 159, § 4; L. 1945, ch. 137, § 3; L. 1971, ch. 49, § 4; L. 1972, ch. 44, § 4; L. 1991, ch. 66, § 4; July 1.

14-645. Same; eminent domain. If the governing body of said city and the owner of any property desired by them for hospital and training school purposes cannot agree as to the price to be paid therefor, said governing body is authorized and empowered to institute and prosecute to completion condemnation proceedings in the name of the city by the city attorney under the provisions of the law in similar cases.

HISTORY: L. 1941, ch. 159, § 5; L. 1945, ch. 137, § 4; Feb. 23.

14-646. Same; plans and specifications; bids. No hospital or training school buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the governing body of the city, and bids advertised for according to law for other public buildings.

HISTORY: L. 1941, ch. 159, § 6; L. 1945, ch. 137, § 5; Feb. 23.

14-647. Same; use of hospital; fees; rules and regulations. Every hospital established under this act shall be for the benefit of all the inhabitants of said city, and of any person falling sick or being injured or maimed within its limits, but every such inhabitant or person shall pay to the governing body of the city, or such officer as it shall designate for such city hospital, a reasonable compensation for occupancy, nursing, care, medicine or attendants, according to the rules and regulations prescribed by said governing body, such hospital always being subject to such reasonable rules and regulations as said governing body shall adopt in order to render the use of such hospital of the greatest benefit to the greatest number. Said governing body may waive the payment to such governing body of compensation from any person who by reason of misfortune is unable to pay therefor; and said governing body may exclude from the use of such hospital any and all inhabitants and persons who shall willfully violate such rules and regulations; and said governing body may extend the privileges and use of such hospital to persons residing outside of such city upon such terms and conditions as said governing body may from time to time by its rules and regulations prescribe.

HISTORY: L. 1941, ch. 159, § 7; L. 1945, ch. 137, § 6; Feb. 23.

14-648. Same; control of staff, employees, patients and grounds. When such hospital and training school for nurses are established, the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within said hospital and nurses training school and the ground immediately surrounding the school, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said governing body may prescribe.

HISTORY: L. 1941, ch. 159, § 8; L. 1945, ch. 137, § 7; Feb. 23.

14-649. Same; donations to hospital. Any person or persons, firm, organization, corporation or society, desiring to make a donation of money, personal property or real estate for the benefit of such hospital or training school for nurses, shall have the right to vest title of the money or real estate so donated in said city, to be controlled when accepted by the governing body of the city according to the terms of the deed, gift, devise or bequest of such property.

HISTORY: L. 1941, ch. 159, § 9; L. 1945, ch. 137, § 8; Feb. 23.

14-650. Same; training school for nurses. A training school for nurses may be established and maintained in connection with such hospital, and as a part of same.

HISTORY: L. 1941, ch. 159, § 10; Feb. 21.

14-651. Same; fixing of patients' fees; account of receipts. The governing body of the city shall have power to determine whether or not patients presented at said city hospital for treatment are subject to charity, and shall fix such prices for compensation for patients, as the said governing body deems proper, the receipts therefor to be paid to the treasurer of said city and credited by the treasurer to the hospital funds.

HISTORY: L. 1941, ch. 159, § 11; L. 1945, ch. 137, § 9; Feb. 23.

14-652. Same; bylaws, rules and regulations. The governing body of such city is hereby authorized and required to make and adopt such bylaws, rules and regulations as are necessary for the purpose of carrying out the provisions of this act and acts amendatory thereof and supplemental thereto in the establishment, management, care and control of such hospital and training school for nurses.

HISTORY: L. 1941, ch. 159, § 12; L. 1945, ch. 137, § 10; Feb. 23.

14-654. Same; invalidity of part. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby. No caption to any section shall in any way affect the interpretation of this act, or any part thereof.

HISTORY: L. 1945, ch. 137, § 12; Feb. 23.

14-654a. Same; additional bonds for site, building and equipment; election. The governing body of any city of the second class which has authorized the issuance of bonds under the provisions of K.S.A. 14-641 to 14-654, for the purpose of acquiring a site and building and equipping a hospital and for other purposes as specified in said sections, is hereby authorized to issue additional bonds of said city in an amount not exceeding three hundred thousand dollars ($ 300,000) for such purposes: Provided, That before any such bonds shall be issued the question of issuing the same shall be submitted to a vote of the people at the next city election or at an election called for that purpose, and no bonds shall be issued until a majority of the qualified electors who shall vote on the question at such an election shall have declared by their votes in favor of issuing said bonds.

All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article 1, chapter 10 of the Kansas Statutes Annotated and amendments thereto, and none of the debt limitations provided by law shall apply to bonds issued under this act. Such city is hereby authorized and empowered to receive and use the benefits of any federal or state aid, or both, in the construction of such hospital and training school, or the acquiring of a site, which aid may be in addition to the proposed bond issue.

HISTORY: L. 1949, ch. 173, § 1; Feb. 15.

14-655. Bonds for acquiring site, building and equipping hospital in certain cities in certain counties between 14,000 and 18,000; limitation; election. The governing body of any city of the second class, located in a county having a population of not less than fourteen thousand nor more than eighteen thousand and having an assessed tangible valuation of not less than twenty-five million dollars nor more than thirty-five million dollars and having within its boundaries two or more cities of the second class, is hereby authorized and empowered to issue the bonds of said city in an amount not exceeding one hundred thousand dollars for the purpose of acquiring a site, building and equipping a hospital: Provided, That the question of issuing such bonds shall be submitted to the vote of the people at any regular city election or at an election called for that purpose, and no bonds shall be issued until a majority of the qualified electors who shall vote on the question at such election shall have declared by their votes in favor of issuing said bonds. Said election may be called by the governing body upon its own motion.

HISTORY: L. 1941, ch. 163, § 1; L. 1947, ch. 159, § 1; March 8.

14-656. Same; how bonds issued; limitations inapplicable. All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated and amendments thereto, except as in this act otherwise provided, and none of the debt limitations provided by law shall apply to bonds issued under this act.

HISTORY: L. 1941, ch. 163, § 2; March 15.

14-658. Same; board of trustees; appointment; terms; election; qualifications. Whenever any election shall have been held for the purpose of determining whether bonds shall be issued for the purpose of acquiring a site, building and equipping such hospital and the electors of such city have declared by their votes in favor of the issuance of the same, the governing body shall proceed at once to appoint three trustees, chosen from the citizens of said city with reference to their fitness for such office, who shall constitute a board of trustees for said hospital. The said trustees shall hold their offices until the next following city election, when three trustees shall be elected and hold their offices, one for one year, one for two years and one for three years. At each subsequent city election, the trustee whose term is about to expire shall be filled by the nomination and election of hospital trustee in the same manner as other officers are elected but at no time shall more than one member of the board be a physician.

HISTORY: L. 1941, ch. 163, § 4; L. 1971, ch. 59, § 2; July 1.

14-659. Same; management. The government of any such hospital shall be as provided in K.S.A. 14-605 to 14-614, inclusive, or any amendments thereto.

HISTORY: L. 1941, ch. 163, § 5; March 15.

14-660. Same; leases; approval by trustees. The governing body of any such city shall have power to lease, let or rent to any person, firm, corporation or other legally organized society the building and equipment herein provided for upon such terms and conditions, including special rates for water, light and power, as they may by resolution declare: Provided, That no contract for the leasing, letting or renting of the same shall be made unless and until the terms and provisions thereof shall have been approved by the board of trustees.

HISTORY: L. 1941, ch. 163, § 6; March 15.

14-661. Same; contracts; federal aid. The board of trustees of such hospital is hereby authorized and empowered to contract for a site, the construction and equipment of said hospital buildings and to do so in such manner as to comply with and secure the benefits of any federal aid, and to receive and use such benefits of such federal aid in the construction and equipment of such hospital, or the acquiring of a site therefor, which aid may be in addition to the proposed bond issue.

HISTORY: L. 1941, ch. 163, § 7; March 15.

14-662. Bonds for acquiring site, building and equipping hospital in cities in certain counties between 20,000 and 25,000; limitation; election. The governing body of any city of the second class located in a county having a population of not less than twenty thousand nor more than twenty-five thousand and having an assessed tangible valuation of not less than thirty-seven million five hundred thousand dollars nor more than forty-five million dollars, is hereby authorized and empowered to issue the bonds of said city in an amount not exceeding fifty thousand dollars for the purpose of acquiring a site, building and equipping a hospital: Provided, That the question of issuing such bonds shall be submitted to the vote of the people at any regular city election or at an election called for that purpose, and no bonds shall be issued until a majority of the qualified electors who shall vote on the question at such election shall have

declared by their votes in favor of issuing said bonds. Said election may be called by the governing body upon its own motion and shall be called by the governing body upon petition of at least forty percent of the qualified electors of such city.

HISTORY: L. 1941, ch. 164, § 1; March 24.

14-663. Same; how bonds issued; limitations inapplicable. All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated and amendments thereto, except as in this act otherwise provided, and none of the debt limitations provided by law shall apply to bonds issued under this act.

HISTORY: L. 1941, ch. 164, § 2; March 24.

14-663a. Same; additional bonds; limitation; election. This act shall apply to any city of the second class wherein the qualified electors thereof have voted in accordance with the provisions of K.S.A. 14-662, to issue bonds for the purpose of providing revenue for the purpose of acquiring a site, building and equipping a hospital and such city has acquired a site for such hospital but the amount of bonds originally voted is insufficient to provide revenue for the construction and equipment of an adequate hospital for said city. The governing body of any such city is hereby authorized and empowered to issue additional bonds of said city in an amount not exceeding one hundred thousand dollars for the purpose of construction and equipping a city hospital: Provided, That the question of issuing such bonds shall be submitted to the vote of the people at any regular city election or at an election called for that purpose and no bonds shall be issued until a majority of the qualified electors who shall vote on the question at such election shall have declared by their votes in favor of issuing said bonds. Said election may be called by the governing body upon its own motion and shall be called by the governing body upon petition of at least forty percent of the qualified electors of such city.

HISTORY: L. 1947, ch. 161, § 1; April 9.

14-663b. Same; how bonds issued; limitations inapplicable. All bonds issued under the authority conferred in this act shall be issued, sold, registered, delivered and retired in the manner prescribed by K.S.A. 14-663, and said section shall be applicable to all bonds issued under this act.

HISTORY: L. 1947, ch. 161, § 2; April 9.

14-665. Same; board of trustees; appointment; terms; election. Whenever any election shall have been held for the purpose of determining whether bonds shall be issued for the purpose of acquiring a site, building and equipping such hospital and the electors of such city have declared by their votes in favor of the issuance of the same, the governing body shall proceed at once to appoint three trustees, chosen from the citizens of said city with reference to their fitness for such office, who shall constitute a board of trustees for said hospital. The said trustees shall hold their offices until the next following city election, when three trustees shall be elected and hold their offices, one for one year, one for two years and one for three years. At each subsequent city election, the trustee whose term is about to expire shall be filled by the nomination and election of hospital trustee in the same manner as other officers are elected but at no time shall more than one member of the board be a physician.

HISTORY: L. 1941, ch. 164, § 4; L. 1971, ch. 59, § 3; July 1.

14-666. Same; management. The government of any such hospital shall be as provided in K.S.A. 14-605 to 14-614, inclusive, or any amendments thereto.

HISTORY: L. 1941, ch. 164, § 5; March 24.

14-667. Same; leases; approval by trustees. The governing body of any such city shall have power to lease, let or rent to any person, firm, corporation or other legally organized society the building and equipment herein provided for upon such terms and conditions, including special rates for water, light and power, as they may by resolution declare: Provided, That no contract for the leasing, letting or renting of the same shall be made unless and until the terms and provisions thereof shall have been approved by the board of trustees.

HISTORY: L. 1941, ch. 164, § 6; March 24.

14-668. Same; contracts; federal aid. The board of trustees of such hospital is hereby authorized and empowered to contract for a site, the construction and equipment of said hospital buildings and to do so in such manner as to comply with and secure the benefits of any federal aid, and to receive and use such benefits of such federal aid in the construction and equipment of such hospital, or the acquiring of a site therefor, which aid may be in addition to the proposed bond issue.

HISTORY: L. 1941, ch. 164, § 7; March 24

14-669. Bonds for acquiring site, building and equipping hospital in certain cities between 5,000 and 8,000; limitation; election; petition. The governing body of any city of the second class having a population of not less than five thousand nor more than eight thousand and located in a county having a population of not less than eleven thousand nor more than fourteen thousand is hereby authorized and empowered to issue bonds of said city in an amount not exceeding three hundred seventy-five thousand dollars for the purpose of acquiring a site, building and equipping a hospital: Provided, That before any such bonds shall be issued the question of issuing the same shall be submitted to a vote of the people at a regular city primary or city election or at a special election called for the purpose of submitting said question, and no bonds shall be issued until a majority of the qualified electors who shall vote on the question at such election shall declare by their votes in favor of issuing said bonds.

The governing body of such city may submit the question of the issuance of such bonds at an election on their own motion and shall submit such question whenever a petition is filed with the city clerk requesting that the question of the issuance of such bonds be submitted at an election, signed by not less than twenty-five percent of the qualified electors of such city determined on the basis of the total vote cast for secretary of state at the last preceding general election in such city. All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated, and amendments thereto.

HISTORY: L. 1945, ch. 142, § 1; March 6.

14-670. Same; lease or rental by city governing body. Upon the establishment and building of a hospital in said city of the second class, the governing body of said city shall have the power by resolution to rent, lease or let said hospital unto any person, persons, corporation or society upon such terms and conditions as the governing body of said city may deem to the best interests of said city; and upon the expiration of the lease so made, the governing body of said city at the time of the expiration of such lease shall have the power to make and execute a new lease to any person, persons, corporation or society upon such terms and conditions as said governing body may deem to the best interests of said city.

HISTORY: L. 1945, ch. 142, § 2; March 6.

14-671. Same; federal aid. The governing bodies of such cities of the second class are hereby authorized and empowered to accept and secure any benefits of federal aid in the construction of any such hospital.

HISTORY: L. 1945, ch. 142, § 3; March 6.

14-672. Same; donations. The governing body of said city is hereby authorized to accept any grants, donations or gifts which shall be in addition to the amount of bonds voted.

HISTORY: L. 1945, ch. 142, § 4; March 6.

14-673. Same; bond limitations not to apply. No other law of this state limiting bonded indebtedness shall apply to any bonds issued under the provisions of this act.

HISTORY: L. 1945, ch. 142, § 5; March 6.

14-674, Bonds for construction and equipment of addition or annex to city hospital, when; limitations; election; petition. The governing body of any city of the second class may construct, build, erect, furnish and equip an addition or annex to any hospital being operated and maintained by such city or enlarge, add to, reconstruct or rebuild said hospital or nurses' home used in connection with said hospital, whenever such governing body shall determine that the existing hospital facilities are inadequate and such addition or annex or other improvement is necessary and needed, and such governing body may issue bonds of such city in such amount, not exceeding the limit of bonded indebtedness of said city, as may be necessary for such purpose: Provided, No such bonds shall be issued pursuant to the provisions hereof until the issuance of such bonds and the amount thereof, has been authorized by a majority vote of the electors, voting at a general city election or at a special election called for that purpose. Said election may be called by the governing body of said city upon its own motion, and shall be called upon petition of twenty-five percent (25%) of the duly registered electors of said city.

HISTORY: L. 1945, ch. 139, § 1; L. 1947, ch. 160, § 1; L. 1961, ch. 104, § 1; March 8.

14-675. Same; application of general bond law. All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated and amendments thereto, except as in this act otherwise provided.

HISTORY: L. 1945, ch. 139, § 2; Feb. 24.

14-676. Same; donations. The governing bodies of any such cities are hereby authorized to accept any grants, donations or gifts which shall be in addition to the amount of the proposed bond issue.

HISTORY: L. 1945, ch. 139, § 3; Feb. 24.

14-677. Same; federal aid. The governing bodies of such cities are hereby authorized and empowered to contract for the construction and equipment of said hospital buildings in such manner as to comply with and secure the benefits of any federal aid.

HISTORY: L. 1945, ch. 139, § 4; Feb. 24.

14-677a. Construction or construction and equipment of hospital or addition; additional bonds for certain hospital purposes; notice; protest petition; election. Any city of the second class which has voted to issue bonds for the purpose of constructing or constructing and equipping a hospital or an addition to its hospital and which is unable to proceed with such construction and equipping because of increased costs since the authorization of such bonds may issue additional bonds of the city in an amount not to exceed 50% of the original amount authorized. Before the issuance of any such bonds, the governing body of the city shall cause to be published once each week for two consecutive weeks in the official city paper a notice of its intention to issue such additional bonds. Unless there is filed in the office of the city clerk within 30 days after the first publication of the notice a petition protesting the issuance of such bonds in accordance with this section, the governing body may proceed to issue and sell such bonds.

If within 30 days after the first publication of the notice, petitions signed by qualified electors equal in number to not less than 25% of the qualified electors of the city who voted for mayor at the last city election are filed with the city clerk, the governing body shall submit the question of issuing such additional bonds at the next regular election held within six months after the filing of such petitions, or at a special election called for that purpose if no regular election will be held within that time. If the majority of those voting on such proposition vote in favor of issuing the bonds, the governing body of the city shall proceed to issue and sell the bonds in accordance with the provisions of the general bond law, and none of the debt limitations provided by law shall apply to bonds issued under this act. The proceeds from the sale of such bonds shall be used together with the amount previously authorized for the purposes for which such original bonds were issued.

HISTORY: L. 1949, ch. 172, § 1; L. 1961, ch. 105, § 1; L. 1981, ch. 173, § 47; July 1.

14-678. Bonds for acquiring site, building and equipping in cities in certain counties not over 50,000; limitation; election. The governing body of any city of the second class located in a county having a population of not more than 50,000 with a total assessed taxable tangible valuation of not less than $ 60,000,000 is hereby authorized and empowered to issue bonds of said city in an amount not exceeding two hundred fifty thousand dollars for the purpose of acquiring a site within or without the corporate limits of said city, building, equipping, improving or remodeling a hospital: Provided, That before any such bonds shall be issued the question of issuing the same shall be submitted to a vote of the people at a regular city primary or city election or at a special election called for the purpose of submitting said question, and no bonds shall be issued until the majority of the qualified electors who shall vote on the question at such election shall declare by their votes in favor of the issuing of said bonds.

All bonds authorized by this act shall be issued, sold, delivered, and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated and amendments thereto, and none of the restrictions or limitations respecting the amount of city indebtedness contained in any of the statutes of the state of Kansas shall apply to or in any way affect the issuance of bonds authorized by this act.

HISTORY: L. 1947, ch. 163, § 1; April 14.

14-679. Hospitals in certain cities; management by governing body or trustees; pension and deferred compensation plans for employees; contracts insuring employees and dependents; expenditures for recruitment or retention of professional staff; lease or rental of hospital. Upon the establishment and building of a hospital by a city of the second class, the governing body thereof is hereby vested with the authority to manage and control such hospital or such governing body may appoint three trustees from the citizens of such city with reference to their fitness for such office, who shall thereupon constitute a board of trustees for the hospital. The trustees shall within 10 days after their appointment organize a board of hospital trustees by the election of one of their number as chairman, one as secretary and one as treasurer. The board of hospital trustees is authorized to establish and fund pension and deferred compensation plans for hospital employees and to procure contracts insuring hospital employees, their dependents, or any class or classes thereof, under a policy or policies of life, disability income, health, accident, accidental death and dismemberment and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee. The board of hospital trustees shall also have authority to expend funds deemed necessary in recruitment or retention of professional staff including, but not limited to, the purchase of professional liability insurance for such staff. The trustees shall receive no compensation for their services and shall serve at the pleasure of the governing body of such city.

The governing body of the city shall have the power by resolution to rent, lease or let the hospital to any person, persons, corporation or society upon such terms and conditions as the governing body of the city may deem to be in the best interest of the city. Upon the expiration of the lease, the governing body of the city at the time of the expiration of such lease shall have the power to make and execute a new lease to any person, persons, corporation or society upon such terms and conditions as the governing body may deem to be in the best interest of the city.

HISTORY: L. 1947, ch. 163, § 2; L. 1971, ch. 49, § 5; L. 1972, ch. 44, § 5; L. 1991, ch. 66, § 5; July 1.

14-680. Same; federal aid and donations or gifts. The governing body of a city of the second class is hereby authorized and empowered to accept and secure any benefits of federal aid or state moneys in the construction, improvement, or maintenance of such hospital and make contracts and agreements therefor, and further to accept any grants, donations or gifts from any source whatsoever.

HISTORY: L. 1947, ch. 163, § 3; April 14.

14-682. Same; eminent domain. If the governing body of a city of the second class and the owner of any property desired by said city for hospital purposes cannot agree as to the price to be paid therefor, the city shall have the authority to institute condemnation proceedings and prosecute said suit in the name of the city by the city attorney under the provisions of the law in similar cases.

HISTORY: L. 1947, ch. 163, § 5; April 14.

14-683. Same; plans and specifications; contracts. No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and approved by the governing body of the city and bids advertised therefor and contracts let to the lowest responsible bidder.

HISTORY: L. 1947, ch. 163, § 6; April 14.

14-684. Same; training school for nurses. A training school for nurses may be established and maintained in connection with such hospital and as a part of same.

HISTORY: L. 1947, ch. 163, § 7; April 14.

14-685. Hospitals in certain cities under 3,000. This act shall apply to any city of the second class which has a population of less than three thousand and which is located in a county having a population of not less than eight thousand nor more than ten thousand and a total assessed tangible valuation of not less than twenty-two million dollars nor more than twenty-eight million dollars.

HISTORY: L. 1947, ch. 162, § 1; April 9.

14-686. Same; bonds for acquiring site, building and equipment; limitation; election. The governing body of any such city is hereby authorized and empowered to issue bonds of said city in an amount not exceeding two hundred fifty thousand dollars for the purpose of acquiring a site within or without the corporate limits of said city, building, equipping, improving or remodeling a hospital: Provided, That before any such bonds shall be issued the question of issuing the same shall be submitted to a vote of the people at a regular city primary or city election or at a special election called for the purpose of submitting said question, and no bonds shall be issued until the majority of the qualified electors who shall vote on the question at such election shall declare by their votes in favor of the issuing of said bonds.

All bonds authorized by this act shall be issued, sold, delivered, and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated and amendments thereto, and none of the restrictions or limitations respecting the amount of city indebtedness contained in any of the statutes of the state of Kansas shall apply to or in any way affect the issuance of bonds authorized by this act.

HISTORY: L. 1947, ch. 162, § 2; April 9.

14-687. Governing body vested with control of hospitals; management by governing body or trustees; pension and deferred compensation plans for employees; contracts insuring employees and dependents; expenditures for recruitment or retention of professional staff; lease or rental of hospital. Upon the establishment and building of a hospital by such cities, the governing bodies thereof are hereby vested with the authority to manage and control such hospital or such governing body may appoint three trustees from the citizens of such city with reference to their fitness for such office, who shall constitute a board of trustees for the hospital. The trustees shall within 10 days after their appointment organize a board of hospital trustees by the election of one of their number as chairman, one as secretary and one as treasurer. The board of hospital trustees is authorized to establish and fund pension and deferred compensation plans for hospital employees and to procure contracts insuring hospital employees, their dependents, or any class or classes thereof, under a policy or policies of life, disability income, health, accident, accidental death and dismemberment and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee. The board of hospital trustees may also expend such funds as deemed necessary in recruitment or retention of professional staff including, but not limited to, the purchase of professional liability insurance for such staff. The trustees shall receive no compensation for their services and shall serve at the pleasure of the governing body of such city.

The governing body of the city shall have the power by resolution to rent, lease or let the hospital to any person, persons, corporation or society upon such terms and conditions as the governing body of the city may deem to the best interest of the city. Upon the expiration of the lease, the governing body of the city at the time of the expiration of such lease shall have the power to make and execute a new lease to any person, persons, corporation or society upon such terms and conditions as the governing body may deem to the best interest of the city.

HISTORY: L. 1947, ch. 162, § 3; L. 1971, ch. 49, § 6; L. 1972, ch. 44, § 6; L. 1991, ch. 66, § 6; July 1.

14-688. Same; federal aid and donations or gifts. The governing body of such cities are hereby authorized and empowered to accept and secure any benefits of federal aid or state moneys in the construction, improvement, or maintenance of such hospital and make contracts and agreements therefor, and further to accept any grants, donations or gifts from any source whatsoever.

HISTORY: L. 1947, ch. 162, § 4; April 9.

14-690. Same; eminent domain. If the governing body of any such city of the second class and the owner of any property desired by said city for hospital purposes cannot agree as to the price to be paid therefor, the city shall have the authority to institute condemnation proceedings and prosecute said suit in the name of the city by the city attorney under the provisions of the law in similar cases.

HISTORY: L. 1947, ch. 162, § 6; April 9.

14-691. Same; plans and specifications; contracts. No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and approved by the governing body of the city and bids advertised therefor and contracts let to the lowest responsible bidder.

HISTORY: L. 1947, ch. 162, § 7; April 9.

14-692. Same; training school for nurses. A training school for nurses may be established and maintained in connection with such hospital and as a part of same.

HISTORY: L. 1947, ch. 162, § 8; April 9.

14-693. Extension of territorial limits for hospital purposes in certain cities. Where any city of the second class having a population of less than three thousand (3,000) or any city of the second class located in a county having a population of more than ten thousand (10,000) and not more than thirteen thousand (13,000) and an assessed tangible valuation of more than twenty-four million dollars ($ 24,000,000) and less than thirty million dollars ($ 30,000,000) has provided for a hospital under the provisions of K.S.A. 14-602 to 14-614, both sections inclusive, and any amendments thereto, the territorial limits of said city may for hospital purposes be extended to include territory outside the regular city limits and which territory is not in any hospital district in the manner hereinafter provided and such added territory shall be considered within such city only for the purposes specified in said sections or any amendments thereto, and for the further purposes of this act.

When any territory has been added to a city as provided by this act the provisions of this act shall be supplemented to the provisions of said sections or any amendments thereto. Hospital purposes shall include nurses' training and nurses' assistants training, if there be such.

HISTORY: L. 1949, ch. 166, § 1; L. 1974, ch. 87, § 1; July 1.

14-694. Same; designation of boundaries; publication of ordinance; election upon petition; attachment of territory; cost of election. The governing body of any city specified in K.S.A. 14-693 shall by ordinance designate the boundaries of the area outside the city limits which it proposes to incorporate in the city for hospital purposes only but any such ordinance shall not take effect until at least 16 days after the last publication required herein. If a sufficient petition is filed requesting an election as hereinafter provided, incorporation of the area shall not take effect until such election is held and unless a majority of the qualified electors of the district vote in favor thereof.

Such ordinance incorporating an area outside the city limits shall be published once each week for two consecutive weeks in a newspaper having general circulation in the areas to be included. If within 15 days after the last publication of the ordinance, 10% of the qualified electors residing in the area petition the county commissioners of the county wherein the greater portion of the land is located to call a special election upon the question of including such area, the county commissioners shall call a special election in such area outside the city limits proposed to be incorporated. Notice of such election shall be given by the county clerk of the county in which the greater portion of the territory to be incorporated in the city is located. In calling the election, the county commissioners shall be governed by the provisions of the general election laws insofar as applicable.

The governing body of any city of the second class located in a county having a population of more than 10,000 and not more than 13,000 and an assessed tangible valuation of more than $ 24,000,000 and less than $ 30,000,000 shall by ordinance designate the boundaries of the area outside the city limits which it proposes to incorporate in the city for hospital purposes only but any such ordinance shall not take effect until approved at an election as hereinafter provided. The county commissioners shall call a special election in such area outside the city limits proposed to be incorporated. Notice of such election shall be given by the county clerk of the county in which the greater portion of the territory to be incorporated in the city is located. In calling the election, the county commissioners shall be governed by the provisions of the general election laws insofar as they are applicable. The election shall be held in accordance with the provisions of this section.

The board of county commissioners of the county in which the greater portion of the territory to be incorporated is located shall appoint the judges and clerks of the election and shall provide separate boards and separate ballots for any territory located in another county. Such county commissioners shall canvass the vote cast in such territory located in another county and shall keep a separate record of the results thereof. The proposition submitted shall be:

> "Shall the city of (here insert name of city) be permitted to incorporate the following described area: _____ into its hospital district?"

If a majority of the qualified electors of the district vote in favor thereof, such territory shall be attached to the city for hospital purposes in accordance with the provisions of this act. No township or part of a township located in a county other than the county in which the hospital is located shall be incorporated in the city for hospital purposes unless a majority of all those voting in such township or part of a township at such election shall have voted in favor of the incorporation. If a majority of those voting in such township or part of a township located in such other county vote

against the proposition, such results shall not prevent the incorporation of the remaining territory if the majority of the votes cast therein favor the incorporation of such territory. The cost of such election shall be reimbursed to the counties by the governing body of the city proposing to create such hospital district.

HISTORY: L. 1949, ch. 166, § 2; L. 1974, ch. 87, § 2; L. 1981, ch. 173, § 48; July 1.

14-695. Extension of territorial limits for hospital purposes in certain cities; board of trustees; terms; pension and deferred compensation plans for employees; contracts insuring employees and dependents; expenditures for recruitment or retention of professional staff. Within 30 days after the addition of the territory the board of commissioners of such city or the mayor, by and with the consent of the council, shall appoint two electors residing in the added territory to the board of trustees to serve until the next regular city election and until their successors are elected and qualified, and the board of hospital trustees shall thereafter consist of five trustees, but at all times at least two of the trustees shall be residents of the city in the added territory. At the next regular city election, two trustees from the added territory shall be elected, one for a term of one year and one for a term of two years, and a successor to the trustee whose office expires under K.S.A. 14-604 and amendments thereto who may reside anywhere in the hospital territory. Successors to the short-term trustees shall be elected for three-year terms. The board of hospital trustees is authorized to establish and fund pension and deferred compensation plans for hospital employees and to procure contracts insuring hospital employees, their dependents, or any class or classes thereof, under a policy or policies of life, disability income, health, accident, accidental death and dismemberment and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee. The board of hospital trustees shall also have authority to expend funds deemed necessary in recruitment or retention of professional staff including, but not limited to, the purchase of professional liability insurance for such staff.

HISTORY: L. 1949, ch. 166, § 3; L. 1971, ch. 49, § 7; L. 1972, ch. 44, § 7; L. 1991, ch. 66, § 7; July 1.

14-696. Same; budget; tax levy; revenues. In addition to the certification of January under the provisions of K.S.A. 14-605, the board of hospital trustees shall, on or before the tenth day of July of each year, file with the governing body of the city a budget for the ensuing budget year, which shall be the ensuing calendar year, and shall accompany such budget with a condensed budget to be published as a part of the regular city budget. At the hearing on the regular city budget there shall be a hearing on the hospital budget, and all persons within the hospital territory may appear at the hearing and be heard. The budget may be modified and reduced but not increased before final adoption and the budget may be adopted by the hospital board immediately after the hearing or afterward. A copy of the adopted budget shall be certified by the chairman and secretary to the governing body of the city.

The governing body of the city shall make a tax levy not exceeding one-half mill, according to the requirements of the budget, for hospital purposes, and such levy shall be extended by the county clerk over the entire hospital territory within the county and such levy shall not be included within the total aggregate tax levy limit of the city. Where the added territory extends into an adjacent county the city clerk shall certify the hospital levy to the county clerk of the adjacent county and he or she shall extend the levy on all the tangible taxable property of such territory in his or her county. Upon the receipt of the revenue provided by such levy from the county treasurer or treasurers the city treasurer shall turn the money over to the treasurer of the board of hospital trustees, taking his or her receipt therefor.

HISTORY: L. 1949, ch. 166, § 4; April 5.

14-697. Same; agreements for nurses' training. In addition to the power to establish and maintain in connection with the hospital and as a part of it, a training school for nurses, the board of trustees may enter into agreements with schools or educational institutions for the training of nurses and nurses' assistants or may provide a training school for the preliminary training of nurses and nurses' assistants and contract with schools or educational institutions for the further training of nurses and nurses' assistants and such contracts may be on a continuing basis or for a definite term.

HISTORY: L. 1949, ch. 166, § 5; April 5.

14-698. Same; bonds for sites, buildings, equipment and improvements; election; costs. Whenever in the judgment of the board of trustees it is necessary to erect and equip a hospital building, or to erect and equip an addition to an existing hospital building, or to make extensive alterations and improvements of existing hospital buildings, or to erect and equip a building for a nurses' training school, or to erect and equip a dormitory for nurses and nurses in training, and acquiring sites in any case where necessary and the landscaping thereof, or for several or all of such purposes, and current funds are insufficient, it shall prepare an explanatory statement and an estimate or estimates of the cost or costs and submit the same to the governing body of the city and request that the matter of issuing bonds of the city be submitted to an election of the electors of the hospital territory.

The governing body of the city shall thereupon provide for a bond election as provided by K.S.A. 10-120. If bonds are to be voted for more than one purpose as herein specified one proposition describing the different purposes and stating one amount may be submitted, or separate propositions for different purposes with the proper amount may be submitted. The cost of the bond election shall be borne out of the proceeds of the sale of the bonds if the election carries and the bonds are issued; otherwise it shall be paid by the board of hospital trustees, upon claim being filed by the city. If a majority of the votes cast on a proposition are in favor of the proposition the bonds may be issued. The bonds shall be issued as are other city bonds and shall be general obligation bonds of such city, but such bonds shall not be subject to any bond limitation nor limit the issuance of other bonds of such city or other taxing unit in which any hospital territory is situated.

The governing body of the city shall annually make such levy for bond principal and interest as is necessary to retire the bonds as they mature and the interest as it accrues, such tax levy or levies to extend over the entire hospital territory, and shall be certified and extended and the money collected and turned to the city treasurer the same as the current levy for hospital purposes, but the bond and interest money shall be kept by the city treasurer in a separate fund designated "hospital bond and interest fund" and shall only be used to pay the hospital bonds and interest.

HISTORY: L. 1949, ch. 166, § 6; April 5.

14-699. Same; election of trustees; nominations; vacancies; expenses. At all elections under this act all electors within the hospital territory, both within and without the regular city limits, shall be entitled to vote for all hospital trustee candidates and on all hospital bond propositions. Registration for voting shall not be required of persons in the added territory for the purposes of this act unless required by other statutes. Before any election affecting the hospital the board of trustees shall determine where polling places shall be provided for the convenience of the electors of the added territory and the chairman and secretary shall certify the determination to the governing body of the city and the governing body shall provide the polling places as certified. The members of the election boards at such polling places shall be electors of the added territory, such members to be appointed by the governing body of the city without regard to political affiliation.

Candidates for trustee shall not run as members of political parties. Where the regular city population does not require the city to have a primary, an elector desiring to become a candidate for hospital trustee shall file a declaration of candidacy with the city clerk within the time other nomination papers or declarations must be filed. The declaration shall be in substantially the following form:

> "I hereby declare my candidacy for the office of hospital trustee, position No. ____, of the city of _____, Kansas, at the regular city election on the ____ day of _____, 19__. My address is _____."
> Signed: _____

Such declaration shall be filed in person by the candidate and the city clerk may require proof of identity. Where more than one trustee is to be elected, whether for a regular term or to fill a vacancy, the city clerk shall assign position numbers, such as Hospital Trustee, Position No. ____, equal to the number of trustees to be elected, and candidates shall in the declaration indicate the trustee position for which they are running, and where one or more trustees must be elected from the added territory only electors from the added territory shall be eligible to file for the position numbers assigned to the trustee positions to be filled for the added territory.

Where a vacancy is to be filled and the office is temporarily held by a trustee from the added territory such vacancy shall be filled from added territory. The city clerk shall explain to electors desiring to file declarations whether a position is for

election at large or for added territory. Where the regular city population requires a primary, a candidate shall file a declaration of candidacy similar in form to the form required where there is no primary except that it shall state that the candidate is a candidate for nomination at the regular city primary. At the primary the candidates receiving the greatest and the next greatest number of votes for a trustee office shall be declared nominated: Provided, That where there are not more than two candidates for nomination for a trustee office there shall be no primary for such office and the persons who filed declarations of candidacy for nomination at the primary shall be declared nominated as candidates at the regular election.

Where a primary precedes an election and more than one trustee is to be elected, position numbers shall be assigned as at the election to follow. If the election is one at which a term of less than three years is being filled the declaration shall state the term for which the candidate is a candidate or by reference to the position designating the short term. No filing fee shall be required. The hospital fund shall bear the expense of the election boards for polling places for added territory, and the other expenses shall be paid the same as in cases of other city elections. In all other respects the election laws applying to the city and not in conflict herewith shall apply.

HISTORY: L. 1949, ch. 166, § 7; April 5.

14-6,100. Certain cities between 4,500 and 6,000; acceptance of gifts; election; site, erection and equipment of hospital. Where in any city of the second class having a population of not less than four thousand five hundred (4,500) and not more than six thousand (6,000), located in a county having five (5) cities of the second class, money has been raised by public subscription or otherwise for the construction of a hospital to serve such city and the surrounding community or where such money so raised for such purpose has been partly or wholly spent for acquiring a site and the partial or complete construction and equipment of a hospital, such city may accept a gift of such money or the money not yet expended for site and hospital and the site and hospital in course of construction or constructed and equipped from the person or persons or corporation having charge or owning such money or site and partly constructed or constructed and equipped hospital.

Before the city accepts such gift the proposition shall be submitted at a regular city election or at an election called for the purpose, and if a majority of the votes cast on the proposition shall be in favor thereof the governing body shall proceed to accept the gift, and shall have power to continue with the construction and equipping of the hospital, or in case the gift is of money only shall have power to acquire a site for and erect and equip a hospital within the amount of money available except as provided in K.S.A. 14-6,101.

HISTORY: L. 1953, ch. 113, § 1; April 13.

14-6,101. Same; bonds; limitation; election. Any city which has accepted a gift for hospital purposes as provided in K.S.A. 14-6,100 may issue bonds to supplement the money received by such gift to acquire a site for and construct and equip such hospital or to add to or enlarge and equip any such hospital in course of construction when received or to add to or enlarge any such hospital already constructed and equip the same when received, in an amount not exceeding two hundred thousand dollars ($ 200,000): Provided, That the question of issuing bonds shall be submitted to the vote of the people at the next regular city primary or regular election or at any election called for that purpose, and no bonds shall be issued until a majority of the qualified electors voting on the proposition shall have declared by their votes in favor of issuing said bonds: Provided further, A proposition for the issuance of bonds hereunder may be voted on at the same election where the acceptance of the gift is voted on.

HISTORY: L. 1953, ch. 113, § 2; April 13.

14-6,102. Same; bond limitations inapplicable. All bonds authorized by this act shall be issued, sold, delivered and retired under the provisions of article 1, chapter 10, of the Kansas Statutes Annotated and amendments thereto, except as in this act otherwise provided and none of the debt limitations provided by law shall apply to bonds issued under this act.

HISTORY: L. 1953, ch. 113, § 3; April 13.

14-6,103. Same; management and control of hospital; board of trustees, when; appointment; election; terms; powers. The governing body of any such city is hereby vested with the authority to manage and control such hospital and it may lease, let or rent to any person, persons, corporation, or other legally organized society, the buildings herein provided for upon such terms and conditions, including special rates for water, light and power, as it may by resolution declare, or it may appoint six (6) trustees chosen from the citizens of said city with reference to their fitness for such office, who together with the mayor, as ex officio member, shall constitute a board of trustees for said hospital. The board of trustees shall hold their offices until the next following city election, when six (6) trustees shall be elected, and hold their offices, two (2) for one (1) year, two (2) for two (2) years, and two (2) for three (3) years. At each subsequent city election, the office of each trustee whose term is about to expire shall be filled by the nomination and election of hospital trustees in the same manner as other officers are elected, none of whom shall be a physician: Provided, That if a board of trustees is appointed or elected, no contract for the leasing, letting or rental of said hospital or buildings shall be made unless and until the terms and provisions thereof shall have been approved by the board of trustees: Provided further, That if a board of trustees is appointed, or elected, the government of such hospital shall be as provided for in K.S.A. 14-605 to 14-614, inclusive, or any amendments thereto.

HISTORY: L. 1953, ch. 113, § 4; L. 1955, ch. 120, § 1; April 12.

14-6,104. Same; acceptance of gifts. Except for the original gift the governing body of any such city is hereby authorized to accept any grants, donations or gifts without election and such grants, donations or gifts may be used in addition to the original gift and the amount of a proposed bond issue or for such purpose as the donor may prescribe.

HISTORY: L. 1953, ch. 113, § 5; April 13.

14-6,105. Same; federal aid. The governing body of any such city is hereby authorized and empowered to contract for a site, the construction and equipment of said hospital building, in such manner as to comply with and secure the benefits of any federal aid.

HISTORY: L. 1953, ch. 113, § 6; April 13.

14-6,107. Same; application of classification under 14-6,100. Any such city once operating under this act whose population shall fall below or exceed the population limits herein provided or where the number of second class cities in such county shall fall below or exceed five (5) shall continue to operate under this act.

HISTORY: L. 1953, ch. 113, § 8; April 13.

14-6,108. Cities located in counties which have issued maximum amount of bonds authorized by 19-1869. The provisions of this act shall apply to any city of the second class which is located in a county which has issued bonds under, and in the maximum amount authorized by the provisions of K.S.A. 19-1869 for the purpose of constructing an enlargement and addition to the county hospital located in such city and for the purpose of equipping and furnishing the same.

HISTORY: L. 1961, ch. 111, § 1; June 30.

14-6,109. Same; city authorized to issue bonds to supplement county funds, when; notice; protest petition; election. Whenever the board of trustees of a county hospital, such as described in K.S.A. 14-6,108, shall adopt and file with the city clerk of any such city a resolution stating that the amount of money derived from the sale of the bonds described in K.S.A. 14-6,108 is insufficient to properly and adequately construct such enlargement and addition to the county hospital and to properly and adequately equip and furnish the same, the governing body of such city is hereby authorized to issue the bonds of such city in an amount not exceeding seventy-five thousand dollars ($ 75,000), the

proceeds thereof to be used to supplement the funds derived by the issuance of bonds by the county for the construction of such enlargement and addition to the county hospital and for the equipping and furnishing the same: Provided, That before the issuance of any such bonds, the governing body of the city shall cause to be published for two (2) consecutive weeks in the official city paper a notice of its intention to issue such bonds and unless there is filed in the office of the city clerk within thirty (30) days after the first publication of said notice a petition signed by not less than ten percent (10%) of the qualified electors of said city, determined on the basis of the total vote for the office of mayor at the last preceding general city election, protesting the issuance of such bonds, the governing body may proceed to issue and sell such bonds. If within said thirty (30) days a sufficient protest petition is filed with the city clerk, the governing body shall submit the question of issuing such bonds at a regular city election or a special election called for such purpose.

If a majority of those voting on such proposition shall vote in the affirmative, the governing body of the city shall proceed to issue and sell said bonds in accordance with the provisions of the general bond law, and none of the debt limitations provided by law shall apply to bonds issued under this act. The proceeds from the sale of such bonds shall be paid by the city to the board of trustees of such county hospital and shall be used, together with the amount previously provided by the county, for the construction of such enlargement and addition to the county hospital and for the equipping and furnishing the same.

HISTORY: L. 1961, ch. 111, § 2; June 30.

14-6,110. Certain cities authorized to enter into contracts with hospital districts to pay certain operational costs of hospital; limitation on amount; tax levy, use of proceeds. The governing body of any city of the second class in which there is located or shall hereafter be located a hospital established by a hospital district, and which city is located in a county having a population of not less than fourteen thousand (14,000) and not more than sixteen thousand (16,000), and having a total assessed taxable tangible valuation of not less than thirty-seven million dollars ($ 37,000,000) and not more than forty-five million dollars ($ 45,000,000), is hereby authorized to enter into a contract with the governing body of such hospital district wherein such city shall agree to pay the costs of the operation of said hospital which are in excess of the amounts received for patient care and maintenance. Such city by any such contract or agreement shall limit its maximum liability for any one calendar year to ten thousand dollars ($ 10,000). Any governing body of any city entering into such a contract or agreement is hereby authorized to make an annual tax levy for the purpose of providing revenue to pay such agreed costs of operation of said hospital and to pay a portion of the principal and interest on bonds issued by such city under the authority of K.S.A. 12-1774, and amendments thereto. Such tax levy shall be in addition to all other tax levies authorized or limited by law, and shall not be subject to any tax levy limit or aggregate tax levy limit prescribed by K.S.A. 79-1952, and acts amendatory thereof or supplemental thereto.

HISTORY: L. 1961, ch. 109, § 1; L. 1979, ch. 52, § 72; July 1.

14-6,111. Boards of trustees of certain hospitals authorized to borrow money under federal public health service act for making certain contractual payments. The board of trustees of a hospital of any city of the second class having a population of more than eight thousand (8,000) and not more than nine thousand (9,000) not located in a county designated as an urban area which has heretofore entered into one or more contracts for the construction, reconstruction, repair, remodeling, equipping, or enlarging of a hospital may borrow funds under the provisions of the public health service act, title VI, part B, 42 U.S.C. 291j et seq., and all acts of the United States congress amendatory thereof or supplemental thereto and any other acts of the United States congress, for the purpose of making when due any payment or payments required under such contract or contracts, in the event that funds for such purpose are not available when required because moneys required for payment to such board of trustees of a federal grant obtained by it for the purpose of making all or a part of such payments were not appropriated by the United States congress and available to such board of trustees when required.

HISTORY: L. 1971, ch. 61, § 1; April 9.

14-6,112. Same; loans exempt from certain statutory provisions. Loans obtained by any such board of trustees under the provisions of K.S.A. 14-6,111 shall be exempt from the provisions of K.S.A. 10-1101 et seq., and amendments thereto, K.S.A. 79-2925, 79-2926, 79-2927, 79-2929, 79-2930, 79-2933, 79-2934, 79-2935, 79-2936 and 79-2937.

HISTORY: L. 1971, ch. 61, § 2; April 9.

14-6,113. Hospital improvements, equipment and additions in certain cities under 3,000; elections; bonds.

(a) The governing body of any city of the second class having a population of less than three thousand (3,000) is hereby authorized and empowered to issue general obligation bonds of said city in an amount not exceeding the sum of two hundred thousand dollars ($ 200,000) for the purpose of making improvements, adding equipment or building and equipping an addition to a hospital located therein.

(b) Before any such general obligation bonds shall be issued, the governing body of such city shall submit the question of issuing such general obligation bonds to a vote of the qualified voters of the city at a regular city election or at an election called for that purpose. No bonds shall be issued pursuant to this section until the issuance thereof has been approved by a majority vote of the qualified electors voting thereon.

HISTORY: L. 1975, ch. 113, § 1; July 1.

CHAPTER 17. CORPORATIONS
ARTICLE 63. DIRECTORS AND OFFICERS

17-6305. Indemnification of officers, directors, employees and agents; advancement of expenses; insurance; definitions.

(a) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, including attorney fees, if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, including attorney fees, if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, such director, officer, employee or agent shall be indemnified against expenses actually and reasonably incurred by such person in connection therewith, including attorney fees.

(d) Any indemnification under subsections (a) and (b), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such director, officer, employee or agent has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made

(1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or

(2) if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or

(3) by the stockholders.

(e) Expenses incurred by a director or officer in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it is ultimately determined that the director or officer is not entitled to be indemnified by the corporation as authorized in this section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this section.

(h) For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this section, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

HISTORY: L. 1972, ch. 52, § 27; L. 1986, ch. 97, § 2; L. 1987, ch. 88, § 2; Feb. 5.

CHAPTER 19. COUNTIES AND COUNTY OFFICERS
ARTICLE 18. HOSPITALS

19-1860j. Hospitals in certain counties over 125,000; sale of hospital to state. Any county which owns a hospital which is organized and operated pursuant to K.S.A. 19-1860 et seq. is hereby authorized to sell and convey merchantable title to said hospital together with all real and personal property owned by the county and used in connection with said hospital to the state of Kansas upon such terms and in such manner as the board of county commissioners and the state may agree upon.

HISTORY: L. 1979, ch. 66, § 1; July 1.

19-1860k. Same; abolishment of board of trustees; transfer of moneys, records and property. The board of trustees of any hospital sold and conveyed pursuant to K.S.A. 19-1860j or leased pursuant to K.S.A. 19-1860l is hereby abolished. Any moneys remaining in any fund of said hospital after its sale or lease shall, after payment of any obligation thereof, be transferred to the county general fund. All records and property of said hospital remaining after the sale or lease thereof shall be transferred to the custody of the county clerk.

HISTORY: L. 1979, ch. 66, § 2; July 1.K.S.A. § 19-1860k (2003)

19-1860l. Same; lease of hospital to board of regents; terms and conditions; approval by attorney general. Any county owning and operating a county hospital under the authority of K.S.A. 19-1860 et seq., and amendments thereto, is hereby authorized to lease such hospital buildings and site together with any personal property of the county used in connection with the operation of said hospital to the state board of regents and the state board of regents is hereby authorized to lease such building and site from such county. The state board of regents and the board of county commissioners of such county are hereby authorized and empowered to enter into a lease for such hospital buildings and site for a term not exceeding ninety-nine (99) years upon such terms and conditions and for such rental as the state board of regents and the board of county commissioners of the county deem to be in the best interest of the state of Kansas and such county. Such lease shall be executed on behalf of the state board of regents by the chairperson of said board, and shall be attested by the secretary of said board. No such lease shall be executed until the same has been approved by the attorney general.

HISTORY: L. 1979, ch. 66, § 3; July 1.

CHAPTER 19. COUNTIES AND COUNTY OFFICERS
ARTICLE 40. MENTAL HEALTH CENTERS AND SERVICES

19-4001. Community mental health centers and community facilities for the mentally retarded; services of such facilities; services provided on contract by mental retardation governing board; approval by secretary of social and rehabilitation services of facility establishment. The board of county commissioners of any county or the boards of county commissioners of two (2) or more counties jointly may establish a community mental health center, and/or community facility for the mentally retarded, which shall be organized, operated, and financed according to the provisions of this act. The mental health center may render the following mental health services: Out-patient and inpatient diagnostic and treatment services; rehabilitation services to individuals returning to the community from an inpatient facility; consultative services to schools, courts, health and welfare agencies, both public and private, and conducting, in collaboration with other agencies when practical, in-service training for students entering the mental health professions, educational programs, information and research. The community facilities for the mentally retarded may render, and a mental retardation governing board which contracts with nonprofit corporations to provide services for the mentally retarded may provide, the following services: Pre-school, day care, work activity, sheltered workshops, sheltered domiciles, parent and community education and, in collaboration with other agencies when practical, clinical services, rehabilitation services, in-service training for students entering professions dealing with the above aspects of mental retardation, information and research. It may establish consulting and/or referral services in conjunction with related community health, education, and welfare services.

No community mental health center, and/or facility for the mentally retarded, shall be established in said community after the effective date of this act unless and until the establishment of the same has been approved by the secretary of social and rehabilitation services.

HISTORY: L. 1961, ch. 292, § 1; L. 1970, ch. 115, § 1; L. 1977, ch. 103, § 1; April 11.

19-4002. Same; governing boards; appointment; representation; single or separate boards.

(a) (1) Except as provided by K.S.A. 19-4002a and 19-4002b, and amendments thereto, every county which establishes a mental health center or facility for the mentally retarded shall establish a community mental health or mental retardation governing board. Every county which wants to establish such board for the purpose of allowing such board to contract with a nonprofit corporation to provide services for the mentally retarded may establish a mental retardation governing board in accordance with the provisions of this section. Any board established under this subsection shall be referred to as the governing board. The governing board shall be composed of not less than seven members. The members of such governing board shall be appointed by and shall serve at the pleasure of the board of county commissioners of the county.

(2) When two or more counties desire to establish a mental health center or facility for the mentally retarded, the chairperson of the board of the county commissioners of each participating county shall appoint two members to a selection committee, which committee shall select the first governing board. Each participating county shall have at least one representative on such board.

(b) Membership of each governing board, as nearly as possible, shall be representative of public health, medical profession, the judiciary, public welfare, hospitals, mental health organizations and mental retardation organizations, education, rehabilitation, labor, business and civic groups and the general public. The governing board of a mental health center also shall include consumers of mental health services or representatives of mental health consumer groups and shall include family members of mentally ill persons.

(c) If the board of county commissioners desires to provide both mental health services and services for the mentally retarded in accordance with the provisions of this act, and determine it is more practical to establish a single governing board for mental health services and mental retardation facilities, the board of commissioners may establish a single board. If the board of county commissioners determine that separate boards are more practical, the board of county commissioners may establish a governing board for a mental health center and a separate board for mental retardation facilities.

HISTORY: L. 1961, ch. 292, § 2; L. 1970, ch. 115, § 2; L. 1976, ch. 139, § 1; L. 1977, ch. 103, § 2; L. 1986, ch. 98, § 1; L. 1990, ch. 92, § 13; L. 1999, ch. 118, § 1; July 1.

19-4002a. Community mental health centers and community facilities for mentally retarded; governing boards; Sedgwick and Wyandotte counties.

(a) (1) In lieu of appointing a governing board as provided by K.S.A. 19-4002, and amendments thereto, the board of county commissioners of Sedgwick county may serve as the community mental health or mental retardation governing board for Sedgwick county.

(2) In lieu of appointing a governing board as provided by K.S.A. 19-4002, and amendments thereto, the unified government board of commissioners of Wyandotte county may serve as the community mental health or mental retardation governing board for Wyandotte county.

(b) If the board of county commissioners or the unified government board of commissioners elects to serve as the governing board pursuant to this section, the board of county commissioners or the unified government board of commissioners shall appoint a mental health and mental retardation advisory board of not less than seven members. Members of the advisory board shall serve at the pleasure of the board making their appointment. Membership of the advisory board shall include consumers of mental health services or representatives of mental health consumer groups

and shall include family members of mentally ill persons and, as nearly as possible, shall be representative of public health, medical profession, the judiciary, public welfare, hospitals and mental health organizations and education, rehabilitation, labor, business and civic groups.

(c) The board of county commissioners or the unified government board of commissioners, as the mental health or mental retardation governing board, shall seek the recommendations of the mental health and mental retardation advisory board prior to adopting the annual plan and budget for county mental health and retardation programs.

HISTORY: L. 1986, ch. 98, § 2; L. 1990, ch. 92, § 14; L. 1999, ch. 118, § 2; July 1.

19-4002b. Same; Johnson county.

(a) In lieu of appointing a governing board as provided by K.S.A. 19-4002 and amendments thereto, the board of county commissioners of Johnson county may serve as the community mental health or mental retardation governing board for Johnson county.

(b) If the board of county commissioners elects to serve as the governing board pursuant to this section, the board of county commissioners shall appoint a mental health and mental retardation advisory board of not less than seven members. Members of the advisory board shall serve at the pleasure of the board of county commissioners. Membership of the advisory board shall include consumers of mental health services or representatives of mental health consumer groups and shall include family members of mentally ill persons and, as nearly as possible, shall be representative of public health, medical profession, the judiciary, public welfare, hospitals and mental health organizations and education, rehabilitation, labor, business and civic groups.

(c) The board of county commissioners, as the mental health or mental retardation governing board, shall seek the recommendations of the mental health and mental retardation advisory board prior to adopting the annual plan and budget for county mental health and retardation programs.

HISTORY: L. 1986, ch. 98, § 3; L. 1990, ch. 92, § 15; Jan. 1, 1991.

19-4003. Same; duties of boards. The duties of the governing boards shall include:

(a) Election from its members of a chairman, a vice-chairman, a secretary and a treasurer, who shall hold office for a term of one (1) year. Such treasurer shall give bond to be approved by the board of county commissioners of the county in which the mental health center and/or facilities for the mentally retarded are located or the board of county commissioners which created a governing board to contract with a nonprofit corporation to provide services for the mentally retarded for the safekeeping and the disbursements of all funds that may come into his or her hands. All money provided for mental health and/or mental retardation purposes under the provisions of this act shall, when collected, be paid over to the treasurer of said governing board for the purposes of this act. Such governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer under the provisions of this act, and no money shall be paid therefrom, except upon vouchers signed by the treasurer and on order of the governing board.

(b) Formulating and establishing policies for the operation of the mental health center and/or facilities for the mentally retarded and employment of personnel if the governing board operates a mental health center or facility for the mentally retarded, or both.

(c) Annually reviewing, evaluating and reporting of community mental health and mental retardation services provided by the center pursuant to this act to such board or boards of county commissioners.

(d) Preparing and submitting the annual plan and budget and making recommendations thereon.

HISTORY: L. 1961, ch. 292, § 3; L. 1970, ch. 115, § 3; L. 1977, ch. 103, § 3; April 11.

19-4004. Same; tax levies, use of proceeds; protest petition and election; issuance of bonds. In all counties wherein the board or boards of county commissioners in the event of a combination of counties has established a governing board, the respective board or boards of county commissioners may levy an annual tax upon all taxable tangible property in such county for mental health services and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. The respective board or boards of county commissioners may also levy an additional annual tax upon all taxable tangible property in such county for mental retardation services and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. The additional levy authorized by this section for mental retardation services shall not be made until a notice of intent to make such levy has been published in a newspaper of general circulation in the county or counties involved by the board or boards of county commissioners proposing to make such levy, and such notice shall state that if a petition signed by 5% of the electors of the county shall file a protest petition within 60 days of the date of such publication a proposition will be submitted at an election called for the purpose in the county for approval of the levy; if such proposition is approved or if no sufficient protest is made, then the board or boards of county commissioners shall levy such tax, but if a sufficient protest is made and such proposition is not approved, the levy will not be made. The proceeds thereof shall be placed in the hands of the appropriate governing board to be administered as provided by this act.

In addition thereto, to provide for the purchase of or the construction of facilities for the community mental health center, and/or facility for the mentally retarded, the board or boards of county commissioners may, upon petition of the governing board, levy an annual tax on all taxable tangible property in their county and to issue and sell general obligation bonds of such county, for the purpose of creating and providing a special fund to be used in acquiring a site for, and the building, equipping, repairing, remodeling and furnishing of a community mental health center, and/or facilities for the mentally retarded, or for any one or more of such purposes. The additional levy authorized by this section shall not be made until a notice of intent to make such levy has been published in a newspaper of general circulation in the county or counties involved by the board or boards of county commissioners proposing to make such levy, and such notice shall state that if a petition signed by 5% of the electors of the county shall file a protest petition within 60 days of the date of such publication a proposition will be submitted at an election called for the purpose in the county for approval of the levy; if such proposition is approved or if no sufficient protest is made, then the board of county commissioners will make the levy of such tax, but if a sufficient protest is made and such proposition is not approved, the levy will not be made. The board of county commissioners shall proceed in the manner prescribed to be followed in such notice. The tax levy may be made annually until sufficient funds have been created for the purpose or purposes, or if the county has issued and sold general obligation bonds, the proceeds raised by the annual tax levy shall be used to retire the general obligation bonds and the tax levy shall continue until the general obligation bonds have been retired. Such federal, state or private funds as may be available may be accepted by the board of county commissioners to be placed in the fund for operation of or construction of a community mental health center, and/or facility for the mentally retarded, as the case may be. Title to the building or buildings of the community mental health center, and/or facility for the mentally retarded, shall vest in the governing board which is responsible for the maintenance and operation of the facilities if a combination of counties has established the center, but, if only one county has established the mental health center or facilities for the mentally retarded, title shall vest in the board of county commissioners of such county. If the board of county commissioners has contracted with a nonprofit corporation to provide mental health services under K.S.A. 19-4007, and amendments thereto, the title to the building or buildings may, in the discretion of the board of county commissioners, vest in the board of county commissioners or the nonprofit corporation providing mental health services, and the board of county commissioners may allow the nonprofit corporation to use the buildings without charge.

HISTORY: L. 1961, ch. 292, § 4; L. 1965, ch. 195, § 1; L. 1970, ch. 115, § 4; L. 1975, ch. 162, § 26; L. 1975, ch. 163, § 2; L. 1979, ch. 52, § 130; L. 1999, ch. 154, § 39; L. 2002, ch. 176, § 8; July 1.

19-4005. Same; charges for services. Said governing board may establish a schedule of charges for services to persons using said community mental health center, and/or mental retardation facilities, but no person shall be denied the services of said mental health center and/or facilities for the mentally retarded because of inability to pay for the same.

HISTORY: L. 1961, ch. 292, § 5; L. 1970, ch. 115, § 5; July 1.

19-4006. Same; transfer and conferral of powers to center governing board; moneys. Upon the creation of any such governing board, all of the jurisdictions, powers, and duties now conferred by law upon the county board of health of such county, or of a joint board of health of such county and a municipality with respect to mental health, shall be withdrawn from such county or joint board of health and conferred upon such governing board. Upon withdrawal of a joint board of health, any money remaining in the hands of the treasurer shall be repaid in the manner provided for in K.S.A. 65-210.

HISTORY: L. 1961, ch. 292, § 6; L. 1970, ch. 115, § 6; July 1.

19-4007. Contracts for services with nonprofit corporations; schedule of charges; annual financial report contents; approval of establishment of corporation by secretary of social and rehabilitation services; annual report; transfer of proceeds of tax levy to state agency.

(a) If the board or boards of county commissioners desire to provide either mental health services or services for the mentally retarded, or both such services, and to levy the taxes authorized in K.S.A. 19-4004, or any amendments thereto, but determine that it is more practicable to contract for such services with a nonprofit corporation, such board or boards may contract with the nonprofit corporation to provide either mental health services or services for the mentally retarded, or both such services, for the residents of said county or counties. In lieu of contracting with a nonprofit corporation to provide services for the mentally retarded, a board of county commissioners may establish a mental retardation governing board for the purpose of allowing this board to contract for and on behalf of the board of county commissioners with a nonprofit corporation to provide services for the mentally retarded. The board or boards entering into such a contract with a nonprofit corporation, or the mental retardation governing board authorized to contract with a nonprofit corporation under this section, are hereby authorized to pay the amount agreed upon in such contract from the proceeds of the tax or taxes levied pursuant to K.S.A. 19-4004, or any amendments thereto, for mental health services or mental retardation services, or for both such services. Said nonprofit corporation may not deny service to anyone because of inability to pay for the same, but said nonprofit corporation may establish a schedule of charges for services to those who are financially able to pay for such services. Said nonprofit corporation shall annually provide said board or boards of county commissioners with a complete financial report showing the amount of fees collected, the amount of tax money received under said contract, and any other income. The financial report shall also show the nonprofit corporation's disbursements, including salaries paid to each person employed by said nonprofit corporation. No such nonprofit corporation shall be organized to receive public funds raised through taxation or public solicitation, or both, unless and until the establishment of the same has been approved by the secretary of social and rehabilitation services. The governing board of all such nonprofit corporations shall report annually to the secretary of social and rehabilitation services, in such form as may be required on the activities of the mental health center, or community facility for the mentally retarded.

(b) If the board or boards of county commissioners desire to provide services for the mentally retarded and to levy the tax authorized in K.S.A. 19-4004, or any amendments thereto, for mental retardation services, but determine that it is more practicable to transfer the proceeds from such tax levy or a portion thereof to a state agency operating a program established under the federal social security act whereby the funds will be eligible for federal financial participation in the purchase of services for eligible persons in facilities for the mentally retarded, the board or boards are hereby authorized to transfer such proceeds, or a portion thereof, to any such state agency to purchase services in facilities for the mentally retarded.

HISTORY: L. 1961, ch. 292, § 7; L. 1965, ch. 195, § 2; L. 1970, ch. 115, § 7; L. 1976, ch. 140, § 1; L. 1977, ch. 103, § 4; April 11.

19-4008. Solicitation, acceptance and expenditures of gifts and grants. Such governing boards are hereby authorized to solicit, accept and expend gifts and grants received from private, county, state and federal sources.

HISTORY: L. 1961, ch. 292, § 8; L. 1970, ch. 115, § 8; L. 1976, ch. 104, § 2; July 1.

19-4009. Application of act as to other laws. Nothing contained in this act shall be construed as repealing any existing law nor as affecting any mental health center or facilities for the mentally retarded established by any county under any other law prior to the effective date of this act except as herein otherwise specifically provided; but no county which has heretofore established or shall hereafter establish under any other law a mental health center or facilities for the mentally retarded shall make a tax levy under such other law for a mental health center or facilities for the mentally retarded if it shall establish either singly or jointly a mental health center under the provisions of this act.

HISTORY: L. 1961, ch. 292, § 9; L. 1970, ch. 115, § 9; July 1.

19-4010. Certain counties authorized to contract with centers organized under 19-4001 et seq. for services; consideration; term of agreement. The board of county commissioners of any county which is not a part of a community mental health center is hereby authorized to contract with a community mental health center and/or community facilities for the mentally retarded organized in accordance with the provisions of K.S.A. 19-4001 et seq., and any amendments thereto, for such mental health services and/or mental retardation services for the residents of such county as may be mutually agreeable between the governing board of the center and/or community facilities for the mentally retarded and the county commissioners, requesting the services for the residents thereof. Such an agreement may provide for out-patient and treatment services, rehabilitation services, consultative services and other services assented to by both parties. The consideration for such services shall not in any case exceed in amount the revenue that will be derived from the tax levy authorized by K.S.A. 19-4011. Such agreement may be for a term of not exceeding five (5) years, but may be renewed from time to time.

HISTORY: L. 1965, ch. 196, § 1; L. 1970, ch. 115, § 10; July 1.

19-4011. Same; tax levy, use of proceeds. The county commissioners of a county entering into such an agreement with a community mental health center is hereby authorized to levy an annual tax upon all of the taxable tangible property in such county for the purpose of providing revenue to pay for the mental health services contracted for with the center and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. The county commissioners of a county entering into such an agreement with a community facility for the mentally retarded is hereby authorized to levy an annual tax upon all of the taxable tangible property in such county for the purpose of providing revenue to pay for the mental retardation services contracted for with the facility and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. Upon receipt of such tax moneys, the county commissioners shall pay the amount agreed upon to the governing body of the center and/or community facilities for the mentally retarded and the governing body is authorized to receive and expend such moneys to provide community mental health services.

HISTORY: L. 1965, ch. 196, § 2; L. 1970, ch. 115, § 11; L. 1975, ch. 162, § 27; L. 1975, ch. 163, § 3; L. 1979, ch. 52, § 131; L. 1999, ch. 154, § 40; May 27.

19-4012. Same; effective date of agreement; payments. No agreement entered into shall become effective until the year in which the tax levy is made; and payments for the services shall be made as provided for in the agreement.

HISTORY: L. 1965, ch. 196, § 3; June 30.

19-4013. Community mental health centers; sale of buildings or buildings and sites; use of proceeds of sale. Whenever the governing board of any community mental health center established under the provisions of K.S.A. 19-4001 et seq. and amendments thereto, which has acquired title to any building or building and site, shall determine that such building or building and site is no longer of benefit to such community mental health center, such governing board is hereby authorized to sell such building or building and site upon such terms and in such manner as the governing board may deem to be in the best interest of the community mental health center. Moneys received from the sale of any such building or building and site may be placed in a special fund and used for the acquisition, repair, reconstruction, remodeling, furnishing or equipping of a building for the use of such community mental health center.

HISTORY: L. 1968, ch. 256, § 1; March 26.

19-4014. Same; prior sales validated and confirmed. Any deed executed by the governing board of any community mental health center, to any building and site, prior to the effective date of this act, which deed has been recorded in the office of the register of deeds, is hereby confirmed and validated and the title conveyed by any such deed is hereby declared to be merchantable to the extent of the interest conveyed.

HISTORY: L. 1968, ch. 256, § 2; March 26.

19-4015. Pension and deferred compensation plans for employees of governing boards of community mental health centers and facilities for mentally retarded. The governing boards created by K.S.A. 19-4002 are hereby authorized to establish and fund pension and deferred compensation plans for the employees of such boards and to procure contracts insuring such employees, their dependents, or any class or classes thereof under a policy or policies of life, disability income, health, accident, accidental death and dismemberment, and hospital, surgical and medical expense insurance. The employee's contribution, if any, to the plan and to the premium for such insurance may be deducted by the employer from the employee's salary when authorized in writing by the respective employee so to do.

HISTORY: L. 1972, ch. 88, § 1; July 1.

CHAPTER 19. COUNTIES AND COUNTY OFFICERS
ARTICLE 46. HOSPITALS AND RELATED FACILITIES

19-4601. Definitions. As used in this act:

(a) "Board" means a hospital board which is selected in accordance with the provisions of this act and which is vested with the management and control of a county hospital;

(b) "commission" means the board of county commissioners of any county;

(c) "hospital" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto and includes within its meaning any clinic, school of nursing, long-term care facility, limited care residential facility, child-care facility and joint enterprises for the provision of health care services operated in connection with the operation of the medical care facility;

(d) "hospital moneys" means, but is not limited to, moneys acquired through the issuance of bonds, the levy of taxes, the receipt of grants, donations, gifts, bequests, interest earned on investments authorized by this act and state or federal aid and from fees and charges for use of and services provided by the hospital;

(e) "limited care residential facility" means a facility, other than an adult care home, in which there are separate apartment-style living areas, bedrooms, bathrooms and individual utilities and in which some health related services are available;

(f) "joint enterprises" means a business undertaking by a hospital and one or more public or private entities for the provision of health care services.

HISTORY: L. 1984, ch. 98, § 1; L. 1995, ch. 143, § 5; L. 2003, ch. 51, § 1; July 1.

19-4602. Existing hospitals governed by act; exceptions.

(a) Any existing county hospital established under the laws of this state prior to the effective date of this act is hereby continued in existence and shall be governed in accordance with the provisions of this act and any existing hospital board

shall be deemed to be the board for purposes of this act unless and until a new board is appointed or elected as provided in this act.

(b) This act shall not affect any judicial proceeding pending or any contract, tax levy, bond issuance or other legal obligation existing on the effective date of this act.

HISTORY: L. 1984, ch. 98, § 2; July 1.

19-4603. County hospitals, procedure to establish; petition and election; bonds; dissolution of certain districts; detachment of territory from certain districts. Any county, except a county having within its boundaries any territory of a hospital district operating and maintaining a hospital under K.S.A. 80-2501 to 80-2533, inclusive, and amendments thereto, may establish a hospital in the following manner:

The commission may, and upon being presented with a petition signed by not less than 5% of the qualified electors of the county requesting the establishment and maintenance of a hospital shall, adopt a resolution authorizing the issuance of general obligation bonds for the purpose of constructing, purchasing, leasing or otherwise acquiring a hospital building or buildings, equipping the same, and acquiring the necessary site or sites therefor, or for any or all such purposes and for the purpose of paying a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774 and amendments thereto. Prior to the issuance of such bonds, the question of issuing the same shall be submitted to a vote of the qualified electors of the county at a regular county primary or county general election or, if no regular county election is to be held within six months from the date of adoption of the resolution, at a special election called for the purpose of submitting such question, and no bonds shall be issued until a majority of the qualified electors voting on the question at such election vote in favor of the issuance of such bonds. The election shall be held at the usual places in such county for electing county officers and the vote shall be canvassed in the same manner as that for county officers. Such question shall not be submitted to the electors of the county at any election more than once in any one year. All general obligation bonds authorized by this section shall be issued, registered and sold in the manner provided by article 1 of chapter 10 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof and supplemental thereto and shall bear interest at a rate not to exceed the maximum rate prescribed by K.S.A. 10-1009 and amendments thereto. None of the debt limitations provided by law shall apply to bonds issued under this section.

In a county having within its boundaries territory of an existing hospital district or districts operating and maintaining a hospital under K.S.A. 80-2501 to 80-2533, inclusive, and amendments thereto, the provisions of this paragraph shall apply in establishing and maintaining a county hospital. If the entire territory of the hospital district is located within the boundary of the county and if a majority of the qualified electors who reside within the boundary of the hospital district vote to dissolve the district and to be a part of the county hospital should it be established within a period of two years from the date of such election, the hospital district shall be dissolved on the second December 31 following the date of the order of the board of county commissioners establishing the county hospital. If part of the territory of the hospital district is located within the boundary of the county and part is not and if a majority of the qualified electors who reside within that part of the hospital district which is located within the county vote to detach from the hospital district and to be a part of the county hospital should it be established within a period of two years from the date of such election, the part of the hospital district located within such county shall be detached from the remainder of the hospital district on the second December 31 following the date of the order of the board of county commissioners establishing the county hospital. An election under this section shall be called by the board of county commissioners and shall be noticed and governed in all respects and the results declared in accordance with the provisions of K.S.A. 10-120 and amendments thereto. The territory of any hospital district dissolved or any territory detached from a hospital district under this paragraph shall be liable for payment of outstanding bonds of indebtedness of the district hospital or hospitals as may have been issued during the period of time such territory was attached to the district hospital or hospitals. If such hospital district authorized the issuance of bonds at a special election, the election shall be in no way affected by the passage of this act, and the bonds authorized at the election may be legally issued notwithstanding the detachment of any portion of the territory of a hospital district which was included at the date of the bond election.

HISTORY: L. 1984, ch. 98, § 3; July 1.

19-4604. Same; transfer of hospital property and facilities operated by cities and other district to county; procedure; election.

(a) (1) The governing body of any city which is operating and maintaining a city hospital, upon the recommendation of the hospital board, or

(2) the board of any hospital district which is operating and maintaining a district hospital may donate, transfer and convey the hospital, together with all real and personal property used in connection with the operation of the hospital, to the county in which the hospital is located to be owned, managed, operated and maintained as a county hospital. The question of donating, transferring and conveying any such hospital property to a county for county hospital purposes shall first be submitted to a vote of the qualified electors of the city at a regular city election or at an annual meeting of the qualified electors of the hospital district, whichever is applicable, or the governing body of the city or the board of the hospital district may call a special election for the purpose of submitting such question to the qualified electors. Any such election called by the governing body of a city shall be noticed and governed in all respects and the results declared in accordance with the provisions of K.S.A. 10-120 and amendments thereto. Any such special election called by the board of a hospital district shall be noticed in accordance with the provisions of K.S.A. 10-120 and amendments thereto, and the election returns shall be made to the secretary of the board and canvassed by the board.

(b) Whenever the governing body of any city or the board of any hospital district, having been authorized to do so by a majority vote of the qualified electors of such city or hospital district, whichever is applicable, voting upon the proposition as provided by subsection (a), shall present to the commission an offer to donate, transfer and convey to the county the hospital property and facilities operated and maintained by such city or hospital district, whichever is applicable, to be owned, managed, maintained and operated as a county hospital, the commission shall submit to the qualified electors of the county at the next general election to be held in the county, or if no general election is to be held within six months from the date of presentation of such offer, then at a special election called for that purpose, the question of establishing, operating and maintaining a county hospital with such hospital property, which election shall be called, noticed, held and canvassed in the manner provided by K.S.A. 10-120, and amendments thereto.

If a majority of the votes cast at such election are in favor of the proposition so submitted, the commission shall enter an order in its proceedings establishing the hospital as a county hospital. Upon the selection, qualification and organization of the board of the county hospital, the governing body of such city or the board of the hospital district, whichever is applicable, shall convey its hospital and all the real and personal property owned by such city or hospital district and used in connection with the operation of such hospital to the county, such conveyance to be signed by the governing body and clerk of such city or the board of the hospital district and to take effect on the January 1 following the establishment of the county hospital. The governing body of such city or the board of the hospital district shall pay over to the county treasurer all the unencumbered moneys in any fund of the hospital of such city or hospital district on January 1, and the county treasurer shall place the moneys in the operation and maintenance fund of the county hospital.

HISTORY: L. 1984, ch. 98, § 4; July 1.

19-4605. Same; management of hospital; hospital board; procedure to elect or appoint members; petition; election; term; vacancies.

(a) The commission shall provide for the management and control of any existing county hospital or any county hospital established under this act by a board.

(b) The system for electing or appointing the board shall continue until the system is changed as provided by subsection (d).

(c) Upon establishment of a county hospital under this act, the commission, by resolution, shall provide for the establishment of a board and shall provide either that the members be appointed by the commission or that the members be elected by the qualified electors of the county on a nonpartisan basis. If the commission determines that the board is to be elected, the procedure for holding such election shall be determined by the commission, by resolution. The laws

applicable to the procedure, manner and method provided for the election of county officers shall apply to the election of members of the board. The commission shall fix the number of board members and the terms of office for such members. The board shall be composed of five, seven or nine members and terms of office thereof shall be for not less than two years and not more than four years. Members of the board shall be residents of the county in which the hospital is located.

(d) (1) The commission, upon being presented with a petition signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of the secretary of state in the last preceding election requesting the manner of selection of the board be changed, shall adopt a resolution providing for the change. The question of changing the method of selection shall be submitted to a vote of the qualified electors of the county at a regular county primary or county general election or, if no regular county election is to be held within six months from the date of adoption of the resolution, at a special election called for the purpose of submitting such question. The resolution shall not be effective until a majority of the qualified electors voting on the question at such election vote in favor of the question. Such question shall not be submitted to the electors of the county at any election more than once in any one year.

(2) The commission may adopt a resolution changing the manner of selection of the board. Such resolution providing for the change shall be published at least once each week for two consecutive weeks in the official county newspaper. If within 30 days following the last publication of such resolution, a petition against such resolution signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of the secretary of state in the last preceding election is filed with the county election officer, such resolution shall not be effective until submitted to and approved by a majority of the qualified electors of the county voting at an election called and held thereon. The question of changing the method of selection shall be submitted to a vote of the qualified electors of the county at a regular county primary or county general election or, if no regular county election is to be held within six months from the date of adoption of the resolution, at a special election called for the purpose of submitting such question. Such question shall not be submitted to the electors of the county at any election more than once in any year.

(e) Members serving on a board on July 1, 1986, shall continue to serve until expiration of their respective terms and their successors shall be selected for terms fixed by resolution of the commission in accordance with the provisions of subsection (c) and this subsection (e). Members appointed to serve on an appointed board of any county hospital shall be appointed for staggered terms so that: (1) Not all terms of office of such members expire at the same time; and (2) a majority of the members of the board are not appointed at the same time. Members elected to serve on an elected board of any county hospital shall be elected for staggered terms so that not all terms of office of such members expire at the same time.

(f) Subject to the provisions of subsection (c), the commission, by resolution, may modify the number of members to serve on the board. Whenever the number of members of a board is modified by the commission, the commission shall provide for the expiration of the terms of the members, appointed or elected, so that not all members of the board are selected at the same time. When complying with the requirements of this subsection, the commission may extend or shorten the length of a term of an existing member for a period not to exceed one year from the date such member's term otherwise would expire.

(g) The commission may adopt a resolution changing the terms of office of some or all members of an elected board so that the members of the board are elected in even-numbered years. When making the change under this subsection, the commission may extend or shorten the length of a term of an existing member of an elected board for a period not to exceed one year from the date such member's term otherwise would expire. The resolution providing for the change shall be published at least once each week for two consecutive weeks in the official county newspaper. If within 30 days following the last publication of such resolution, a petition against such resolution signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of the secretary of state in the last preceding election is filed with the county election officer, such resolution shall not be effective until submitted to and approved by a majority of the qualified electors of the county voting at an election called and held thereon. The question of changing the terms of office of some or all members of an elected board so that the members of the board are elected in even-numbered years shall be submitted to a vote of the qualified electors of the county at a regular county primary or county general election or, if no regular county election is to be held within six months from

the date of adoption of the resolution, at a special election called for the purpose of submitting such question. Such question shall not be submitted to the electors of the county at any election more than once in any year.

(h) Vacancies in the membership of the board shall be filled by appointment by the commission. Any member appointed to fill a vacancy shall hold office until expiration of the term of the vacated office.

(i) Members of the board are subject to removal from office in the manner and for the causes prescribed by law for other county officers.

HISTORY: L. 1984, ch. 98, § 5; L. 1986, ch. 113, § 1; L. 1998, ch. 102, § 1; July 1.

19-4606. Same; tax levy, increase; bonds; use of proceeds; limitations.

(a) The commission or, in the case of an elected board, the board may annually levy a tax for the purpose of operating, maintaining, equipping and improving any hospital managed and controlled under the provisions of this act and for the purpose of paying a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto. The commission or, in the case of an elected board, the board may levy such tax in any amount not exceeding six mills in any year without an election as provided in subsection (c) and such tax shall not be subject to or within any aggregate tax levy limit prescribed by law. In the event the commission or the board proposes to levy such tax in an amount which exceeds two mills but is less than six mills in any year, such proposition shall be published once each week for two consecutive weeks in the official county newspaper. If, within 30 days after the last publication of the proposition, a petition signed by not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election requesting an election thereon, no such levy shall be made unless the proposition is submitted to and approved by a majority of the voters of the county voting at an election held thereon. Such election shall be called and held in the manner provided under the general bond law. Any tax levied for the purpose of paying the principal and interest upon any general obligation bonds issued pursuant to this act is not subject to the six-mill limitation imposed under the provisions of this subsection.

(b) After a hospital has been established, the commission may issue additional general obligation bonds for the purposes of constructing, purchasing or leasing and equipping a new hospital separate and apart from an existing hospital, or an additional hospital, or constructing and equipping an addition to an existing hospital, or equipping and improving an existing hospital, or acquiring the necessary site or sites therefor or for any or all such purposes and for the purpose of paying a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774 and amendments thereto.

(c) The commission or, in the case of an elected board, the board shall not levy any tax exceeding six mills under authority of subsection (a) or in the case of the commission, issue general obligation bonds under authority of subsection (b) until the levy of such tax or the issuance of such bonds has been authorized by resolution of the commission and approved by a majority of the qualified electors of the county voting on such question at a regular county primary or county general election or, if no regular county election is to be held within six months from the date of adoption of the resolution, at a special election called by the commission for the purpose of submitting such question to the qualified electors. The increase in any tax levy authorized by any such election shall not be subject to or within any aggregate tax levy limit prescribed by law.

HISTORY: L. 1984, ch. 98, § 6; L. 1987, ch. 105, § 1; L. 1989, ch. 63, § 2; L. 1990, ch. 66, § 36; May 31

19-4607. Same; organization of board; treasurer's bond; meetings; filing of audit report; budget preparation and approval.

(a) Members of the board, within 10 days after their selection, shall qualify by taking the oath or affirmation of civil officers as provided in K.S.A. 54-106 and amendments thereto, and shall organize the board by election of one of their number as chairperson, one as secretary and one as treasurer and by the election of such other officer or officers as deemed necessary. Every two years thereafter, a reorganization meeting shall be held and officers shall be selected as provided in this subsection. No bond need be required of any member of the board except the treasurer.

(b) The treasurer, before entering upon the duties of office, shall give an official bond in an amount to be determined by the commission.

(c) The board shall hold meetings at least once each month, and shall keep and maintain a complete record of all its proceedings. Such records shall be available for inspection by the commission on request. A simple majority of the members serving on the board shall constitute a quorum for the transaction of business. Within 15 days after completion of the audit provided for by article 11 of chapter 75 of Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto, the board shall file with the commission a written report of the management of the hospital and a copy of the audit report rendered by the accountant performing the audit. The commission shall keep and maintain a copy of such report as a part of the public records of the county. Prior to June 1 of each year, the board shall prepare a budget showing the amount it deems necessary to operate, equip, maintain and improve the hospital for the ensuing fiscal year and the amount of that portion thereof that it deems necessary to be raised by the tax authorized under K.S.A. 19-4606, and shall submit its proposed budget to the commission or, in case of an elected board, to the county clerk. If the commission does not approve the proposed budget within 10 days after receipt thereof, it shall return the budget to the board. Upon receipt of the returned budget, the board shall consider amendments or modifications and may consult with the commission concerning the budget. Within 10 days after receipt of the returned budget, the board shall resubmit its proposed budget, with or without amendment or modification, to the commission. Within 10 days after resubmission of the proposed budget, the commission shall approve, or amend or modify and approve as amended or modified, such proposed budget. The commission shall adopt the proposed budget as approved and shall make the same a part of the regular county budget. In the case of an elected board, submission of the budget to the commission shall not be required.

HISTORY: L. 1984, ch. 98, § 7; July 1.

19-4608. Same; deposit of hospital moneys; gifts and other donations; investment of money; financial records; transfer of money to not-for-profit corporation.

(a) All hospital moneys, except moneys acquired through the issuance of revenue bonds, shall be paid to the treasurer of the board, shall be allocated to and accounted for in separate funds or accounts of the hospital, and shall be paid out only upon claims and warrants or warrant checks as provided in K.S.A. 10-801 to 10-806, inclusive, and K.S.A. 12-105a and 12-105b, and amendments to these statutes. The board may designate a person or persons to sign such claims and warrants or warrant checks.

(b) The board may accept any grants, donations, bequests or gifts to be used for hospital purposes and may accept federal and state aid. Such moneys shall be used in accordance with the terms of the grant, donation, bequest, gift or aid and if no terms are imposed in connection therewith such moneys may be used to provide additional funds for any improvement for which bonds have been issued or taxes levied.

(c) Hospital moneys shall be deemed public moneys and hospital moneys not immediately required for the purposes for which acquired may be invested in accordance with the provisions of K.S.A. 12-1675 and amendments thereto. Hospital moneys acquired through the receipt of grants, donations, bequests or gifts and deposited pursuant to the provisions of K.S.A. 12-1675 and amendments thereto need not be secured as required under K.S.A. 9-1402 and amendments thereto. In addition, hospital moneys may be invested in joint enterprises for the provision of health care services as permitted by subsection (c) of K.S.A. 19-4601 and amendments thereto.

(d) Hospital moneys which are deposited to the credit of funds and accounts which are not restricted to expenditure for specified purposes may be transferred to the general fund of the hospital and used for operation of the hospital or to a special fund for additional equipment and capital improvements for the hospital.

(e) The board shall keep and maintain complete financial records in a form consistent with generally accepted accounting principles, and such records shall be available for public inspection at any reasonable time.

(f) Notwithstanding subsections (a) to (e), inclusive, the board may transfer any moneys or property a hospital receives by donation, contribution, gift, devise or bequest to a Kansas not-for-profit corporation which meets each of the following requirements:

(1) The corporation is exempt from federal income taxation under the provisions of section 501(a) by reason of section 501(c)(3) of the internal revenue code of 1954, as amended;

(2) the corporation has been determined not to be a private foundation within the meaning of section 509(a)(1) of the internal revenue code of 1954, as amended; and

(3) the corporation has been organized for the purpose of the charitable support of health care, hospital and related services, including the support of ambulance, emergency medical care, first responder systems, medical and hospital staff recruitment, health education and training of the public and other related purposes.

(g) The board may transfer gifts under subsection (f) in such amounts and subject to such terms, conditions, restrictions and limitations as the board determines but only if the terms of the gift do not otherwise restrict the transfer. Before making any such transfer, the board shall determine that the amount of money or the property to be transferred is not required by the hospital to maintain its operations and meet its obligations. In addition, the board shall determine that the transfer is in the best interests of the hospital and the residents within the county the hospital has been organized to serve.

HISTORY: L. 1984, ch. 98, § 8; L. 1985, ch. 103, § 1; L. 2003, ch. 51, § 2; July 1.

19-4609. Same; compensation and expenses of board members. Members of the board may be allowed compensation by the commission and, if allowed, such compensation shall be in an amount to be determined by the commission. All members may also be reimbursed for any actual and necessary personal expenses incurred as a member of the board, including an allowance for mileage, in the amount fixed under K.S.A. 75-3203 and amendments thereto for each mile actually traveled while engaged in hospital business. An itemized statement of all such expenses and money paid out shall be kept and maintained and shall be filed with the secretary and the commission, which shall keep and maintain the same as a part of the public records of the county.

HISTORY: L. 1984, ch. 98, § 9; July 1.

19-4610. Same; powers and duties of board; bylaws; rules and regulations; expenditures and investments; hospital administrator and employees, appointment, bond and benefit plans.

(a) The board shall make and adopt such bylaws and rules and regulations for the management and control of the hospital as it deems necessary so long as the same are not inconsistent with this act, the statutes of the state of Kansas, the resolutions of the county and, if the hospital is located in a city, the ordinances of the city in which the hospital is located. The board shall have the exclusive control of the expenditures of all hospital moneys, except hospital moneys acquired through the issuance of revenue bonds, and all expenditures shall be subject to the approval of a majority of all the members of the board. The board is authorized to invest in any mutual insurance company organized by an association of health care providers to which the hospital belongs, enter into contracts with such company, pay any assessments pursuant to such contracts and arrange for the issuance of a letter of credit by any bank chartered by this state or which is a member bank of the federal reserve system. The board is charged with the supervision, care and custody of all hospital property. The board is authorized to appoint an administrator, to fix the compensation thereof, and to remove such administrator. The board may also require personal or surety bonds of all hospital employees entrusted with the handling of hospital moneys, such bonds to be in an amount to be determined and approved by the board.

(b) The board may establish and fund pension and deferred compensation plans and any other employee benefit plans for hospital employees and may procure contracts insuring hospital employees, their dependents, or any class or classes thereof, under a policy or policies covering one or more risks including, but not limited to, a policy or policies of life, disability income, health, accident, accidental death and dismemberment, and hospital, surgical and medical expense insurance or may provide for a plan of self-insurance for such purposes. The employee's contribution, if any, to the plan and to the premiums for insurance or for the expenses incurred by the board under a plan of self-insurance may be deducted by the employer from the employee's salary when authorized in writing by the employee.

HISTORY: L. 1984, ch. 98, § 10; L. 1988, ch. 147, § 12; April 28.

19-4611. Same; lease of hospital property; contracts for management; emergency or ambulance service; expenditures for recruitment or retention of staff; loans and scholarships for staff; authority to sue; exemption from cash-basis law.

(a) The board may enter into written contracts for the lease of any hospital property to any person, corporation, society or association upon such terms and conditions as deemed necessary by the board.

(b) The board may enter into written contracts for the lease of real property to be used for hospital purposes from any person, corporation, society or association upon such terms and conditions as deemed necessary by the board.

(c) The board may enter into written contracts for the lease of personal property from any person, corporation, society or association upon such terms and conditions as deemed necessary by the board. Any such contract may provide for the payment as compensation for use of such personal property a sum substantially equivalent to or in excess of the value of the personal property under an agreement that the hospital shall become, or for no further or a merely nominal consideration has the option of becoming, the owner of the personal property upon full compliance with the provisions of the contract.

(d) The board may contract for the management of any hospital with any person, corporation, society or association upon such terms and conditions as deemed necessary by the board.

(e) The board may operate and maintain an emergency medical or ambulance service upon authorization by and under contract with the commission upon such terms and conditions as are specified by the commission.

(f) The board may expend funds as deemed necessary for the recruitment or retention of staff including, but not limited to, the purchase of professional liability insurance for such staff. Such expenditures may include the expenditure of funds for the provision of loans or scholarships to aid in financing the education of persons who agree, upon completion of their education, to become members of the staff.

(g) The board may sue in its own name or in the name of the hospital. The board may be sued and may defend any action brought against it or the hospital.

(h) The board is not subject to the cash-basis law.

HISTORY: L. 1984, ch. 98, § 11; L. 1991, ch. 66, § 8; July 1.

19-4612. Same; levy for hospital. Notwithstanding any contract entered into by the commission or the board for the management and control of the hospital with any person, corporation, association or society, the commission or, in case of an elected board, the board may make such tax levies for the benefit of the hospital as are authorized by law.

HISTORY: L. 1984, ch. 98, § 12; July 1.

19-4613. Same; eminent domain. If the board and the owner of any real property desired by the board for hospital purposes cannot agree as to the price to be paid therefor, the board shall report the facts to the commission and condemnation proceedings may be instituted by the commission in the manner prescribed by article 5 of chapter 26 of Kansas Statutes Annotated.

HISTORY: L. 1984, ch. 98, § 13; July 1.

19-4614. Same; construction projects; bids. No hospital building or addition shall be erected or constructed until the plans and specifications have been made therefor, adopted by the board and approved by the commission, and bids advertised for according to law for other county public buildings.

HISTORY: L. 1984, ch. 98, § 14; July 1.

19-4615. Same; jurisdiction over hospital located in a city. If a county hospital is located in a city, the jurisdiction of the city in which the hospital is located shall extend over all lands used for hospital purposes, and all ordinances of such city shall be in full force and effect in and over the territory occupied by such county hospital.

HISTORY: L. 1984, ch. 98, § 15; July 1.

19-4616. Same; revenue bonds; notice; use of proceeds. The commission may issue and sell revenue bonds for the purpose of purchasing, leasing or otherwise acquiring an existing hospital building or buildings and improving, remodeling or repairing and equipping the same, or for the purpose of constructing, equipping and furnishing an addition to an existing county hospital and, if necessary, acquiring a site therefor, or for the purpose of acquiring a site for constructing, equipping and furnishing a new hospital building or facility, separate and apart from an existing county hospital. Before any such bonds shall be issued, the commission shall publish a resolution declaring its intention to issue such bonds, stating the purpose for which such bonds are to be issued and the amount thereof. Such resolution shall be published once each week for three consecutive weeks in the official county newspaper, or if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101 and amendments thereto.

HISTORY: L. 1984, ch. 98, § 16; July 1.

19-4617. Same; revenue bonds; pledge of certain revenues. At or prior to the issuance of revenue bonds under authority of this act, the commission and the board shall pledge either the gross or the net income and revenues of the hospital to the payment of principal and interest of such revenue bonds and shall covenant to fix, maintain and collect such fees and charges for the use of the hospital as will produce revenues sufficient to pay the reasonable cost of operating and maintaining the hospital and to provide and maintain an interest and sinking fund in an amount adequate to promptly pay both principal and interest on such bonds and to provide a reasonable reserve fund. The commission may agree to pay the cost of operation and maintenance of the hospital from any other revenues of the commission or of the board legally available for such purpose. In addition, the commission in its discretion may pledge to the payment of principal and interest of such revenue bonds the proceeds of any gift, grant, donation or bequest which may be received by the commission or board from any source.

HISTORY: L. 1984, ch. 98, § 17; July 1.

19-4618. Same; revenue bonds; not an indebtedness of county or hospital; exempt from debt limit. Revenue bonds issued under authority of this act shall not be an indebtedness of the county or the hospital or of the commission or the individual members of the commission, or the board or the individual members of the board, and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

HISTORY: L. 1984, ch. 98, § 18; July 1.

19-4619. Same; revenue bonds; negotiability; interest rate; terms. Revenue bonds issued under authority of this act shall have all of the qualities and incidents of negotiable instruments, may bear interest at a rate not exceeding the maximum rate for revenue bonds prescribed in K.S.A. 10-1009 and amendments thereto, may bear such date, may mature at such time or times not exceeding 40 years from their date, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment and may be subject to such terms of redemption, with or without premium, as may be provided by resolution adopted by the commission.

Such bonds may be sold in such manner and at such price or prices not less than 95% of par and accrued interest to date of delivery as may be considered advisable by the commission.

HISTORY: L. 1984, ch. 98, § 19; July 1.

19-4620. Same; revenue bonds; covenants and agreements. In order to secure the prompt payment of the principal and interest upon revenue bonds and the proper application of the revenue pledged thereto, the commission and the board are authorized to:

(a) Covenant as to the use and disposition of the proceeds of the sale of such bonds;

(b) covenant as to the operation of the hospital and the collection and disposition of the revenues derived from such operation;

(c) covenant as to the rights, liabilities, powers and duties arising from the pledge of any covenant and agreement into which it may enter in authorizing and issuing the bonds;

(d) covenant and agree to carry such insurance on the hospital and the use and occupancy thereof as may be considered desirable, and in its discretion to provide that the cost of such insurance shall be considered a part of the expense of operating the hospital;

(e) fix charges and fees to be imposed in connection with and for the use of the hospital and the facilities supplied thereby, which charges and fees shall be considered to be income and revenues derived from the operation of the hospital, and to make and enforce such rules and regulations with reference to the use of the hospital for the accomplishment of the purposes of this act;

(f) appoint a trustee to act under the terms of the resolution authorizing the issuance of the revenue bonds;

(g) covenant against the issuance of any other obligations payable on a parity from the revenues to be derived from the hospital;

(h) make covenants other than and in addition to those herein expressly mentioned of such character as may be considered necessary or advisable to effect the purposes of this act.

All such agreements and covenants entered into by the commission and the board shall be binding in all respects upon the commission and the board and their officers, agents, employees, and upon their successors, and all such agreements and covenants shall be enforceable by appropriate action or suit at law or in equity which may be brought by any holder or holders of bonds issued hereunder against the commission, or board, or their officials, agents, employees, or their successors. The rents, charges and fees to be imposed under the provisions of this act shall not be limited by the provisions of any prior act.

HISTORY: L. 1984, ch. 98, § 20; July 1.

19-4621. Same; revenue bonds; deposit of proceeds. The proceeds derived from the sale of the revenue bonds herein authorized shall be deposited to the credit of the commission in a bank, banks or other depositories designated by the commission and kept in a separate fund and used solely for the purpose for which the bonds are authorized. The commission is authorized to make all contracts and execute all instruments which in its discretion may be deemed necessary or advisable to provide for the purpose for which the bonds were issued, and to provide for the manner of disbursement of the funds for such purposes. Nothing contained in this act shall be construed as placing in the county general fund or other county fund any moneys collected under this act or requiring such action.

HISTORY: L. 1984, ch. 98, § 21; July 1.

19-4622. Same; revenue bonds; tax exemptions. The interest on the revenue bonds issued under this act shall be exempt from all state, county and municipal taxation in the state of Kansas, except inheritance taxes of the state of Kansas.

HISTORY: L. 1984, ch. 98, § 22; July 1.

19-4623. Same; revenue bonds; investment of proceeds. Any officer or officers, board or boards, having charge of any sinking fund or any other fund of the state of Kansas, or any department, agency or institution thereof, or any county, municipality or other public corporation or political subdivision, may invest such funds in bonds issued under the provisions of this act. Any bank, trust or insurance company organized under the laws of the state of Kansas may invest in revenue bonds issued under the provisions of this act. Such bonds shall also be approved as collateral security for the deposit of any public funds and for the investment of trust funds.

HISTORY: L. 1984, ch. 98, § 23; July 1.

19-4624. Same; title to property. Title to any real or personal hospital property shall be vested in the county where the hospital is located.

HISTORY: L. 1984, ch. 98, § 24; July 1.

19-4625. Same; termination of operation; procedure; election; disposition of property; abolition of board; transfer of moneys to county. Any commission may close and terminate operation of a county hospital in accordance with the following provisions:

(a) Whenever the commission maintaining and operating the hospital shall determine, by resolution, that it is in the best interest of the county that operation of the hospital should be closed and terminated, or whenever a petition signed by not less than 5% of the qualified electors of a county requesting that operation of the hospital be closed and terminated is filed with the county clerk, there shall be submitted a proposition authorizing the same to the qualified electors of the county at the next regular county election or, if no regular county election is to be held within six months from the date of adoption of the resolution or filing of the petition, at a special election called for the purpose of submitting such proposition. If a majority of the votes cast on the proposition are in favor thereof, the commission shall perform all acts necessary to close and terminate the operation of the county hospital.

(b) If a majority of the votes cast at the election are in favor of the proposition submitted under the provisions of subsection (a), the commission may sell or donate and transfer and convey such hospital and all real and personal property owned by such county and used in connection with the operation of the hospital to a city in or near which the hospital is located subject to the approval and acceptance of such city, or to a hospital district established for such purpose, or to a nonprofit corporation to be owned, managed, maintained and operated as a hospital by such city, hospital district or corporation, or may dispose of all such real and personal property as authorized by law for the disposition of other county property. If the proposition submitted under subsection (a) fails to receive a majority of the votes cast in favor thereof, the county hospital shall be continued in operation.

(c) The commission and the board shall continue to pay the normal and usual operating expenses of the hospital, including such maintenance and repairs as are certified by the state fire marshal or the secretary of health and environment as being necessary for the safety of persons admitted to the hospital, until such time as operation of the hospital is terminated.

(d) The board of any hospital closed under the provisions of this section, is hereby abolished. The balance of any moneys remaining in any fund of the county hospital after termination of its operation and after payment and performance of any obligation thereof shall be transferred to the county general fund. Any records of a county hospital remaining after the closing and termination of operation thereof shall be transferred to the custody of the county clerk.

HISTORY: L. 1984, ch. 98, § 25; July 1.

CHAPTER 21. CRIMES AND PUNISHMENTS
ARTICLE 34. CRIMES AGAINST PERSONS

21-3423. Interference with custody of a committed person. Interference with custody of a committed person is knowingly taking or enticing any committed person away from the control of such person's lawful custodian without privilege to do so. A committed person is any person committed other than by criminal process to any institution or other custodian by any court or other officer or agency authorized by law to make such commitment.

Interference with custody of a committed person is a class A nonperson misdemeanor.

HISTORY: L. 1969, ch. 180, § 21-3423; L. 1992, ch. 239, § 62; L. 1993, ch. 291, § 37; July 1.

21-3425. Mistreatment of a confined person. Mistreatment of a confined person is the intentional abuse, neglect or ill-treatment of any person, who is detained or confined and who is physically disabled, mentally ill or mentally retarded or whose detention or confinement is involuntary, by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution or any public or private hospital or nursing home.

Mistreatment of a confined person is a class A person misdemeanor.

HISTORY: L. 1969, ch. 180, § 21-3425; L. 1987, ch. 107, § 1; L. 1992, ch. 239, § 64; L. 1993, ch. 291, § 39; July 1.

CHAPTER 21. CRIMES AND PUNISHMENTS
ARTICLE 36. CRIMES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN

21-3608. Endangering a child.

(a) Endangering a child is intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered.

(b) Nothing in this section shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(c) Endangering a child is a class A person misdemeanor.

HISTORY: L. 1969, ch. 180, § 21-3608; L. 1992, ch. 298, § 36; L. 1993, ch. 291, § 59; July 1.

21-3609. Abuse of a child. Abuse of a child is intentionally torturing, cruelly beating, shaking which results in great bodily harm or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

Abuse of a child is a severity level 5, person felony.

HISTORY: L. 1969, ch. 180, § 21-3609; L. 1984, ch. 119, § 12; L. 1992, ch. 298, § 37; L. 1993, ch. 291, § 60; L. 1995, ch. 251, § 12; July 1.

CHAPTER 21. CRIMES AND PUNISHMENTS
ARTICLE 38. CRIMES AFFECTING GOVERNMENTAL FUNCTIONS
KANSAS MEDICAID FRAUD CONTROL ACT

21-3846 Making a false claim to the medicaid program.

(a) Making a false claim, statement, or representation to the medicaid program is, knowingly and with intent to defraud, engaging in a pattern of making, presenting, submitting, offering or causing to be made, presented, submitted or offered:

(1) Any false or fraudulent claim for payment for any goods, service, item, facility, accommodation for jwhich payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(2) any false or fraudulent statement or representation for use in determining payments which may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(3) any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(4) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(5) any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claim is allowed or allowable;

(6) any claim for payment, for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable; or

(7) any wholly or partially false or fraudulent book, record, document, data or instrument, which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation or of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation for which payment is, has been, or can be sought, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable.

(8) Any wholly or partially false or fraudulent book, record, document, data or instrument to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the department of social and rehabilitation services, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program.

(9) Any false or fraudulent statement or representation made, with the intent to influence any acts or decision of any official, employee or agent of a state or federal agency having regulatory or administrative authority over the Kansas medicaid program.

(b) (1) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is $ 25,000 or more is a severity level 7, nonperson felony.

(2) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is at least $ 500 but less than $ 25,000 is a severity level 9, nonperson felony.

(3) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is less than $ 500 is a class A misdemeanor.

(4) As defined by subsections (a)(8) and (a)(9), making a false claim, statement or representation to the medicaid program is a severity level 9, nonperson felony.

(c) In determining what is medically necessary pursuant to subsection (a)(6) of this section the attorney general may contract with or consult with qualified health care providers and other qualified individuals to identify professionally recognized parameters for the diagnosis or treatment of the recipient's condition, illness or injury.

HISTORY: L. 1996, ch. 267, § 3; July 1.

21-3847. Unlawful acts relating to the medicaid program.

(a) No person nor family member of such person shall:

(1) Knowingly and intentionally solicit or receive any remuneration, including but not limited to any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring or refraining from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(2) Knowingly and intentionally offer or pay any remuneration, including, but not limited to, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(A) To refer or refrain from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(b) A violation of this section is a severity level 7, nonperson felony.

(c) This section shall not apply to a refund, discount, copayment, deductible, incentive or other reduction obtained by a provider in the ordinary course of business, and appropriately reflected in the claims or reports submitted to the medicaid program, or its fiscal agent, nor shall it be construed to prohibit deductibles, copayments or any other cost or risk sharing arrangements which are a part of any program operated by or pursuant to contracts with the medicaid program.

HISTORY: L. 1996, ch. 267, § 4; July 1.

21-3848. Failure to maintain adequate records.

(a) Failure to maintain adequate records is negligently failing to maintain such records as are necessary to disclose fully the nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based under the medicaid program. Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall maintain adequate

records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received.

(b) Failure to maintain adequate records is a class A, nonperson misdemeanor.

HISTORY: L. 1996, ch. 267, § 5; July 1.

21-3849. Destruction or concealment of records.

(a) Destruction or concealment of records is intentionally destroying or concealing such records as are necessary to disclose fully the nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based under the medicaid program. Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall not destroy or conceal any records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received.

(b) Destruction or concealment of records is a severity level 9, nonperson felony.

HISTORY: L. 1996, ch. 267, § 6; July 1.

21-3850. Defense of actions. Offers of repayment or repayment occurring after the filing of criminal charges of payments, goods, services, items, facilities or accommodations wrongfully obtained shall not constitute a defense to or ground for dismissal of criminal charges brought pursuant to this act.

HISTORY: L. 1996, ch. 267, § 7; July 1.

21-3853. Access to records by the attorney general.

(a) The attorney general shall be allowed access to all records which are held by a provider that are directly related to an alleged violation of this act and which are necessary for the purpose of investigating whether any person may have violated this act, or for use or potential use in any legal, administrative or judicial proceeding pursuant to the Kansas medicaid fraud control act.

(b) No person holding such records may refuse to provide the attorney general with access to such records on the basis that release would violate any recipient's right of privacy, any recipient's privilege against disclosure or use, or any professional or other privilege or right. The disclosure of patient information as required by this act shall not subject any provider to liability for breach of any confidential relationship between a patient and a provider. Notwithstanding K.S.A. 60-427 and amendments thereto, there shall be no privilege preventing the furnishing of such information or reports as required by this act by any person.

HISTORY: L. 1996, ch. 267, § 10; July 1

CHAPTER 21. CRIMES AND PUNISHMENTS
ARTICLE 40. CRIMES INVOLVING VIOLATIONS OF PERSONAL RIGHTS

21-4003. Denial of civil rights.

(a) Denial of civil rights is denying to another, on account of the race, color, ancestry, national origin or religion of such other:

(1) The full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof;

(2) the full and equal use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any establishment which provides lodging to transient guests for hire; of any establishment which is engaged in selling food or beverage to the public for consumption upon the premises; or of any place of recreation, amusement, exhibition or entertainment which is open to members of the public;

(3) the full and equal use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods;

(4) the full and equal use and enjoyment of the services, facilities, privileges and advantages of any establishment which offers personal or professional services to members of the public; or

(5) the full and equal exercise of the right to vote in any election held pursuant to the laws of Kansas.

(b) Denial of civil rights is a class A nonperson misdemeanor.

HISTORY: L. 1969, ch. 180, § 21-4003; L. 1992, ch. 239, § 186; L. 1993, ch. 291, § 134; July 1.

CHAPTER 21. CRIMES AND PUNISHMENTS
ARTICLE 42. CRIMES AGAINST THE PUBLIC SAFETY
ADDITIONAL CRIMES AFFECTING PUBLIC SAFETY

21-4213. Unlawful failure to report a wound.

(1) Unlawful failure to report a wound is the failure by an attending physician or other person to report his treatment of any wound, described in subsections (a) and (b) hereafter, to the office of the chief of police of the city or the office of the sheriff of the county in which such treatment took place:

(a) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(b) Any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick, or other sharp or pointed instrument.

(2) Unlawful failure to report a wound is a class C misdemeanor.

HISTORY: L. 1969, ch. 180, § 21-4213; July 1, 1970.

CHAPTER 22A. DISTRICT OFFICERS AND EMPLOYEES
ARTICLE 2. DISTRICT CORONERS

22a-215. District coroner; disposition of body of deceased; burial, when; expenses, how paid; penalties.

(a) The coroner shall cause the body of a deceased person to be delivered to the immediate family or the next of kin of the deceased in accordance with the provisions of K.S.A. 65-904, and amendments thereto. If there is no immediate family or next of kin the coroner shall report and make delivery in accordance with the provisions of article 9 of chapter 65 of Kansas Statutes Annotated. If no such delivery is required, the coroner shall cause the body of such deceased person to be cremated or buried. The state or county officer responsible for the final disposition of the deceased person may authorize and order the cremation or burial of such deceased person. Cremation or burial expenses shall be paid from any property found with the body. If there is no property found with the body or if the property is not sufficient to cover such expenses and if the deceased was eligible for assistance under the provisions of article 7 of chapter 39 of Kansas Statutes Annotated expenses of final disposition shall be paid in accordance with the provisions of K.S.A. 39-

713d, and amendments thereto. Otherwise, such expenses shall be paid from the county general fund unless the deceased died in the custody of the secretary of corrections. Expenses of final disposition of the unclaimed bodies of deceased inmates in the custody of the secretary of corrections shall be paid by the department of corrections.

(b) Any coroner who, over the protest of the immediate family or next of kin of the deceased, delivers or causes to be delivered the body of a deceased person for final disposition to a particular embalmer, funeral director or funeral establishment, shall be deemed guilty of a class B nonperson misdemeanor and upon conviction thereof shall forfeit the coroner's office.

HISTORY: G.S. 1868, ch. 25, § 132; R.S. 1923, 19-1015; L. 1945, ch. 163, § 1; L. 1951, ch. 359, § 1; L. 1955, ch. 148, § 1; L. 1965, ch. 164, § 7; L. 1975, ch. 158, § 1; L. 1993, ch. 214, § 1; L. 1997, ch. 179, § 7; L. 1999, ch. 47, § 1; July 1.

22a-230. Same; inquest, when; jury; oath; subpoenas; arrest.

(a) The coroner may hold an inquest upon the dead bodies of such persons whose deaths appear to have been caused by unlawful means when the circumstances relating to such deaths are unknown. The inquest shall be held in accordance with the provisions of this section. Except as provided in subsection (b), upon being notified of any such death occurring within the district, if an inquest is to be held, the coroner shall summon a jury of six residents of the county in which the death occurred, at a time and place named, for the purpose of inquiring into the cause of death. In any other case in which this act requires that the coroner be notified, the coroner may also summon six citizens of the county to appear at a time and place named.

(b) When the coroner has been notified of any death as provided in subsection (a), and the cause of such death occurred in a county other than the county in which the death occurred, the coroner of the county in which the cause of death occurred shall take the responsibility of summoning a jury as provided in subsection (a) for the purpose of inquiring into the death, if requested to do so by the coroner of the county in which the death occurred.

(c) If any juror fails to appear, the coroner shall summon the proper number from bystanders immediately, and proceed to impanel them and administer the following oath, in substance: "You do solemnly swear (or affirm) that you will diligently inquire and true presentment make, when, how and by what means the person whose body lies here dead came to death, according to your knowledge, and evidence given you. So help you God."

(d) The coroner may issue subpoenas for witnesses, returnable forthwith, or at such time and place as the coroner shall therein direct. Witnesses shall be allowed the fees provided in K.S.A. 28-125 and amendments thereto. In cases of disobedience of the coroner's subpoena, it shall be the duty of the judge of the district court, on application of the coroner, to compel obedience to the coroner's subpoena by indirect proceedings for contempt as in cases of disobedience of a subpoena issued from the district court.

(e) An oath shall be administered to the witness, in substance as follows: "You do solemnly swear (or affirm) that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God."

(f) The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witness.

(g) The jurors, having inspected the body, if available, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matter in the following form suggested, as far as found:

> State of Kansas, _____ County.
> An inquisition held at _____, in _____ county, on the _____ day of _____, A.D., year__, before me, _____ coroner of such county, on the body of _____ (or, a person unknown), there lying dead; by the jurors whose names are hereunto subscribed. The jurors, upon their oaths, do say (here state when, how, by what person, means, weapon or accident the person died, and whether feloniously). In testimony whereof, the jurors have hereunto subscribe, the day and year aforesaid. Which shall be attested by the coroner.

(h) If the inquisition finds a crime has been committed on the deceased, and name the person the jury believes has committed the crime, the inquest shall not be made public until after the arrest directed in the next subsection.

(i) If the person charged is present, the coroner may order the person arrested by an officer or any other person, and shall then make a warrant requiring the officer or other person to take the arrested person before a judge of a court of competent jurisdiction.

(j) If the person charged is not present, the coroner may issue a warrant to the sheriff of the county, directing the sheriff to arrest the person and take the arrested person before a judge of a court of competent jurisdiction.

(k) The warrant of a coroner in the above case shall be of equal authority with that of a judge of a court of competent jurisdiction. When the person charged is brought before the court, the person charged shall be dealt with as a person held under a complaint in the usual form.

(l) The warrant of the coroner shall recite substantially the transaction before the coroner, and the verdict of the jury of inquest leading to the arrest. The warrant shall be a sufficient foundation for the proceeding of the court instead of a complaint.

(m) The coroner shall then return to the clerk of the district court the inquisition, the written evidence and a list of the witnesses who testified to material matters.

(n) The district coroner shall receive such compensation, in addition to other compensation provided by law for the coroner, for holding an inquest as specified by the county commissioners of a single-county judicial district or the county commissioners of the county with the largest population in multiple-county judicial districts.

HISTORY: L. 1963, ch. 166, § 6; L. 1969, ch. 143, § 4; L. 1976, ch. 124, § 1; L. 1993, ch. 214, § 5; L. 2000, ch. 54, § 1; July 1.

22a-231. Same; notification of death to coroner or deputy, when; jurisdiction regarding investigation. When any person dies, or human body is found dead in the state, and the death is suspected to have been the result of violence, caused by unlawful means or by suicide, or by casualty, or suddenly when the decedent was in apparent health, or when decedent was not regularly attended by a licensed physician, or in any suspicious or unusual manner, or when in police custody, or when in a jail or correctional institution, or in any circumstances specified under K.S.A. 22a-242, and amendments thereto, or when the determination of the cause of a death is held to be in the public interest, the coroner or deputy coroner of the county in which the death occurred, if known, or if not known, the coroner or deputy coroner of the county in which such dead body was found, shall be notified by the physician in attendance, by any law enforcement officer, by the embalmer, by any person who is or may in the future be required to notify the coroner or by any other person. The coroner in the county of the cause of death shall decide if an investigation shall take place. If an investigation is authorized by the coroner of the county of cause of death, the coroner in the county of death shall undertake such investigation, with costs to be accounted to and reimbursed by the county of the cause of death. Investigation may include, but is not limited to, obtaining medical and law enforcement background information, examination of the scene of the cause of death, inquest, autopsy, and other duties required of the coroner. If the coroner of the county of the cause of death requests an investigation, the coroner of the county of death shall be responsible for the investigation and the certification of death.

HISTORY: L. 1963, ch. 166, § 7; L. 1965, ch. 164, § 12; L. 1969, ch. 143, § 5; L. 1988, ch. 103, § 1; L. 1992, ch. 312, § 35; L. 1993, ch. 214, § 6; L. 2000, ch. 54, § 2; July 1.

22a-232. Same; duties; transfer of jurisdiction.

(a) Upon receipt of notice pursuant to K.S.A. 22a-231, and amendments thereto, the coroner shall take charge of the dead body, make inquiries regarding the cause of death and reduce the findings to a report in writing. Such report shall be filed with the clerk of the district court of the county in which the death occurred if known, or if not known the report shall be filed with the clerk of the district court of the county in which the dead body was found. If the coroner determines that

the dead body is not a body described by K.S.A. 22a-231, and amendments thereto, the coroner shall immediately notify the state historical society.

(b) If in the opinion of the coroner information is present in the coroner's report that might jeopardize a criminal investigation, the coroner shall file the report with the clerk of the district court of such county and designate such report as a criminal investigation record, pursuant to subsection (a)(10) of K.S.A. 45-221, and amendments thereto.

(c) If a death investigation involves multiple jurisdictions, the coroner notified under K.S.A. 22a-231, and amendments thereto, may transfer jurisdiction to another jurisdiction if the coroners of both jurisdictions agree to the transfer.

HISTORY: L. 1963, ch. 166, § 8; L. 1976, ch. 124, § 4; L. 1989, ch. 234, § 15; L. 1993, ch. 214, § 7; L. 2000, ch. 54, § 3; July 1.

22a-233. Autopsy, when; fees and travel allowances; specimens; record and report to coroner and clerk of the district court; exhumation and autopsy.

(a) If, in the opinion of the coroner, an autopsy should be performed, or if an autopsy is requested in writing by the county or district attorney or if the autopsy is required under K.S.A. 22a-242, and amendments thereto, such autopsy shall be performed by a qualified pathologist as may be designated by the coroner. A pathologist performing an autopsy, at the request of a coroner, shall be paid a usual and reasonable fee to be allowed by the board of county commissioners and shall be allowed and paid the travel allowance prescribed for coroners and deputy coroners in accordance with the provisions of K.S.A. 22a-228, and amendments thereto, the same to be paid by the board of county commissioners of the county in which the cause of death occurred except that autopsies performed under K.S.A. 22a-242, and amendments thereto, shall be paid for in accordance with K.S.A. 22a-242, and amendments thereto.

(b) If, in the opinion of the secretary of corrections, warden or administrator of a correctional facility, jail or other institution for the detention of persons accused or convicted of crimes, an autopsy of a person who died while in the custody of such official should be performed, such autopsy shall be performed by a qualified pathologist as may be designated by the secretary of corrections, warden or administrator. A pathologist performing an autopsy pursuant to this subsection shall be paid a fee and travel allowance in the same amount as authorized by K.S.A. 22a-228, and amendments thereto. Such fee and travel allowance shall be paid by the correctional facility, jail or other facility where the death occurred from moneys available therefor. For the purposes of this subsection, custody does not include general supervision of a person on probation, parole, postrelease supervision or constraint incidental to release on bail. This subsection shall not limit the authority of a coroner pursuant to subsection (a).

(c) The pathologist performing the autopsy shall remove and retain, for a period of three years, such specimens as appear to be necessary in the determination of the cause of death.

(d) A full record and report of the facts developed by the autopsy and findings of the pathologist performing such autopsy shall be promptly made and filed with the coroner and with the clerk of the district court of the county in which decedent died. If, in any case in which this act requires that the coroner be notified, the body is buried without the permission of the coroner, it shall be the duty of the coroner, upon being advised of such fact, to notify the county or district attorney, who shall communicate the same to a district judge, and such judge may order that the body be exhumed and an autopsy performed.

HISTORY: L. 1963, ch. 166, § 9; L. 1965, ch. 164, § 13; L. 1967, ch. 135, § 1; L. 1975, ch. 158, § 2; L. 1976, ch. 124, § 2; L. 1977, ch. 109, § 13; L. 1978, ch. 91, § 1; L. 1988, ch. 103, § 3; L. 1991, ch. 95, § 1; L. 1992, ch. 312, § 36; L. 1993, ch. 214, § 8; L. 2000, ch. 122, § 1; July

22a-242. Child death, notification of coroner; autopsy; notification of state review board; notification of parent or guardian; SIDS death; fee for autopsy.

(a) When a child dies, any law enforcement officer, health care provider or other person having knowledge of the death shall immediately notify the coroner of the known facts concerning the time, place, manner and circumstances of the

death. If the notice to the coroner identifies any suspicious circumstances or unknown cause, as described in the protocol developed by the state review board under K.S.A. 22a-243 and amendments thereto, the coroner shall immediately: (1) Investigate the death to determine whether the child's death included any such suspicious circumstance or unknown cause; and (2) direct a pathologist to perform an autopsy.

(b) If, after investigation and an autopsy, the coroner determines that the death of a child does not include any suspicious circumstances or unknown cause, as described in the protocol developed by the state review board under K.S.A. 22a-243 and amendments thereto, the coroner shall complete and sign a nonsuspicious child death form.

(c) If, after investigation and an autopsy, the coroner determines that the death of a child includes any suspicious circumstance or unknown cause, as described in the protocol developed by the state review board under K.S.A. 22a-243 and amendments thereto, the coroner shall notify, within 30 days, the chairperson of the state review board and shall notify, within 24 hours, the county or district attorney of the county where the death of the child occurred.

(d) The coroner shall attempt to notify any parent or legal guardian of the deceased child prior to the performance of an autopsy pursuant to this section and attempt to notify any such parent or legal guardian of the results of the autopsy.

(e) A coroner shall not make a determination that the death of a child less than one year of age was caused by sudden infant death syndrome unless an autopsy is performed.

(f) The fee for an autopsy performed under this section shall be the usual and reasonable fee and travel allowance authorized under K.S.A. 22a-233 and amendments thereto and shall be paid from the district coroners fund.

HISTORY: L. 1992, ch. 312, § 32; L. 1994, ch. 279, § 27; L. 2002, ch. 119, § 1; July 1.

22a-243. State child death review board; executive director; development of protocol; annual report; confidentiality of records; rules and regulations.

(a) There is hereby established a state child death review board, which shall be composed of:

> (1) One member appointed by each of the following officers to represent the officer's agency: The attorney general, the director of the Kansas bureau of investigation, the secretary of social and rehabilitation services, the secretary of health and environment and the commissioner of education;
>
> (2) three members appointed by the state board of healing arts, one of whom shall be a district coroner and two of whom shall be physicians licensed to practice medicine and surgery, one specializing in pathology and the other specializing in pediatrics;
>
> (3) one person appointed by the attorney general to represent advocacy groups which focus attention on child abuse awareness and prevention; and
>
> (4) one county or district attorney appointed by the Kansas county and district attorneys association.

(b) The chairperson of the state review board shall be the member appointed by the attorney general to represent the office of the attorney general.

(c) The state child death review board shall be within the office of the attorney general as a part thereof.

All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the attorney general. All vouchers for expenditures and all payrolls of the board shall be approved by the chairperson of the board and by the attorney general. The state review board shall establish and maintain an office in Topeka.

(d) The state review board shall meet at least annually to review all reports submitted to the board. The chairperson of the state review board may call a special meeting of the board at any time to review any report of a child death.

(e) Within the limits of appropriations therefor, the state review board shall appoint an executive director who shall be in the unclassified service of the Kansas civil service act and shall receive an annual salary fixed by the state review board.

(f) Within the limits of appropriations therefor, the state review board may employ other persons who shall be in the classified service of the Kansas civil service act.

(g) Members of the state review board shall not receive compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto for attending meetings or subcommittee meetings of the board.

(h) The state review board shall develop a protocol to be used by the state review board. The protocol shall include written guidelines for coroners to use in identifying any suspicious deaths, procedures to be used by the board in investigating child deaths, methods to ensure coordination and cooperation among all agencies involved in child deaths and procedures for facilitating prosecution of perpetrators when it appears the cause of a child's death was from abuse or neglect. The protocol shall be adopted by the state review board by rules and regulations.

(i) The state review board shall submit an annual report to the governor and the legislature on or before October 1 of each year, commencing October 1993. Such report shall include the findings of the board regarding reports of child deaths, the board's analysis and the board's recommendations for improving child protection, including recommendations for modifying statutes, rules and regulations, policies and procedures.

(j) Information acquired by, and records of, the state review board shall be confidential, shall not be disclosed and shall not be subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding, except that such information and records may be disclosed to any member of the legislature or any legislative committee which has legislative responsibility of the enabling or appropriating legislation, carrying out such member's or committee's official functions. The legislative committee, in accordance with K.S.A. 75-4319 and amendments thereto, shall recess for a closed or executive meeting to receive and discuss information received by the committee pursuant to this subsection.

(k) The state review board may adopt rules and regulations as necessary to carry out the provisions of K.S.A. 22a-241 through 22a-244 and amendments thereto.

HISTORY: L. 1992, ch. 312, § 33; L. 1994, ch. 279, § 28; July 1.

22a-244. Same; activation of board to investigate; access to records; subpoena power; report issued; disclosure of conclusions.

(a) Within 72 hours after receipt of notification from a coroner pursuant to K.S.A. 22a-242, the chairperson of the state review board may activate the board to investigate and make a written report regarding the death.

(b) The state review board shall have access to all law enforcement investigative information regarding the death; any autopsy records and coroner's investigative records relating to the death; any medical records of the child; and any records of the department of social and rehabilitation services or any other social service agency which has provided services to the child or the child's family within three years preceding the child's death.

(c) The state review board may apply to the district court for the issuance of, and the district court may issue, a subpoena to compel the production of any books, records or papers relevant to the cause of any death being investigated by the board. Any books, records or papers received by the board pursuant to the subpoena shall be regarded as confidential and privileged information and not subject to disclosure.

(d) The state review board's report shall contain the circumstances leading up to the death and cause of death; any social service agency involvement prior to death, including the kinds of services delivered to the dead child or the child's parents, siblings or any other children in the home; the reasons for initial social service agency activity and the reasons for any termination of agency activities if involvement was terminated; whether court intervention had ever been sought and, if so, any action taken by the court; and recommendations for prevention of future death under similar circumstances.

(e) Within 15 days of its activation pursuant to this section, the state review board shall complete and transmit a copy of its written report to the county or district attorney of the county in which the child's death occurred. If the death of the child occurred in a different county than where the child resided, a copy of the report shall be sent to the county or district attorney of the county where the child resided or, if the child resided in another state, to the child protective services agency of that state.

(f) The state review board shall maintain permanent records of all written reports concerning child deaths.

(g) The state review board may disclose its conclusions regarding a report of a child death but shall not disclose any information received by the board which is not subject to public disclosure by the agency that provided the information to the board.

(h) Information, documents and records otherwise available from other sources are not immune from discovery or use in a civil or criminal action solely because they were presented during proceedings of the state review board. A person who presented information before the board or who is a member of the board shall not be prevented from testifying about matters within the person's knowledge.

HISTORY: L. 1992, ch. 312, § 34; July 1.

CHAPTER 31. FIRE PROTECTION
ARTICLE 1. FIRE SAFETY AND PREVENTION

31-133. Fire marshal; power and duties; rules and regulations.

(a) The state fire marshal shall adopt reasonable rules and regulations, consistent with the provisions of this act, for the safeguarding of life and property from fire, explosion and hazardous materials. Such rules and regulations shall include, but not be limited to the following:

(1) The keeping, storage, use, sale, handling, transportation or other disposition of highly flammable materials, including crude petroleum or any of its products, natural gas for use in motor vehicles, and of explosives, including gunpowder, dynamite, fireworks and firecrackers; and any such rules and regulations may prescribe the materials and construction of receptacles and buildings to be used for any of such purposes;

(2) the transportation of liquid fuel over public highways in order to provide for the public safety in connection therewith;

(3) the construction, maintenance and regulation of exits and fire escapes from buildings and all other places in which people work, live or congregate from time to time for any purpose, including apartment houses, as defined by K.S.A. 31-132a, and amendments thereto. Such rules and regulations shall not apply to buildings used wholly as dwelling houses containing no more than two families;

(4) the installation and maintenance of equipment intended for fire control, detection and extinguishment in all buildings and other places in which persons work, live or congregate from time to time for any purpose, including apartment houses as defined by K.S.A. 31-132a, and amendments thereto. Such rules and regulations shall not apply to buildings used wholly as dwelling houses containing no more than two families;

(5) requiring administrators of public and private schools and educational institutions, except community colleges, colleges and universities, to conduct at least one fire drill each month at some time during school hours, aside from the regular dismissal at the close of the day's session, and prescribing the manner in which such fire drill is to be conducted;

(6) procedures for the reporting of fires and explosions occurring within the state and for the investigation thereof;

(7) procedures for reporting by health care providers of treatment of second and third degree burn wounds involving 20% or more of the victim's body and requiring hospitalization of the victim, which reporting is hereby authorized notwithstanding any provision of K.S.A. 60-427, and amendments thereto, to the contrary;

(8) requiring administrators of public and private schools and educational institutions, except community colleges, colleges and universities, to establish tornado procedures, which procedures shall provide for at least three tornado drills to be conducted each year at some time during school hours, aside from the regular dismissal at the close of the day's session, shall describe the manner in which such tornado drills are to be conducted, and shall be subject to approval by the state fire marshal;

(9) requiring administrators of community colleges, colleges and universities to establish tornado procedures, which procedures shall be subject to approval by the director of the disaster agency of the county;

(10) the development and implementation of a statewide system of hazardous materials assessment and response; and

(11) other safeguards, protective measures or means adapted to render inherently safe from the hazards of fire or the loss of life by fire any building or other place in which people work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses containing no more than two families.

(b) Any rules and regulations of the state fire marshal adopted pursuant to this section may incorporate by reference specific editions, or portions thereof, of nationally recognized fire prevention codes.

(c) The rules and regulations adopted pursuant to this section shall allow facilities in service prior to the effective date of such rules and regulations, and not in strict conformity therewith, to continue in service, so long as such facilities are not determined by the state fire marshal to constitute a distinct hazard to life or property. Any such determination shall be subject to the appeal provisions contained in K.S.A. 31-140, and amendments thereto.

HISTORY: L. 1972, ch. 157, § 2; L. 1974, ch. 172, § 1; L. 1975, ch. 219, § 1; L. 1975, ch. 220, § 1; L. 1976, ch. 200, § 1; L. 1982, ch. 168, § 1; L. 1985, ch. 128, § 1; L. 1988, ch. 127, § 1; L. 1999, ch. 65, § 1; July 1.

CHAPTER 35. HOLIDAYS AND DAYS OF COMMEMORATION
ARTICLE 1. LEGAL HOLIDAYS

35-107. Legal public holidays designated.

(a) On and after January 1, 2006, the following days are declared to be legal public holidays and are to be observed as such:

New Year's Day, January 1;
Martin Luther King, Jr. Day, the third Monday in January;
President’s Day, the third Monday in February;
Memorial Day, the last Monday in May;
Independence Day, July 4;
Labor Day, the first Monday in September;
Columbus Day, the second Monday in October;
Veterans' Day, the eleventh day in November;
Thanksgiving Day, the fourth Thursday in November;
Christmas Day, December 25.

(b) Any reference in the laws of this state concerning observance of legal holidays shall on and after January 1, 2006, be considered as a reference to the day or days prescribed in subsection (a) hereof for the observance of such legal holiday or holidays.

HISTORY: L. 1969, ch. 218, § 1; L. 1973, ch. 181, § 1; Jan. 1, 1976.

CHAPTER 36. HOTELS, LODGINGHOUSES AND RESTAURANTS
ARTICLE 5. FOOD SERVICE AND LODGING ESTABLISHMENTS

36-501. Definitions. As used in the food service and lodging act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Hotel" means every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin camp, tourist cabin, motel or other type of lodging unit.

(b) "Rooming house" means every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, but which does not maintain common facilities for the serving or preparation of food for such guests.

(c) "Boarding house" means every building or other structure which is kept, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, and which maintains common facilities for the serving or preparation of food for such guests. The term "boarding house" shall not include facilities licensed under paragraph (5) of subsection (a) of K.S.A. 75-3307b and amendments thereto.

(d) "Lodging establishment" means a hotel, rooming house or boarding house.

(e) "Food service establishment" means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial-feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(f) "Food" means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale, in whole or in part, for human consumption.

(g) "Food vending machine" means any self-service device which, upon insertion of a coin, coins or tokens, or by other similar means, dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation but shall not include any vending machine dispensing only bottled or canned soft drinks, or prepackaged and nonpotentially hazardous food, chewing gum, nuts or candies.

(h) "Food vending machine company" means any person who is in the business of operating and servicing food vending machines.

(i) "Food vending machine dealer" means any manufacturer, remanufacturer or distributor of food vending machines who sells food vending machines to food vending machine companies.

(j) "Person" means an individual, partnership, corporation or other association of persons.

(k) "Municipality" means any city or county of this state.

(l) "Secretary" means the secretary of health and environment.

(m) "Department" means the department of health and environment.

HISTORY: L. 1975, ch. 314, § 5; L. 1986, ch. 324, § 1; July 1.

36-503. License for food service establishment required; exceptions; application, form, application and license fees, exemptions; inspection; denial, hearing; display; duplicate; existing licenses continued in effect.

(a) It shall be unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of health and environment, except that any food service establishment providing only a device for the convenience and operation by a customer for the purpose of heating prepackaged food with no provision for consumption of food on the premises, or any food service establishment licensed by the secretary pursuant to any other law and maintained in connection with any premises licensed by the secretary pursuant to any other law shall not be required to obtain a license under this section, nor shall any person engaged only in the serving of food on railway dining cars or in the occasional sale or serving of food be required to obtain a license hereunder. For the purpose of this section, the sale or serving of food in the same location less than seven days in any calendar year shall be construed as the occasional sale or serving of food. Nothing in this act shall prevent the secretary of health and environment from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of health and environment or any authorized agent thereof except that no provision of this act shall be construed to authorize the secretary of health and environment to inspect or cause to be inspected under the provisions of this act any food service establishment licensed by the secretary of health and environment pursuant to any other law or maintained in connection with any premises licensed by the secretary pursuant to any other law which food service establishment is not required to obtain a license under this section.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee, each of which shall be established in an amount fixed by rules and regulations adopted by the secretary of health and environment. Application fees may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed $ 200. Such license fee shall not exceed $ 200 and shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the food service establishment inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the food service establishment designated in the application, to determine that it complies with the standards for food service establishments promulgated pursuant to this act. If such food service establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(c) Every license issued hereunder shall be displayed conspicuously in the food service establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of $ 3.

(d) Any person who, on the effective date of this act, has a valid license to operate a restaurant shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a food service establishment issued under the provisions of this act.

(e) A premises where prepackaged individual meals are distributed to persons eligible under the federal older Americans act shall not pay any fee prescribed under subsection (b).

HISTORY: L. 1975, ch. 314, § 7; L. 1976, ch. 205, § 1; L. 1978, ch. 154, § 2; L. 1981, ch. 181, § 1; L. 1982, ch. 181, § 1; L. 1984, ch. 313, § 56; L. 1993, ch. 196, § 1; L. 2001, ch. 203, § 1; July 1.

CHAPTER 38. MINORS
ARTICLE 1. GENERAL PROVISIONS

38-101. Period of minority. The period of minority extends in all persons to the age of eighteen (18) years, except that every person sixteen (16) years of age or over who is or has been married shall be considered of the age of majority in all matters relating to contracts, property rights, liabilities and the capacity to sue and be sued.

HISTORY: G.S. 1868, ch. 67, § 1; L. 1917, ch. 184, § 1; L. 1919, ch. 229, § 1; R.S. 1923, 38-101; L. 1965, ch. 274, § 1; L. 1972, ch. 161, § 5; L. 1978, ch. 155, § 1; July 1.

38-108. District court may confer rights of majority. That the district courts for the several counties in this state shall have authority to confer upon minors the rights of majority, concerning contracts and real and personal property, and to authorize and empower minors to purchase, hold, possess and control in their own person and right, and without the intervention or control of a guardian or trustee, any goods, chattels, rights, interests in lands, tenements and effects by such minor lawfully acquired or inherited; and such minor shall have full power to hold, convey and dispose of the same, and to make contracts and be subject to all the liabilities incident thereto, sue and be sued, and in all respects to exercise and enjoy all rights of property and of contracts in the same manner and to the same extent as persons at the age of majority.

HISTORY: L. 1875, ch. 114, § 1; May 15; R.S. 1923, 38-108.

38-122. Consent by parent for surgery and other procedures on child. Any parent, including a parent who is a minor, whether married or unmarried, may consent to the performance upon his or her child of a medical, surgical or post mortem procedure by a physician licensed to practice medicine or surgery. The consent of a parent who is a minor shall not be voidable because of such minority, but for such purpose a parent who is a minor shall be deemed to have the same legal capacity to act and shall have the same powers and obligations as has a person of legal age.

HISTORY: L. 1967, ch. 241, § 1; July 1.

38-123. Consent for medical care of unmarried pregnant minor. Notwithstanding any other provision of the law, an unmarried pregnant minor where no parent or guardian is available may give consent to the furnishing of hospital, medical and surgical care related to her pregnancy, and such consent shall not be subject to disaffirmance because of minority. The consent of a parent or guardian of an unmarried pregnant minor shall not be necessary in order to authorize hospital, medical and surgical care related to her pregnancy, where no parent or guardian is available.

HISTORY: L. 1967, ch. 241, § 2; July 1.

38-123a. Donation of blood by persons over 17; compensation. Any person seventeen (17) years of age or older shall be eligible to donate blood voluntarily without the necessity of obtaining parental permission or authorization. No person seventeen (17) years of age shall receive compensation for any such donation without parental permission or authorization.

HISTORY: L. 1969, ch. 221, § 1; L. 1972, ch. 161, § 6; L. 1975, ch. 229, § 1; July 1.

38-123b. Consent by minor 16 or over to hospital, medical or surgical treatment or procedures. Notwithstanding any other provision of the law, any minor sixteen (16) years of age or over, where no parent or guardian is immediately available, may give consent to the performance and furnishing of hospital, medical or surgical treatment or procedures and such consent shall not be subject to disaffirmance because of minority. The consent of a parent or guardian of such a minor shall not be necessary in order to authorize the proposed hospital, medical or surgical treatment or procedures.

HISTORY: L. 1969, ch. 220, § 1; July 1.

38-133. Medical and surgical care for children placed in certain homes by secretary of social and rehabilitation services or by a court; consent; form.

(a) Whenever any child has been placed by the secretary of social and rehabilitation services or by any court of competent jurisdiction in a licensed foster care home, or a home approved by the department of health and environment and department of social and rehabilitation services as meeting licensing standards of a foster care home, and such child needs medical or surgical care determined by a physician to be necessary for the welfare of such child, consent to such care by the child's parent or other legal guardian shall be deemed to have been given if there has been given a consent to medical and surgical care by the terms of a written order of a court of competent jurisdiction or if there has been given a consent in terms that substantially conform to the provisions of subsection (c) and such form has been signed by a parent or other legal guardian of such child and acknowledged before a notary public or other person authorized by law to administer oaths.

(b) The secretary of social and rehabilitation services or such secretary's designee is authorized to sign the consent form as legal guardian of any child committed to the custody of the secretary when the parental rights of a child's parents have been severed or when authorized by order of a court of competent jurisdiction.

(c) The form provided for in subsection (a) is as follows:

CONSENT TO MEDICAL CARE

I, _____, parent or legal guardian of _____, born _____, do hereby consent to any medical or surgical care and the administration of anesthesia determined by a physician to be necessary for the welfare of _____ while said child is under the care, custody and control of
(Name of Child)
the secretary of social and rehabilitation services.

x_____
(Signature of Parent or Legal Guardian)

Acknowledged before me this _____ day of _____, ____.

x_____
Signature of Notary Public

My appointment expires _____, ____.

HISTORY: L. 1977, ch. 286, § 1; April 18.

CHAPTER 38. MINORS
ARTICLE 6. CHILD LABOR

38-601. Children under 14, employment. No child under fourteen (14) years of age shall be at any time employed at any occupation or trade in any business or service, except as provided by K.S.A. 38-614.

HISTORY: L. 1917, ch. 227, § 1; R.S. 1923, 38-601; L. 1973, ch. 183, § 1; July 1.

38-602. Children under 18, employment; rules and regulations. No child under eighteen (18) years of age shall be at any time employed in any occupation, trade or business which is in any way dangerous or injurious to the life, health, safety, morals or welfare of such minor. The state labor commissioner is hereby authorized and empowered, from time to time, to hold public hearings to determine work, trade or occupations which are within the prohibition of this section, and he shall adopt appropriate rules and regulations, after public hearings thereon, prohibiting or regulating employment of minors in any work, trade or occupation found to be dangerous or injurious to the life, health, safety, morals or welfare of minors under the age of eighteen (18) years: Provided, That no child under the age of eighteen (18) shall be employed in any of the occupations declared by the United States secretary of labor to be within the hazardous occupation regulations issued pursuant to the child labor provisions of the fair labor standards act on July 1, 1973.

HISTORY: L. 1917, ch. 227, § 2; R.S. 1923, 38-602; L. 1943, ch. 178, § 1; L. 1973, ch. 183, § 2; July 1.

38-603. Children under 16, employment.

(a) No child under sixteen (16) years of age, who is employed in any of the several vocations mentioned in this act, or in the transmission of merchandise or messages, or any hotel, restaurant or mercantile establishment shall be employed before 7 a.m., or after 10 p.m., except on any evening that does not precede a school day, nor more than eight (8) hours in any one calendar day, nor more than forty (40) hours in any one week.

(b) The provisions of this section shall not apply to any student engaged in school food service preparation nor shall such provisions apply to the employment of a student-learner who is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority, or in a course of study in a substantially similar program conducted by a private school: Provided, That such a student-learner is employed under a written agreement which shall provide: (1) That the work of the student-learner shall be incidental to his training, and shall be under the supervision of a teacher-coordinator employed by the school, and (2) that a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Such a written agreement shall carry the name of the student-learner, and shall be signed by the employer and the school coordinator or principal.

HISTORY: L. 1917, ch. 227, § 3; R.S. 1923, 38-603; L. 1973, ch. 183, § 3; July 1.

38-604. Work permit required; exception. That all persons, firms, or corporations employing children under sixteen (16) years of age in any of the vocations mentioned in this act, shall be required to first obtain and keep on file and accessible to any inspector or officer charged with the enforcement of this act, the work permit as hereinafter provided for: Provided, That if such children are enrolled in or attending any secondary school within the state, no such work permit shall be required.

HISTORY: L. 1917, ch. 227, § 4; R.S. 1923, 38-604; L. 1972, ch. 163, § 1; July 1.

38-605. Notice of hours of labor. That every employer shall keep posted in a conspicuous place near the principal entrance, in any establishment where children under sixteen years of age are employed, permitted or suffered to work, a notice stating the maximum number of hours such child may be required, or permitted to work, on each day of the week, the hours of commencing and stopping work and the hours allowed for dinner or other meals. The form for such notice shall be furnished by the state labor commissioner, and the employment of any child for a longer time in any day than so stated, or at any time other than as stated in said notice, shall be deemed a violation of the provisions of this act.

HISTORY: L. 1917, ch. 227, § 5; May 26; R.S. 1923, 38-605.

38-606. Work permits, requirements before issuance. The superintendent of schools or his or her duly authorized representative, or the judge of the district court, shall issue a work permit only after he or she has received, examined, approved, and filed the following papers duly executed, namely:

First. A written statement signed by the person for whom the child expects to work, or by some one duly authorized by such person, stating the occupation at which he or she intends to employ such child.

Second. The school record of such child properly filled out and signed by the principal of the school last attended, setting forth that such child has completed the course of study prescribed for elementary schools by the state board of education. In case such school record is not available then the official issuing the permit shall cause such child to be examined to determine whether or not such child has the educational qualifications equivalent to a completion of the elementary course of study prescribed by the state board of education, and shall file in the office a statement setting forth the result of such examination: Provided, That a permit may be issued to allow a child who has not completed the

course of study provided for herein to work when school is not in session in the district in which such child resides, subject to all the other limitations of this act.

Third. Evidence of age of the child, showing that the child is fourteen years of age; and that the state labor commissioner shall be, and hereby is authorized, empowered, and directed to make and prescribe, and from time to time to change and amend such rules and regulations, not in conflict with this act, as he or she may deem necessary and proper to secure satisfactory evidence of the age of the child applying for a work permit: Provided, however, That the evidence of age, and the manner of preparing and producing such evidence, required under such rules and regulations, shall comply substantially with the requirements as to proof of age prescribed by any rules and regulations made pursuant to the act of congress entitled, "An act to prevent interstate commerce in the products of child labor, and for other purposes, approved September 1, 1916," and any amendments thereto hereafter made.

HISTORY: L. 1917, ch. 227, § 6; R.S. 1923, 38-606; L. 1976, ch. 145, § 183; Jan. 10, 1977.

38-614. Activities not considered employment; performance prohibited, when. For the purposes of article 6 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto, the following shall not be considered employment:

(1) Children employed by their parents in nonhazardous occupations;

(2) domestic service;

(3) casual labor in or around a private home;

(4) delivery or messenger work;

(5) delivering or distributing newspapers or shopping news;

(6) agricultural, horticultural, livestock or dairying pursuits and employments incident thereto; and

(7) except as provided by K.S.A. 38-615 through 38-622, and amendments thereto, children employed as actors, actresses or performers in motion pictures, theatrical, radio or television productions.

Such exempt services shall not be performed by a child attending school during hours in which the public school is in session in the district in which such child resides.

HISTORY: L. 1973, ch. 183, § 5; L. 1982, ch. 183, § 1; L. 2000, ch. 174, § 10; July 1.

CHAPTER 38. MINORS
ARTICLE 15. KANSAS CODE FOR CARE OF CHILDREN
GENERAL PROVISIONS

38-1507. Child in need of care reports; exchange of, access to and disclosure of information; liability; unlawful acts.

(a) Except as otherwise provided, in order to protect the privacy of children who are the subject of a child in need of care record or report, all records and reports concerning children in need of care, including the juvenile intake and assessment report, received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker shall be kept confidential except: (1) To those persons or entities with a need for information that is directly related to achieving the purposes of this code, or (2) upon an order of a court of competent jurisdiction pursuant to a determination by the court that disclosure of the reports and records is in the best interests of the child or are necessary for the proceedings before the court, or both, and are otherwise admissible in evidence. Such access shall be limited to in camera inspection unless the court otherwise issues an order specifying the terms of disclosure.

(b) The provisions of subsection (a) shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A. 72-89b03 and amendments thereto.

(c) When a report is received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker which indicates a child may be in need of care, the following persons and entities shall have a free exchange of information between and among them:

(1) The department of social and rehabilitation services;

(2) the commissioner of juvenile justice;

(3) the law enforcement agency receiving such report;

(4) members of a court appointed multidisciplinary team;

(5) an entity mandated by federal law or an agency of any state authorized to receive and investigate reports of a child known or suspected to be in need of care;

(6) a military enclave or Indian tribal organization authorized to receive and investigate reports of a child known or suspected to be in need of care;

(7) a county or district attorney;

(8) a court services officer who has taken a child into custody pursuant to K.S.A. 38-1527, and amendments thereto;

(9) a guardian ad litem appointed for a child alleged to be in need of care;

(10) an intake and assessment worker;

(11) any community corrections program which has the child under court ordered supervision;

(12) the department of health and environment or persons authorized by the department of health and environment pursuant to K.S.A. 65-512, and amendments thereto, for the purpose of carrying out responsibilities relating to licensure or registration of child care providers as required by article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto; and

(13) members of a duly appointed community services team.

(d) The following persons or entities shall have access to information, records or reports received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities to maintain their personal safety and the personal safety of individuals in their care or to diagnose, treat, care for or protect a child alleged to be in need of care.

(1) A child named in the report or records.

(2) A parent or other person responsible for the welfare of a child, or such person's legal representative.

(3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.

(4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise:

(A) A child whom such service provider reasonably suspects may be in need of care;

(B) a member of the child's family; or

(C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of social and rehabilitation services to care for, treat or supervise a child in need of care. In order to assist a child placed for care by the secretary of social and rehabilitation services in a foster home or child care facility, the secretary shall provide relevant information to the foster parents or child care facility prior to placement and as such information becomes available to the secretary.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) A prospective adoptive parent prior to placing a child in their care.

(9) The department of health and environment or person authorized by the department of health and environment pursuant to K.S.A. 65-512, and amendments thereto, for the purpose of carrying out responsibilities relating to licensure or registration of child care providers as required by article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

(10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.

(11) Any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees.

(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.

(13) The secretary of social and rehabilitation services.

(14) A law enforcement agency.

(15) A juvenile intake and assessment worker.

(16) The commissioner of juvenile justice.

(e) Information from a record or report of a child in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on appropriations, senate committee on ways and means, legislative post audit committee and joint committee on children and families, carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319 and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate.

(f) Nothing in this section shall be interpreted to prohibit the secretary of social and rehabilitation services from summarizing the outcome of department actions regarding a child alleged to be a child in need of care to a person having made such report.

(g) Disclosure of information from reports or records of a child in need of care to the public shall be limited to confirmation of factual details with respect to how the case was handled that do not violate the privacy of the child, if living, or the child's siblings, parents or guardians. Further, confidential information may be released to the public only with the express written permission of the individuals involved or their representatives or upon order of the court having jurisdiction upon a finding by the court that public disclosure of information in the records or reports is necessary for the resolution of an issue before the court.

(h) Nothing in this section shall be interpreted to prohibit a court of competent jurisdiction from making an order disclosing the findings or information pursuant to a report of alleged or suspected child abuse or neglect which has resulted in a child fatality or near fatality if the court determines such disclosure is necessary to a legitimate state purpose. In making such order, the court shall give due consideration to the privacy of the child, if, living, or the child's siblings, parents or guardians.

(i) Information authorized to be disclosed in subsections (d) through (g) shall not contain information which identifies a reporter of a child in need of care.

(j) Records or reports authorized to be disclosed in this section shall not be further disclosed, except that the provisions of this subsection shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A. 72-89b03 and amendments thereto.

(k) Anyone who participates in providing or receiving information without malice under the provisions of this section shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from providing or receiving information.

(l) No individual, association, partnership, corporation or other entity shall willfully or knowingly disclose, permit or encourage disclosure of the contents of records or reports concerning a child in need of care received by the department of social and rehabilitation services, a law enforcement agency or a juvenile intake and assessment worker except as provided by this code. Violation of this subsection is a class B misdemeanor.

HISTORY: L. 1982, ch. 182, § 7; L. 1983, ch. 140, § 14; L. 1985, ch. 145, § 1; L. 1988, ch. 138, § 2; L. 1990, ch. 147, § 1; L. 1992, ch. 318, § 2; L. 1996, ch. 229, § 33; L. 1997, ch. 156, § 41; L. 1998, ch. 171, § 7; L. 1999, ch. 116, § 43; L. 2000, ch. 150, § 5; L. 2002, ch. 135, § 1; July 1.

38-1513. Health services.

(a) Physical or mental care and treatment.

(1) When a child less than 18 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, no consent shall be required to medically examine the child to determine whether the child has been maltreated.

(2) When the health or condition of a child who is a ward of the court requires it, the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records. A child, or parent of any child, who is opposed to certain medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may limit the performance of matters provided for in this subsection or may authorize the performance of those matters subject to terms and conditions the court considers proper.

(3) Prior to disposition the person having custody of the child may give consent to the following:

(A) Dental treatment for the child by a licensed dentist;

(B) diagnostic examinations of the child, including but not limited to the withdrawal of blood or other body fluids, x-rays and other laboratory examinations;

(C) releases and inspections of the child's medical history records;

(D) immunizations for the child;

(E) administration of lawfully prescribed drugs to the child; and

(F) examinations of the child including, but not limited to, the withdrawal of blood or other body fluids or tissues, for the purpose of determining the child's parentage.

(4) When the court has granted legal custody of a child in a dispositional hearing to any agency, association or individual, the custodian or an agent designated by the custodian shall have authority to consent to the performance and furnishing of hospital, medical, surgical or dental treatment or procedures or mental care or treatment other than inpatient treatment at a state psychiatric hospital, including the release and inspection of medical or hospital records, subject to terms and conditions the court considers proper.

(5) If a child is in the custody of the secretary, the secretary may consent to the mental care and treatment of the child, without court approval, so long as such care and treatment do not include inpatient treatment at a state psychiatric hospital.

(6) Any health care provider who in good faith renders hospital, medical, surgical, mental or dental care or treatment to any child after a consent has been obtained as authorized by this section shall not be liable in any civil or criminal action for failure to obtain consent of a parent.

(7) Nothing in this section shall be construed to mean that any person shall be relieved of legal responsibility to provide care and support for a child.

(b) Mental care and treatment requiring court action. If it is brought to the court's attention, while the court is exercising jurisdiction over the person of a child under this code, that the child may be a mentally ill person as defined in K.S.A. 2000 Supp. 59-2946 and amendments thereto, the court may:

(1) Direct or authorize the county or district attorney or the person supplying the information to file the petition provided for in K.S.A. 2000 Supp. 59-2957 and amendments thereto and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for mentally ill persons; or

(2) authorize that the child seek voluntary admission to a treatment facility as provided in K.S.A. 2000 Supp. 59-2949 and amendments thereto.

The application to determine whether the child is a mentally ill person may be filed in the same proceedings as the petition alleging the child to be a child in need of care, or may be brought in separate proceedings. In either event the court may enter an order staying any further proceedings under this code until all proceedings have been concluded under the care and treatment act for mentally ill persons.

HISTORY: L. 1982, ch. 182, § 13; L. 1983, ch. 140, § 17; L. 1985, ch. 146, § 1; L. 1986, ch. 211, § 31; L. 1992, ch. 312, § 2; L. 1994, ch. 301, § 31; L. 1996, ch. 167, § 49; L. 2000, ch. 150, § 6; June 1.

38-1522. Reporting of certain abuse or neglect of children; persons reporting; reports, made to whom; penalties for failure to report or interference with making of a report.

(a) When any of the following persons has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsection (c) or (e): Persons licensed to practice the healing arts or dentistry; persons licensed to practice optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed psychologists; licensed masters level psychologists; licensed clinical psychotherapists; licensed professional or practical nurses examining, attending or treating a child under the age of 18; teachers, school administrators or other employees of a school which the child is attending; chief administrative officers of medical care facilities; licensed marriage and family therapists; licensed clinical marriage and family therapists; licensed professional counselors; licensed clinical professional counselors; registered alcohol and drug abuse counselors; persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; licensed social workers; firefighters; emergency medical services personnel; mediators appointed under K.S.A. 23-602 and amendments thereto; juvenile intake and assessment workers; and law enforcement officers. The report may be made orally and shall be followed by a written report if requested. When the suspicion is the result of

medical examination or treatment of a child by a member of the staff of a medical care facility or similar institution, that staff member shall immediately notify the superintendent, manager or other person in charge of the institution who shall make a written report forthwith. Every written report shall contain, if known, the names and addresses of the child and the child's parents or other persons responsible for the child's care, the child's age, the nature and extent of the child's injury (including any evidence of previous injuries) and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the persons responsible for the injuries.

(b) Any other person who has reason to suspect that a child has been injured as a result of physical, mental or emotional abuse or neglect or sexual abuse may report the matter as provided in subsection (c) or (e).

(c) Except as provided by subsection (e), reports made pursuant to this section shall be made to the state department of social and rehabilitation services. When the department is not open for business, the reports shall be made to the appropriate law enforcement agency. On the next day that the state department of social and rehabilitation services is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports may be made orally or, on request of the department, in writing.

(d) Any person who is required by this section to report an injury to a child and who knows of the death of a child shall notify immediately the coroner as provided by K.S.A. 22a-242, and amendments thereto.

(e) Reports of child abuse or neglect occurring in an institution operated by the secretary of social and rehabilitation services or the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the state department of social and rehabilitation services or the juvenile justice authority shall be made to the appropriate law enforcement agency.

(f) Willful and knowing failure to make a report required by this section is a class B misdemeanor.

(g) Preventing or interfering with, with the intent to prevent, the making of a report required by this section is a class B misdemeanor.

HISTORY: L. 1982, ch. 182, § 19; L. 1983, ch. 140, § 19; L. 1985, ch. 147, § 8; L. 1986, ch. 299, § 4; L. 1987, ch. 152, § 1; L. 1988, ch. 140, § 2; L. 1991, ch. 114, § 13; L. 1992, ch. 312, § 38; L. 1996, ch. 229, § 36; L. 1997, ch. 156, § 43; L. 2001, ch. 154, § 2; July 1.

38-1526. Same; immunity from liability. Anyone participating without malice in the making of an oral or written report to a law enforcement agency or the department of social and rehabilitation services relating to injury inflicted upon a child under 18 years of age as a result of physical, mental or emotional abuse or neglect or sexual abuse or in any follow-up activity to or investigation of the report shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from the report.

HISTORY: L. 1982, ch. 182, § 23; L. 1983, ch. 140, § 22; L. 1984, ch. 155, § 1; July 1.

CHAPTER 39. MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS; SOCIAL WELFARE
ARTICLE 4. HOSPITAL TREATMENT AND HOSPITALIZATION

39-415. Counties between 175,000 and 250,000; definitions. As used in this act:

(a) The words "medically indigent" shall mean a person who is unable to pay for hospitalization and who is not receiving or who is not eligible for medical assistance under K.S.A. 39-701 et seq., and amendments thereto, at the time of application for hospitalization hereunder.

(b) The word "hospitalization" shall mean the routine services ordinarily rendered in a hospital as a hospital is defined in K.S.A. 65-425 and licensed under K.S.A. 65-427.

HISTORY: L. 1951, ch. 237, § 1; L. 1976, ch. 209, § 1; July 1.

39-416. County hospital fund for medically indigent persons in certain counties; tax levy, use of proceeds. The board of county commissioners in any county having a population of not less than 175,000 or more than 250,000 may levy each year a tax upon all taxable tangible property in their respective counties and the proceeds thereof, except for an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, shall be placed into a separate fund designated as "the county hospital fund," which fund is hereby created, and shall be used only to provide and pay for hospitalization for medically indigent persons who have resided in any such county for a period of not less than one year immediately preceding any application for hospitalization as a medically indigent person, and resided in the state for not less than two years during the four years immediately preceding any application for hospitalization as a medically indigent person. The provisions of this act shall not abrogate or amend any other existing laws relating to hospitalization of any person or persons.

HISTORY: L. 1951, ch. 237, § 2; L. 1957, ch. 265, § 1; L. 1970, ch. 100, § 38; L. 1975, ch. 162, § 34; L. 1979, ch. 52, § 151; July 1.

39-417. Same; rules and regulations. Hospitalization shall be on a case basis and the payment therefor as provided under K.S.A. 39-416 aforesaid shall be furnished under such rules and regulations as the board of county commissioners shall from time to time adopt.

HISTORY: L. 1951, ch. 237, § 3; June 30.

39-418. Same; hospital advisory council; appointment; duties; monthly publication of recipients' names and addresses. The board of county commissioners within 90 days after the taking effect of this act shall appoint a hospital advisory council consisting of not more than five citizens residents of such county selected so as to provide a representative on said council from the hospital of the university of Kansas medical center and a representative from each of the other hospitals located in the county. Said council shall advise and consult with the board of county commissioners and make recommendations in the formation and establishment of rules and regulations as provided in K.S.A. 39-417.

The members of the hospital advisory council shall serve without compensation and shall serve at the will and pleasure of such board of county commissioners: Provided, Disbursements of the county hospital fund shall be by voucher, approved by the board of county commissioners, which vouchers shall be paid in the same manner as are other county vouchers and shall be subject to the same auditing procedure as are other county vouchers: Provided further, That there be published monthly in the official county paper, the names and addresses of each person for whom payment is made under this act, and the amount of each warrant issued to a hospital in payment of each case shall be separately stated in said publication.

HISTORY: L. 1951, ch. 237, § 4; June 30.

CHAPTER 39. MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS; SOCIAL WELFARE
ARTICLE 7. SOCIAL WELFARE

39-702. Definitions. The following words and phrases when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section:

(a) "Secretary" means the secretary of social and rehabilitation services.

(b) "Applicants" means all persons who, as individuals, or in whose behalf requests are made of the secretary for aid or assistance.

(c) "Social welfare service" may include such functions as giving assistance, the prevention of public dependency, and promoting the rehabilitation of dependent persons or those who are approaching public dependency.

(d) "Assistance" includes such items or functions as the giving or providing of money, food stamps or coupons, food, clothing, shelter, medicine or other materials, the giving of any service, including instructive or scientific, and the providing of institutional care, which may be necessary or helpful to the recipient in providing the necessities of life for the recipient and the recipient's dependents. The definitions of social welfare service and assistance in this section shall be deemed as partially descriptive and not limiting.

(e) "Aid to families with dependent children" means financial assistance with respect to or on behalf of a dependent child or dependent children and includes financial assistance for any month to meet the needs of the relative with whom any dependent child is living.

(f) "Medical assistance" means the payment of all or part of the cost of necessary: (1) Medical, remedial, rehabilitative or preventive care and services which are within the scope of services to be provided under a medical care plan developed by the secretary pursuant to this act and furnished by health care providers who have a current approved provider agreement with the secretary, and (2) transportation to obtain care and services which are within the scope of services to be provided under a medical care plan developed by the secretary pursuant to this act.

(g) "Dependent children" means needy children under the age of 18, or who are under the age of 19 and are full-time students in secondary schools or the equivalent educational program or are full-time students in a program of vocational or technical training if they may be reasonably expected to complete the training before attaining age 19, who have been deprived of parental or guardian support or care by reasons of the death, continued absence from the home, or physical or mental incapacity of a parent or guardian, and who are living with any blood relative, including those of the half-blood, and including first cousins, uncles, aunts, and persons of preceding generations are denoted by prefixes of grand, great, or great-great, and including the spouses or former spouses of any persons named in the above groups, in a place of residence maintained by one or more of such relatives as their own home. The secretary may adopt rules and regulations which extend the deprivation requirement under this definition to include being deprived of parental or guardian support or care by reason of the unemployment of a parent or guardian. The term "dependent children" also includes children who would meet the foregoing requirements except for their removal from the home of a relative as a result of judicial determination to the effect that continuation therein would be contrary to the welfare of such children, for whose placement and care the secretary is responsible, who have been placed in a foster family home or child care institution as a result of such determination and who received aid to dependent children in or for the month in which court proceedings leading to such determination were initiated, or would have received such aid in or for such month if application had been made therefor, or in the case of a child who had been living with a relative specified above within six months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month such child had been living with and removed from the home of such a relative and application had been made therefor.

(h) "The blind" means not only those who are totally and permanently devoid of vision, but also those persons whose vision is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

(i) "General assistance" means financial assistance in which the cost of such financial assistance is not participated in by the federal government. General assistance may be limited to transitional assistance in some instances as specified by rules and regulations adopted by the secretary.

(j) "Recipient" means a person who has received assistance under the terms of this act.

(k) "Intake office" means the place where the secretary shall maintain an office for receiving applications.

(l) "Adequate consideration" means consideration equal, or reasonably proportioned to the value of that for which it is given.

(m) "Transitional assistance" means a form of general assistance in which as little financial assistance as one payment may be made during each period of 12 consecutive calendar months to an eligible and needy person and all other persons for whom such person is legally responsible.

(n) "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. 651, et seq.), or acts mendatory thereof or supplemental thereto as in effect on May 1, 1997.

HISTORY: L. 1937, ch. 327, § 2; L. 1951, ch. 288, § 1; L. 1953, ch. 391, § 34; L. 1955, ch. 236, § 1; L. 1957, ch. 268, § 1; L. 1963, ch. 255, § 1; L. 1967, ch. 245, § 1; L. 1969, ch. 226, § 1; L. 1973, ch. 186, § 2; L. 1978, ch. 159, § 1; L. 1981, ch. 185, § 1; L. 1983, ch. 143, § 1; L. 1997, ch. 182, § 68; July 3.

39-708a. Payment of claims to medical vendors not filed within fiscal year; limitation.

(a) Except as otherwise provided in subsection (b), the director of accounts and reports shall accept for payment from an agent or intermediary authorized to make medical payment reviews and to determine the amount due to medical vendors for the care of needy persons, in accordance with agreements entered into by the secretary under the provisions of subsections (s) and (x) of K.S.A. 39-708c and amendments thereto, notwithstanding the fact that such claims were not submitted or processed for payment within the fiscal year in which the service was rendered.

(b) No claim filed more than 12 months after the time the service was rendered shall be allowed or paid except that payment to medical vendors may be made on claims submitted more than 12 months after the service was rendered: (1) If the services were provided to a child who at the time of service was in the custody of the secretary, or a child for whom the agency has entered into an adoptive support agreement if the medical vendor did not have actual knowledge of that fact prior to the expiration of the 12-month period; (2) if the claim was submitted to medicare within 12 months of the date of service, paid or denied for payment by medicare, and subsequently submitted for payment to the state medical assistance program within 30 days of the medicare payment or denial date; (3) if the claim is determined payable by reason of administrative appeals, court action or agency error; (4) if the claim is for emergency services rendered by providers located outside the state who are not already enrolled as state medical assistance program providers; or (5) if the claim arises out of circumstances described under items (1), (2), (3) or (4) and is determined not to be payable under any such item, but the secretary determines that such claim is the result of extraordinary circumstances.

HISTORY: L. 1969, ch. 228, § 1; L. 1973, ch. 186, § 4; L. 1989, ch. 123, § 1; L. 1994, ch. 55, § 1; July 1.

39-708c. Powers and duties of secretary of social and rehabilitation services; community work experience programs; disbursal of property including food stamps; division of services for the blind; children and youth service program; medical care for needy persons; payment schedules for health care providers; centralized payment of welfare expenditures.

(a) The secretary of social and rehabilitation services shall develop state plans, as provided under the federal social security act, whereby the state cooperates with the federal government in its program of assisting the states financially in furnishing assistance and services to eligible individuals. The secretary shall undertake to cooperate with the federal government on any other federal program providing federal financial assistance and services in the field of social welfare not inconsistent with this act. The secretary is not required to develop a state plan for participation or cooperation in all federal social security act programs or other federal programs that are available. The secretary shall also have the power, but is not required, to develop a state plan in regard to assistance and services in which the federal government does not participate.

(b) The secretary shall have the power and duty to determine the general policies relating to all forms of social welfare which are administered or supervised by the secretary and to adopt the rules and regulations therefor.

(c) The secretary shall hire, in accordance with the provisions of the Kansas civil service act, such employees as may be needed, in the judgment of the secretary, to carry out the provisions of this act. The secretary shall advise the governor and the legislature on all social welfare matters covered in this act.

(d) The secretary shall establish and maintain intake offices throughout the state. The secretary may establish and create area offices to coordinate and supervise the administration of the intake offices located within the area. The number and location of intake offices and area offices shall be within the discretion of the secretary. Each intake office shall be open at least 12 hours of each working week on a regularly scheduled basis. The secretary shall supervise all social welfare activities of the intake offices and area offices. The secretary may lease office or business space, but no lease or rental contract shall be for a period to exceed 10 years. A person desiring public assistance, or if the person is incapable or incapacitated, a relative, friend, personal representative or conservator of the person shall make application at the intake office. When it is necessary, employees may take applications elsewhere at any time. The applications shall contain a statement of the amount of property, both personal and real, in which the applicant has an interest and of all income which the applicant may have at the time of the filing of the application and such other information as may be required by the secretary. When a husband and wife are living together the combined income or resources of both shall be considered in determining the eligibility of either or both for assistance unless otherwise prohibited by law. The form of application, the procedure for the determination of eligibility and the amount and kind of assistance or service shall be determined by the secretary.

(e) The secretary shall provide special inservice training for employees of the secretary and may provide the training as a part of the job or at accredited educational institutions.

(f) The secretary shall establish an adequate system of financial records. The secretary shall make annual reports to the governor and shall make any reports required by federal agencies.

(g) The secretary shall sponsor, operate or supervise community work experience programs whereby recipients of assistance shall work out a part or all of their assistance and conserve work skills and develop new skills. The compensation credited to recipients for the programs shall be based upon an hourly rate equal to or in excess of the federal minimum wage hourly rate. The programs shall be administered by the secretary. In the programs, the secretary shall provide protection to the recipient under the workmen's compensation act or shall provide comparable protection and may enter into cooperative arrangements with other public officials and agencies or with private not-for-profit corporations providing assistance to needy persons in developing, subject to the approval of the secretary, the programs under this section.

(h) The secretary may receive, have custody of, protect, administer, disburse, dispose of and account for federal or private commodities, equipment, supplies and any kind of property, including food stamps or coupons, which are given, granted, loaned or advanced to the state of Kansas for social welfare works, and for any other purposes provided for by federal laws or rules and regulations or by private devise, grant or loan, or from corporations organized to act as federal agencies, and to do all things and acts which are necessary or required to perform the functions and carry out the provisions of federal laws, rules and regulations under which such commodities, equipment, supplies and other property may be given, granted, loaned or advanced to the state of Kansas, and to act as an agent of the federal government when designated as an agent, and do and perform all things and acts that may be required by the federal laws or rules and regulations not inconsistent with the act.

(i) The secretary may assist other departments, agencies and institutions of the state and federal government and of other states under interstate agreements, when so requested, by performing services in conformity with the purpose of this act.

(j) The secretary shall have authority to lease real and personal property whenever the property is not available through the state or a political subdivision of the state, for carrying on the functions of the secretary.

(k) All contracts shall be made in the name of "secretary of social and rehabilitation services," and in that name the secretary may sue and be sued on such contracts. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriations act of this state.

(l) All moneys and property of any kind whatsoever received from the Kansas emergency relief committee or from any other state department or political subdivision of the state shall be used by the secretary in the administration and promotion of social welfare in the state of Kansas. The property may be given, loaned or placed at the disposal of any county, city or state agency engaged in the promotion of social welfare.

(m) The secretary shall prepare annually, at the time and in the form directed by the governor, a budget covering the estimated receipts and expenditures of the secretary for the ensuing year.

(n) The secretary shall have authority to make grants of funds, commodities or other needed property to local units of government under rules and regulations adopted by the secretary for the promotion of social welfare in local units of government.

(o) The secretary shall have authority to sell any property in the secretary's possession received from any source whatsoever for which there is no need or use in the administration or the promotion of social welfare in the state of Kansas.

(p) The secretary shall adopt a seal.

(q) The secretary shall initiate or cooperate with other agencies in developing programs for the prevention of blindness, the restoration of eyesight and the vocational rehabilitation of blind persons and shall establish a division of services for the blind. The secretary may initiate or cooperate with other agencies in developing programs for the prevention and rehabilitation of other handicapped persons.

(r) The secretary shall develop a children and youth service program and shall administer or supervise program activities including the care and protection of children who are deprived, defective, wayward, miscreant, delinquent or children in need of care. The secretary shall cooperate with the federal government through its appropriate agency or instrumentality in establishing, extending and strengthening such services and undertake other services to children authorized by law. Nothing in this act shall be construed as authorizing any state official, agent or representative, in carrying out any of the provisions of this act, to take charge of any child over the objection of either of the parents of such child or of the person standing in loco parentis to such child except pursuant to a proper court order.

(s) The secretary shall develop plans financed by federal funds or state funds or both for providing medical care for needy persons. The secretary, in developing the plan, may enter into an agreement with an agent or intermediary for the purpose of performing certain functions, including the making of medical payment reviews, determining the amount due the medical vendors from the state in accordance with standards set by the secretary, preparing and certifying to the secretary lists of medical vendors and the amounts due them and other related functions determined by the secretary. The secretary may also provide medical, remedial, preventive or rehabilitative care and services for needy persons by the payment of premiums to the federal social security system for the purchase of supplemental medical insurance benefits as provided by the federal social security act and amendments thereto. Medicaid recipients who were residents of a nursing facility on September 1, 1991, and who subsequently lost eligibility in the period September 1, 1991, through June 30, 1992, due to an increase in income shall be considered to meet the 300% income cap eligibility test.

(t) The secretary shall carry on research and compile statistics relative to the entire social welfare program throughout the state, including all phases of dependency, defectiveness, delinquency and related problems; develop plans in cooperation with other public and private agencies for the prevention as well as treatment of conditions giving rise to social welfare problems.

(u) The secretary may receive grants, gifts, bequests, money or aid of any character whatsoever, for state welfare work. All moneys coming into the hands of the secretary shall be deposited in the state social welfare fund provided for in this act.

(v) The secretary may enter into agreements with other states or the welfare department of other states, in regard to the manner of determining the state of residence in disputed cases, the manner of returning persons to the place of residence and the bearing or sharing of the costs.

(w) The secretary shall perform any other duties and services necessary to carry out the purposes of this act and promote social welfare in the state of Kansas, not inconsistent with the state law.

(x) The secretary shall establish payment schedules for each group of health care providers. Any payment schedules which are a part of the state medicaid plan shall conform to state and federal law. The secretary shall not be required to make any payments under the state medicaid plan which do not meet requirements for state and federal financial participation.

(1) The secretary shall consider budgetary constraints as a factor in establishing payment schedules so long as the result complies with state and federal law.

(2) The secretary shall establish payment schedules for providers of hospital and adult care home services under the medicaid plan that are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards. The secretary shall not be required to establish rates for any such facility that are in excess of the minimum necessary to efficiently and economically meet those standards regardless of any excess costs incurred by any such facility.

(y) The secretary shall maintain a system of centralized payment for all welfare expenditures.

HISTORY: L. 1973, ch. 186, § 3; L. 1975, ch. 237, § 1; L. 1978, ch. 159, § 2; L. 1980, ch. 272, § 1; L. 1982, ch. 182, § 132; L. 1983, ch. 143, § 2; L. 1985, ch. 114, § 24; L. 1990, ch. 152, § 1; L. 1992, ch. 322, § 5; L. 1995, ch. 153, § 1; L. 1996, ch. 229, § 104; July 1, 1997.

39-709. Eligibility requirements of applicants for and recipients of assistance; penalties for failing to comply with reporting and other requirements; automatic assignment of support rights.

(a) General eligibility requirements for assistance for which federal moneys are expended. Subject to the additional requirements below, assistance in accordance with plans under which federal moneys are expended may be granted to any needy person who:

(1) Has insufficient income or resources to provide a reasonable subsistence compatible with decency and health. Where a husband and wife are living together, the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary, in determining need of any applicant for or recipient of assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or minor stepchild if the stepchild is living with such individual. The secretary in determining need of an individual may provide such income and resource exemptions as may be permitted by federal law. For purposes of eligibility for aid for families with dependent children, for food stamp assistance and for any other assistance provided through the department of social and rehabilitation services under which federal moneys are expended, the secretary of social and rehabilitation services shall consider one motor vehicle owned by the applicant for assistance, regardless of the value of such vehicle, as exempt personal property and shall consider any equity in any additional motor vehicle owned by the applicant for assistance to be a nonexempt resource of the applicant for assistance.

(2) Is a citizen of the United States or is an alien lawfully admitted to the United States and who is residing in the state of Kansas.

(b) Assistance to families with dependent children. Assistance may be granted under this act to any dependent child, or relative, subject to the general eligibility requirements as set out in subsection (a), who resides in the state of Kansas or whose parent or other relative with whom the child is living resides in the state of Kansas. Such assistance shall be known as aid to families with dependent children. Where husband and wife are living together both shall register for work under the program requirements for aid to families with dependent children in accordance with criteria and guidelines prescribed by rules and regulations of the secretary.

(c) Aid to families with dependent children; assignment of support rights and limited power of attorney. By applying for or receiving aid to families with dependent children such applicant or recipient shall be deemed to have assigned to the secretary on behalf of the state any accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. In any case in which an order for child support has been established and the legal custodian and obligee under the order surrenders physical custody of the child to a caretaker relative without obtaining a modification of legal custody and support rights on behalf of the child are assigned pursuant to this section, the surrender of physical custody and the assignment shall transfer, by operation of law, the child's support rights under the order to the secretary on behalf of the state. Such assignment shall be of all accrued, present or future rights to support of the child surrendered to the caretaker relative. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant, recipient or obligee. By applying for or receiving aid to families with dependent children, or by surrendering physical custody of a child to a caretaker relative who is an applicant or recipient of such assistance on the child's behalf, the applicant, recipient or obligee is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full.

(d) Eligibility requirements for general assistance, the cost of which is not shared by the federal government.

(1) General assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d).

(A) To qualify for general assistance in any form a needy person must have insufficient income or resources to provide a reasonable subsistence compatible with decency and health and, except as provided for transitional assistance, be a member of a family in which a minor child or a pregnant woman resides or be unable to engage in employment. The secretary shall adopt rules and regulations prescribing criteria for establishing when a minor child may be considered to be living with a family and whether a person is able to engage in employment, including such factors as age or physical or mental condition. Eligibility for general assistance, other than transitional assistance, is limited to families in which a minor child or a pregnant woman resides or to an adult or family in which all legally responsible family members are unable to engage in employment. Where a husband and wife are living together the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary in determining need of any applicant for or recipient of general assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of general assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or a minor stepchild if the stepchild is living with such individual. In determining the need of an individual, the secretary may provide for income and resource exemptions.

(B) To qualify for general assistance in any form a needy person must be a citizen of the United States or an alien lawfully admitted to the United States and must be residing in the state of Kansas.

(2) General assistance in the form of transitional assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d), but who do not meet the criteria prescribed by rules and regulations of the secretary relating to inability to engage in employment or are not a member of a family in which a minor or a pregnant woman resides.

(3) In addition to the other requirements prescribed under this subsection (d), the secretary shall adopt rules and regulations which establish community work experience program requirements for eligibility for the receipt of general assistance in any form and which establish penalties to be imposed when a work assignment under a community work experience program requirement is not completed without good cause. The secretary may adopt rules and regulations establishing exemptions from any such community work experience program

requirements. A first time failure to complete such a work assignment requirement shall result in ineligibility to receive general assistance for a period fixed by such rules and regulations of not more than three calendar months. A subsequent failure to complete such a work assignment requirement shall result in a period fixed by such rules and regulations of ineligibility of not more than six calendar months.

(4) If any person is found guilty of the crime of theft under the provisions of K.S.A. 39-720, and amendments thereto, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the provisions of K.S.A. 39-720, and amendments thereto, or the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction. If any person is found guilty by a court of competent jurisdiction of any state other than the state of Kansas of a crime involving welfare fraud, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction.

(e) Requirements for medical assistance for which federal moneys or state moneys or both are expended. When the secretary has adopted a medical care plan under which federal moneys or state moneys or both are expended, medical assistance in accordance with such plan shall be granted to any person who is a citizen of the United States or who is an alien lawfully admitted to the United States and who is residing in the state of Kansas, whose resources and income do not exceed the levels prescribed by the secretary. In determining the need of an individual, the secretary may provide for income and resource exemptions and protected income and resource levels. Resources from inheritance shall be counted. A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and amendments thereto, shall constitute a transfer of resources. The secretary shall exempt principal and interest held in irrevocable trust pursuant to subsection (c) of K.S.A. 16-303, and amendments thereto, from the eligibility requirements of applicants for and recipients of medical assistance. Such assistance shall be known as medical assistance.

(f) Eligibility for medical assistance of resident receiving medical care outside state. A person who is receiving medical care including long-term care outside of Kansas whose health would be endangered by the postponement of medical care until return to the state or by travel to return to Kansas, may be determined eligible for medical assistance if such individual is a resident of Kansas and all other eligibility factors are met. Persons who are receiving medical care on an ongoing basis in a long-term medical care facility in a state other than Kansas and who do not return to a care facility in Kansas when they are able to do so, shall no longer be eligible to receive assistance in Kansas unless such medical care is not available in a comparable facility or program providing such medical care in Kansas. For persons who are minors or who are under guardianship, the actions of the parent or guardian shall be deemed to be the actions of the child or ward in determining whether or not the person is remaining outside the state voluntarily.

(g) Medical assistance; assignment of rights to medical support and limited power of attorney; recovery from estates of deceased recipients.

(1) Except as otherwise provided in K.S.A. 39-786 and 39-787, and amendments thereto, or as otherwise authorized on and after September 30, 1989, under section 303 and amendments thereto of the federal medicare catastrophic coverage act of 1988, whichever is applicable, by applying for or receiving medical assistance under a medical care plan in which federal funds are expended, any accrued, present or future rights to support and any rights to payment for medical care from a third party of an applicant or recipient and any other family member for whom the applicant is applying shall be deemed to have been assigned to the secretary on behalf of the state. The assignment shall automatically become effective upon the date of approval for such assistance without the requirement that any document be signed by the applicant or recipient. By applying for or receiving medical assistance the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks,

money orders or other negotiable instruments, representing payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for assistance and shall remain in effect until the assignment has been terminated in full. The assignment of any rights to payment for medical care from a third party under this subsection shall not prohibit a health care provider from directly billing an insurance carrier for services rendered if the provider has not submitted a claim covering such services to the secretary for payment. Support amounts collected on behalf of persons whose rights to support are assigned to the secretary only under this subsection and no other shall be distributed pursuant to subsection (d) of K.S.A. 39-756, and amendments thereto, except that any amounts designated as medical support shall be retained by the secretary for repayment of the unreimbursed portion of assistance. Amounts collected pursuant to the assignment of rights to payment for medical care from a third party shall also be retained by the secretary for repayment of the unreimbursed portion of assistance.

(2) The amount of any medical assistance paid after June 30, 1992, under the provisions of subsection (e) is (A) a claim against the property or any interest therein belonging to and a part of the estate of any deceased recipient or, if there is no estate, the estate of the surviving spouse, if any, shall be charged for such medical assistance paid to either or both, and (B) a claim against any funds of such recipient or spouse in any account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-5829, and amendments thereto. There shall be no recovery of medical assistance correctly paid to or on behalf of an individual under subsection (e) except after the death of the surviving spouse of the individual, if any, and only at a time when the individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled. Transfers of real or personal property by recipients of medical assistance without adequate consideration are voidable and may be set aside. Except where there is a surviving spouse, or a surviving child who is under 21 years of age or is blind or permanently and totally disabled, the amount of any medical assistance paid under subsection (e) is a claim against the estate in any guardianship or conservatorship proceeding. The monetary value of any benefits received by the recipient of such medical assistance under long-term care insurance, as defined by K.S.A. 40-2227, and amendments thereto, shall be a credit against the amount of the claim provided for such medical assistance under this subsection (g). The secretary is authorized to enforce each claim provided for under this subsection (g). The secretary shall not be required to pursue every claim, but is granted discretion to determine which claims to pursue. All moneys received by the secretary from claims under this subsection (g) shall be deposited in the social welfare fund. The secretary may adopt rules and regulations for the implementation and administration of the medical assistance recovery program under this subsection (g).

(h) Placement under code for care of children or juvenile offenders code; assignment of support rights and limited power of attorney. In any case in which the secretary of social and rehabilitation services pays for the expenses of care and custody of a child pursuant to K.S.A. 38-1501 et seq. or 38-1601 et seq., and amendments thereto, including the expenses of any foster care placement, an assignment of all past, present and future support rights of the child in custody possessed by either parent or other person entitled to receive support payments for the child is, by operation of law, conveyed to the secretary. Such assignment shall become effective upon placement of a child in the custody of the secretary or upon payment of the expenses of care and custody of a child by the secretary without the requirement that any document be signed by the parent or other person entitled to receive support payments for the child. When the secretary pays for the expenses of care and custody of a child or a child is placed in the custody of the secretary, the parent or other person entitled to receive support payments for the child is also deemed to have appointed the secretary, or the secretary's designee, as attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary on behalf of the child. This limited power of attorney shall be effective from the date the assignment to support rights becomes effective and shall remain in effect until the assignment of support rights has been terminated in full.

(i) No person who voluntarily quits employment or who is fired from employment due to gross misconduct as defined by rules and regulations of the secretary or who is a fugitive from justice by reason of a felony conviction or charge shall be eligible to receive public assistance benefits in this state. Any recipient of public assistance who fails to timely comply with monthly reporting requirements under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations.

(j) If the applicant or recipient of aid to families with dependent children is a mother of the dependent child, as a condition of the mother's eligibility for aid to families with dependent children the mother shall identify by name and, if

known, by current address the father of the dependent child except that the secretary may adopt by rules and regulations exceptions to this requirement in cases of undue hardship. Any recipient of aid to families with dependent children who fails to cooperate with requirements relating to child support enforcement under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations which penalty shall progress to ineligibility for the family after three months of noncooperation.

(k) By applying for or receiving child care benefits or food stamps, the applicant or recipient shall be deemed to have assigned, pursuant to K.S.A. 39-756 and amendments thereto, to the secretary on behalf of the state only accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant or recipient. By applying for or receiving child care benefits or food stamps, the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full. An applicant or recipient who has assigned support rights to the secretary pursuant to this subsection shall cooperate in establishing and enforcing support obligations to the same extent required of applicants for or recipients of aid to families with dependent children.

HISTORY: L. 1937, ch. 327, § 8a; L. 1939, ch. 200, § 2; L. 1947, ch. 266, § 1; L. 1949, ch. 275, § 1; L. 1951, ch. 288, § 3; L. 1953, ch. 220, § 1; L. 1955, ch. 236, § 2; L. 1957, ch. 269, § 1; L. 1961, ch. 230, § 1; L. 1963, ch. 255, § 3; L. 1965, ch. 287, § 1; L. 1967, ch. 245, § 3; L. 1968, ch. 380, § 1; L. 1969, ch. 226, § 3; L. 1973, ch. 186, § 5; L. 1976, ch. 210, § 2; L. 1978, ch. 159, § 3; L. 1980, ch. 125, § 1; L. 1981, ch. 186, § 1; L. 1982, ch. 90, § 2; L. 1982, ch. 185, §§ 1, 2; L. 1983, ch. 143, § 3; L. 1985, ch. 149, § 1; L. 1985, ch. 115, § 43; L. 1986, ch. 165, § 1; L. 1986, ch. 137, § 23; L. 1988, ch. 143, § 8; L. 1989, ch. 124, § 2; L. 1989, ch. 125, § 1; L. 1992, ch. 150, § 7; L. 1993, ch. 180, § 1; L. 1994, ch. 265, § 8; July 1.

39-719e. Medical benefit plan providers to provide information identifying covered medical assistance recipients; procedures; enforcement.

(a) Upon the request of the secretary of social and rehabilitation services, each medical benefit plan provider that provides or maintains a medical benefit plan, that provides any hospital or medical services or any other health care or other medical benefits or services, or both, in Kansas, shall provide the secretary with information, to the extent known by the medical benefit plan provider, identifying each person who is covered by such medical benefit plan or who is otherwise provided any such hospital or medical services or any other such health care or other medical benefits or services, or both, in Kansas under such medical benefit plan. The information shall be provided in such form as is prescribed by the secretary for the purpose of comparing such information with medicaid beneficiary information maintained by the secretary to assist in identifying other health care or medical benefit coverage available to medicaid beneficiaries. The secretary shall reimburse each medical benefit plan provider that provides information under this section for the reasonable cost of providing such information.

(b) All information provided by medical benefit plan providers under this section shall be confidential and shall not be disclosed pursuant to the provisions of the open records act or under the provisions of any other law. Such information may be used solely for the purpose of determining whether medical assistance has been paid or is eligible to be paid by the secretary for which a recovery from a medical benefit plan provider is due under K.S.A. 39-719a and amendments thereto.

(c) Failure to provide information pursuant to a request by the secretary of social and rehabilitation services under this section shall constitute a failure to reply to an inquiry of the commissioner of insurance and shall be subject to the penalties applicable thereto under K.S.A. 40-226 and amendments thereto [*]. If a medical plan provider fails to provide information to the secretary of social and rehabilitation services pursuant to a request under this section, the secretary shall notify the commissioner of such failure. The commissioner of insurance may pursue each such failure to provide such information in accordance with K.S.A. 40-226 and amendments thereto.

(d) As used in this section:

(1) "Medical benefit plan" means any accident and health insurance or any other policy, contract, plan or agreement that provides benefits or services, or both, for any hospital or medical services or any other health care or medical benefits or services, or both, in Kansas, whether or not such benefits or services, or both, are provided pursuant to individual, group, blanket or certificates of accident and sickness insurance, any other insurance providing any accident and health insurance, or any other policy, contract, plan or agreement providing any such benefits or services, or both, in Kansas, and includes any policy, plan, contract or agreement offered in Kansas pursuant to the federal employee retirement income security act of 1974 (ERISA) that provides any hospital or medical services or any other health care or medical benefits or services, or both, in Kansas; and

(2) "medical benefit plan provider" means any insurance company, nonprofit medical and hospital service corporation, health maintenance organization, fraternal benefit society, municipal group-funded pool, group-funded workers compensation pool or any other entity providing or maintaining a medical benefit plan.

(e) No medicaid provider who rendered professional services to a medicaid beneficiary and was paid by the secretary for such services shall be liable to the medical benefit plan provider for any amounts recovered pursuant to this act or pursuant to the provisions of K.S.A. 39-719a and amendments thereto.

HISTORY: L. 1997, ch. 91, § 1; Apr. 17.

39-739. Sight handicapped persons; reports to state board of health; forms. Every health and social agency, attending or consulting physician or nurse, shall report in writing to the state board of health, the name, age and residence of all patients or persons who are handicapped in vision, and who come within the definition of "the blind" as defined in K.S.A. 39-702: Provided, The reporter may omit such registration upon the objection of the adult blind. Such report shall be made within thirty (30) days after a first consultation, interview or meeting of the agency, physician or nurse, and the blind person, and shall be on a form prescribed by the state board of health.

HISTORY: L. 1949, ch. 279, § 1; June 30.

39-740. Same; records available to secretary of social and rehabilitation services. The records relating to the blind, as filed in the office of the state board of health, shall be available to the secretary of social and rehabilitation services at all times.

HISTORY: L. 1949, ch. 279, § 2; June 30.

39-760. Establishment of system for reporting suspected abuse or fraud in welfare or medical assistance programs; notice of existence of system.

(a) The secretary of social and rehabilitation services is hereby directed to establish a system for the reporting of suspected abuse or fraud in connection with state welfare or medical assistance programs, either by recipients or health care providers. The system shall be designed to permit any person in the state at any time to place a toll-free call into the system and report suspected cases of welfare abuse or suspected cases of health care provider fraud.

(b) The secretary of social and rehabilitation services is further directed to publicize the system throughout the state.

(c) Notice of the existence of the system established pursuant to this section shall be displayed prominently in the office or facility of every health care provider who provides services under the state medical assistance program.

(d) The secretary of social and rehabilitation services shall notify monthly each recipient of state medical assistance of the toll-free number of the system established pursuant to this section and the purpose thereof. If possible, such notice shall be printed on the medical cards issued to recipients by the secretary.

HISTORY: L. 1978, ch. 372, § 1; May 11.

39-783. Notice to affected health care provider groups of reduction in scope or reimbursement of services under medical assistance program; contents; effect of failure to give notice. The secretary of social and rehabilitation services shall mail a written notice to all affected health care provider groups of each reduction in the scope or reimbursement of services provided under the medical assistance program of the department of social and rehabilitation services at least 10 days prior to the effective date of any such reduction. The written notice shall include a complete and accurate description of the proposed reductions. The secretary of social and rehabilitation services shall not implement any such reduction in the medical assistance program until 10 days after the date that the written notice prescribed by this section is mailed to the affected provider groups. The failure to give notice as prescribed by this section shall not constitute or provide grounds for any cause of action concerning the medical assistance program and no such failure to give notice shall invalidate any action of the secretary of social and rehabilitation services concerning the medical assistance program.

HISTORY: L. 1987, ch. 328, § 1; July 1.

CHAPTER 39. MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS; SOCIAL WELFARE
ARTICLE 14. REPORTING ABUSE, NEGLECT OR EXPLOITATION OF CERTAIN PERSONS

39-1402. Abuse, neglect or exploitation of residents; reporting abuse, neglect or exploitation or need of protective services; persons required to report; contents of report; posting notice of requirements of act; penalty for failure to report.

(a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a teacher, a bank trust officer and any other officers of financial institutions, a legal representative or a governmental assistance provider who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department on aging with respect to residents defined under subsection (a)(1) of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services and appropriate law enforcement agencies with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department on aging with respect to residents defined

under subsection (a)(1) of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous public place in every adult care home and medical care facility in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

HISTORY: L. 1980, ch. 124, § 2; L. 1983, ch. 149, § 2; L. 1985, ch. 152, § 1; L. 1986, ch. 299, § 6; L. 1990, ch. 153, § 2; L. 1998, ch. 200, § 5; L. 2001, ch. 154, § 3; L. 2003, ch. 91, § 3; L. 2003, ch. 149, § 26; July 1.

39-1431. Abuse, neglect or exploitation of certain adults; reporting abuse, neglect or exploitation or need of protective services; persons required to report; penalty for failure to report; posting notice of requirements of act.

(a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, the chief administrative officer of a medical care facility, a teacher, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed dentist, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a law enforcement officer, a case manager, a rehabilitation counselor, a bank trust officer or any other officers of financial institutions, a legal representative, a governmental assistance provider, an owner or operator of a residential care facility, an independent living counselor and the chief administrative officer of a licensed home health agency, the chief administrative officer of an adult family home and the chief administrative officer of a provider of community services and affiliates thereof operated or funded by the department of social and rehabilitation services or licensed under K.S.A. 75-3307b and amendments thereto who has reasonable cause to believe that an adult is being or has been abused, neglected or exploited or is in need of protective services shall report, immediately from receipt of the information, such information or cause a report of such information to be made in any reasonable manner. An employee of a domestic violence center shall not be required to report information or cause a report of information to be made under this subsection. Other state agencies receiving reports that are to be referred to the department of social and rehabilitation services and the appropriate law enforcement agency, shall submit the report to the department and agency within six hours, during normal work days, of receiving the information. Reports shall be made to the department of social and rehabilitation services during the normal working week days and hours of operation. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation. Law enforcement shall submit the report and appropriate information to the department of social and rehabilitation services on the first working day that social and rehabilitation services is in operation after receipt of such information.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the involved adult, the name and address of the involved adult, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the involved adult, if known, and any other information which the person making the report believes might be helpful in the investigation of the case and the protection of the involved adult.

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that an adult is being or has been abused, neglected or exploited or is in need of protective services may report such information to the department of social and rehabilitation services. Reports shall be made to law enforcement agencies during the time social and rehabilitation services are not in operation.

(d) A person making a report under subsection (a) shall not be required to make a report under K.S.A. 39-1401 to 39-1410, inclusive, and amendments thereto.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report not to be made shall be guilty of a class B misdemeanor.

(f) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous public place in every adult family home as defined in K.S.A. 39-1501 and amendments thereto and every provider of community services and affiliates thereof operated or funded by the department of social and rehabilitation services or other facility licensed under K.S.A. 75-3307b and amendments thereto, and other institutions included in subsection (a).

HISTORY: L. 1989, ch. 129, § 2; L. 1998, ch. 200, § 9; L. 2001, ch. 154, § 4; L. 2003, ch. 91, § 12; July 1.

CHAPTER 40. INSURANCE
ARTICLE 2. GENERAL PROVISIONS

40-2,100. Insurance coverage to include reimbursement or indemnity for services performed by optometrist, dentist or podiatrist. Notwithstanding any provision of any individual, group or blanket policy of accident and sickness, medical or surgical expense insurance coverage or any provision of a policy, contract, plan or agreement for medical service, issued on or after the effective date of this act, whenever such policy, contract, plan or agreement provides for reimbursement or indemnity for any service which is within the lawful scope of practice of any practitioner licensed under the healing arts act of this state, reimbursement or indemnification under such policy contract, plan or agreement shall not be denied when such services are performed by an optometrist, dentist or podiatrist acting within the lawful scope of their license.

HISTORY: L. 1973, ch. 194, § 1; July 1.

40-2,101. No policies, contracts or agreements for medical service shall deny reimbursement or indemnification for any service within scope of practice licensed under Kansas healing arts act. Notwithstanding any provision of any individual, group or blanket policy of accident and sickness, medical or surgical expense insurance coverage or any provision of a policy, contract, plan or agreement for medical service, issued on or after the effective date of this act, whenever such policy, contract, plan or agreement provides for reimbursement or indemnity for any service which is within the lawful scope of practice of any practitioner licensed under the Kansas healing arts act, reimbursement or indemnification under such policy contract, plan or agreement shall not be denied when such service is rendered by any such licensed practitioner within the lawful scope of his license.

HISTORY: L. 1973, ch. 195, § 1; July 1.

40-2,102. Coverage for newly born and adopted children; coverage for immunizations; notification of birth or adoption; mandatory option to cover delivery expenses of birth mother of adopted child.

(a) (1) All individual and group health insurance policies providing coverage on an expense incurred basis, individual and group service or indemnity type contracts issued by a profit or nonprofit corporation and all contracts issued by health maintenance organizations organized or authorized to transact business in this state which provides coverage for a family member of the enrollee, insured or subscriber shall, as to such family members' coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a: (A) Newly born child of the enrollee, insured or subscriber from the moment of birth; (B) newly born child adopted by the enrollee, insured or subscriber from the moment of birth if a petition for adoption as provided in K.S.A. 59-2128 and amendments thereto was filed within 31 days of the birth of the child; or (C) child adopted by the enrollee, insured or subscriber from the date the petition for adoption as provided in K.S.A. 59-2128 and amendments thereto was filed or (D) child placed in enrollee, insured or subscriber's home by a child placement agency as defined by K.S.A. 65-503 and amendments thereto, for the purpose of adoption from the date of placement as certified by the enrollee, insured or subscriber. In no case shall the time from the date of placement to the date the petition for adoption as provided in K.S.A. 59-2128 and amendments thereto was filed exceed 280 days.

(2) The coverage for newly born children shall consist of:

(A) Coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities; and

(B) routine and necessary immunizations for all newly born children of the insured or subscriber. For purposes of this paragraph "routine and necessary immunizations" shall consist of at least five doses of vaccine against diphtheria, pertussis, tetanus; at least four doses of vaccine against polio and Haemophilus B (Hib); and three doses of vaccine against Hepatitis B; two doses of vaccine against measles, mumps and rubella; one dose of vaccine against varicella and such other vaccines and dosages as may be prescribed by the secretary of health and environment. The required benefits shall apply to immunizations administered to each newly born child from birth to 72 months of age and shall not be subject to any deductible, copayment or coinsurance requirements.

(3) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child or the filing of the petition for adoption or certification that a child has been placed in the home for adoption as defined by subsection (a)(1)(D) and payment of the required premium or fees must be furnished to the health maintenance organization, insurer or nonprofit service or indemnity corporation within 31 days after the date of birth or the filing of the petition for adoption or certification that a child has been placed in the home for adoption as defined by subsection (a)(1)(D) in order to have the coverage continue beyond such 31-day period.

(4) The contract issued by a health maintenance organization may provide that the benefits required pursuant to this subsection shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

(b) (1) All individual and group health insurance policies providing coverage on an expense incurred basis, individual and group service or indemnity type contracts issued by a profit or nonprofit corporation and all contracts issued by health maintenance organizations organized or authorized to transact business in this state which provides coverage for a family member of the enrollee, insured or subscriber, as to such family members' coverage, shall also offer an option whereby the health insurance benefits shall include delivery and obstetrical expenses at birth of the birth mother of a child adopted within 90 days of birth of such child by the enrollee, insured or subscriber subject to the same limitations contained in such policy or contract applicable to the enrollee, insured or subscriber. Such offer of an option regarding such delivery and obstetrical expense shall be made to the enrollee of a health maintenance organization and to the insured and, to the individual subscribers in the case of a group health insurance policy.

(2) Contracts issued by a health maintenance organization may provide that the benefits required pursuant to paragraph (1) of this subsection, shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

HISTORY: L. 1974, ch. 190, § 4; L. 1990, ch. 145, § 35; L. 1995, ch. 183, § 1; L. 1997, ch. 95, § 1; July 1.

40-2,103. Application of designated statutes. The requirements of K.S.A. 40-2,100, 40-2,101, 40-2,102, 40-2,104, 40-2,105, 40-2,114, 40-2,160, 40-2,165 through 40-2,170, inclusive, 40-2250, K.S.A. 2003 Supp. 40-2,105a and 40-2,105b, and amendments thereto, shall apply to all insurance policies, subscriber contracts or certificates of insurance delivered, renewed or issued for delivery within or outside of this state or used within this state by or for an individual who resides or is employed in this state.

HISTORY: L. 1974, ch. 190, § 5; L. 1984, ch. 168, § 1; L. 1989, ch. 133, § 1; L. 1990, ch. 162, § 4; L. 1991, ch. 129, § 1; L. 1996, ch. 96, § 2; L. 1999, ch. 128, § 5; L. 1999, ch. 162, § 3; L. 2001, ch. 178, § 4; Jan. 1, 2002.

40-2,104. Insurance coverage to include reimbursement for services performed by licensed psychologist. Notwithstanding any provision of an individual or group policy or contract of health and accident insurance, delivered

within the state whenever such policy or contract shall provide for reimbursement for any service within the lawful scope of practice of a duly licensed psychologist within the state of Kansas, the insured, or any other person covered by the policy or contract shall be allowed and entitled to reimbursement for such service irrespective of whether it was provided or performed by a duly licensed physician or a duly licensed psychologist.

HISTORY: L. 1974, ch. 189, § 1; L. 1986, ch. 299, § 7; June 1.

40-2,105. Insurance coverage for services rendered in treatment of alcoholism, drug abuse or nervous or mental conditions; applicability or nonapplicability of section.

(a) On or after the effective date of this act, every insurer which issues any individual or group policy of accident and sickness insurance providing medical, surgical or hospital expense coverage for other than specific diseases or accidents only and which provides for reimbursement or indemnity for services rendered to a person covered by such policy in a medical care facility, must provide for reimbursement or indemnity under such individual policy or under such group policy, except as provided in subsection (d), which shall be limited to not less than 30 days per year when such person is confined for treatment of alcoholism, drug abuse or nervous or mental conditions in a medical care facility licensed under the provisions of K.S.A. 65-429 and amendments thereto, a treatment facility for alcoholics licensed under the provisions of K.S.A. 65-4014 and amendments thereto, a treatment facility for drug abusers licensed under the provisions of K.S.A. 65-4605 and amendments thereto, a community mental health center or clinic licensed under the provisions of K.S.A. 75-3307b and amendments thereto or a psychiatric hospital licensed under the provisions of K.S.A. 75-3307b and amendments thereto. Such individual policy or such group policy shall also provide for reimbursement or indemnity, except as provided in subsection (d), of the costs of treatment of such person for alcoholism, drug abuse and nervous or mental conditions, limited to not less than 100% of the first $ 100, 80% of the next $ 100 and 50% of the next $ 1,640 in any year and limited to not less than $ 7,500 in such person's lifetime, in the facilities enumerated when confinement is not necessary for the treatment or by a physician licensed or psychologist licensed to practice under the laws of the state of Kansas.

(b) For the purposes of this section "nervous or mental conditions" means disorders specified in the diagnostic and statistical manual of mental disorders, fourth edition, (DSM-IV, 1994) of the American psychiatric association but shall not include conditions:

(1) Not attributable to a mental disorder that are a focus of attention or treatment (DSM-IV, 1994); and

(2) defined as a mental illness in K.S.A. 2003 Supp. 40-2,105a and amendments thereto.

(c) The provisions of this section shall be applicable to health maintenance organizations organized under article 32 of chapter 40 of the Kansas Statutes Annotated.

(d) There shall be no coverage under the provisions of this section for any assessment against any person required by a diversion agreement or by order of a court to attend an alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto or for evaluations and diagnostic tests ordered or requested in connection with criminal actions, divorce, child custody or child visitation proceedings.

(e) The provisions of this section shall not apply to any medicare supplement policy of insurance, as defined by the commissioner of insurance by rule and regulation.

(f) The provisions of this section shall be applicable to the Kansas state employees health care benefits program developed and provided by the Kansas state employees health care commission.

(g) The outpatient coverage provisions of this section shall not apply to a high deductible health plan as defined in Section 301 of P.L. 104-191 and any amendments thereto if such plan is purchased in connection with a medical savings account pursuant to that act. After the amount of eligible deductible expenses have been paid by the insured, the outpatient costs of treatment of the insured for alcoholism, drug abuse and nervous or mental conditions shall be paid on the same level they are provided for a medical condition, subject to the yearly and lifetime maximums provided in subsection (a).

HISTORY: L. 1977, ch. 161, § 1; L. 1978, ch. 166, § 1; L. 1986, ch. 299, § 8; L. 1986, ch. 174, § 1; L. 1996, ch. 170, § 1; L. 1997, ch. 190, § 15; L. 1998, ch. 174, § 1; L. 2001, ch. 178, § 5; Jan. 1, 2002.

CHAPTER 40. INSURANCE
ARTICLE 22A. UTILIZATION REVIEW

40-22a01. Utilization review organization act. This act shall be known and may be cited as the utilization review organization act.

HISTORY: L. 1994, ch. 238, § 1; July 1.

40-22a02. Same; purpose. The legislature finds that in order to promote the delivery of quality health care services in a cost effective manner, it is necessary to encourage greater coordination between health care providers and those agencies performing utilization review of health care services. Effective standards for utilization review activities will protect patients while reducing administrative costs associated with the review and approval of health care services provided to patients.

HISTORY: L. 1994, ch. 238, § 2; July 1.

40-22a03. Same; definitions. For the purposes of this act:

(a) "Commissioner" means the commissioner of insurance.

(b) "Utilization review" means the evaluation of the necessity, appropriateness and efficiency of the use of health care services, procedures and facilities.

(c) "Utilization review organization" means any entity which conducts utilization review and determines certification of an admission, extension of stay or other health care service.

(d) "Health care provider" means a licensed medical care facility, a licensed health maintenance organization, or a person licensed or registered to engage in an occupation which renders health care services.

HISTORY: L. 1994, ch. 238, § 3; July 1.

40-22a08. Same; examination by commissioner; expenses. Whenever the insurance commissioner deems it to be prudent for the benefit of the insureds, health care providers or insurers, the commissioner or any person designated by the commissioner may visit and examine the affairs of any utilization review organization to determine if the organization is in compliance with this act or rules and regulations adopted under this act or orders issued by the commissioner pursuant to such act or rules and regulations.

Any person or entity examined pursuant to the provisions of this section shall pay the reasonable and proper charges incurred for such examination, including the actual expenses of the insurance commissioner or the expenses and compensation of the commissioner's authorized representative and the expenses and compensation of assistants and examiners employed therein.

HISTORY: L. 1994, ch. 238, § 8; July 1.

40-22a09. Same; written procedures for utilization review; patient information confidential. Each utilization review organization shall have written procedures for assuring that patient-specific information obtained during the process of utilization review will be:

(a) Kept confidential in accordance with applicable federal and state laws; and

(b) used solely for the purposes of utilization review, quality assurance, discharge planning and catastrophic case management.

HISTORY: L. 1994, ch. 238, § 9; July 1.

40-22a10. Same; patient information not subject to discovery or subpoena. Any records, charts or other information exchanged between a health care provider or patient and a utilization review organization 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 agency of the state which regulates health care providers.

HISTORY: L. 1994, ch. 238, § 10; July 1.

CHAPTER 40. INSURANCE
ARTICLE 24. REGULATION OF CERTAIN TRADE PRACTICES

40-2440. Kansas health care prompt payment act; citation; effective date.

(a) K.S.A. 40-2440 through 40-2442 and amendments thereto shall be known as the Kansas health care prompt payment act and shall apply to any policy of accident and sickness insurance issued or renewed in this state.

(b) The provisions of the Kansas health care prompt payment act shall take effect and be in force on and after January 1, 2001.

HISTORY: L. 2000, ch. 147, § 43; July 1.

40-2441. Same; definitions. As used in K.S.A. 40-2440 through 40-2442 and amendments thereto:

(a) The term "clean claim" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under the Kansas health care prompt payment act.

(b) The term "claim" means a written proof of loss as defined in paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto, or an electronic proof of loss which contains the information required by paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto.

(c) The term "policy of accident and sickness insurance" means any policy or contract insuring against loss resulting from sickness or bodily injury or death by accident, or both, any hospital or medical expense policy, health, hospital, medical service corporation contract issued by a stock or mutual company or association, a health maintenance organization or any other insurer, third party administrator or other entity which pays claims pursuant to a policy of accident and sickness insurance. The term policy of accident and sickness insurance does not include any policy or contract of reinsurance, life insurance, endowment or annuity contract, policies or certificates covering only credit, disability income, long-term care, medicare supplement, dental, drug, or vision-care only policy, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance or insurance under which benefits are payable without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

HISTORY: L. 2000, ch. 147, § 44; July 1.

40-2442. Same; claims; procedures; rules and regulations.

(a) Within 30 days after receipt of any claim, and amendments thereto, any insurer issuing a policy of accident and sickness insurance shall pay a clean claim for reimbursement in accordance with this section or send a written or electronic notice acknowledging receipt of and the status of the claim. Such notice shall include the date such claim was received by the insurer and state that:

(1) The insurer refuses to reimburse all or part of the claim and specify each reason for denial; or

(2) additional information is necessary to determine if all or any part of the claim will be reimbursed and what specific additional information is necessary.

(b) If any insurer issuing a policy of accident and sickness insurance fails to comply with subsection (a), such insurer shall pay interest at the rate of 1% per month on the amount of the claim that remains unpaid 30 days after the receipt of the claim. The interest paid pursuant to this subsection shall be included in any late reimbursement without requiring the person who filed the original claim to make any additional claim for such interest.

(c) After receiving a request for additional information, the person claiming reimbursement shall submit all additional information requested by the insurer within 30 days after receipt of the request for additional information. Failure to furnish such additional information within the time required shall not invalidate nor reduce the claim if it was not reasonably possible to give such information within such time, provided such proof is furnished as soon as possible as defined (within the time prescribed) in paragraph (7) of subsection (A) of K.S.A. 40-2203, and amendments thereto.

(d) Within 15 days after receipt of all the requested additional information, an insurer issuing a policy of accident and sickness insurance shall pay a clean claim in accordance with this section or send a written or electronic notice that states:

(1) Such insurer refuses to reimburse all or part of the claim; and

(2) specifies each reason for denial. Any insurer issuing a policy of accident and sickness insurance that fails to comply with this subsection shall pay interest on any amount of the claim that remains unpaid at the rate of 1% per month.

(e) The provisions of subsection (b) shall not apply when there is a good faith dispute about the legitimacy of the claim, or when there is a reasonable basis supported by specific information that such claim was submitted fraudulently.

(f) Any violation of this act by an insurer issuing a policy of accident and sickness insurance with flagrant and conscious disregard of the provisions of this act or with such frequency as to constitute a general business practice shall be considered a violation of the unfair trade practices act in K.S.A. 40-2401 et seq. and amendments thereto.

(g) The commissioner of insurance shall adopt rules and regulations necessary to carry out the provisions of the Kansas health care prompt payment act.

HISTORY: L. 2000, ch. 147, § 45; July 1.

CHAPTER 40. INSURANCE
ARTICLE 32. HEALTH MAINTENANCE ORGANIZATIONS AND MEDICARE PROVIDER ORGANIZATIONS

40-3201. Title. This act may be cited as the health maintenance organization act.

HISTORY: L. 1974, ch. 181, § 1; July 1.

40-3202. Definitions. As used in this act:

(a) "Commissioner" means the commissioner of insurance of the state of Kansas.

(b) "Basic health care services" means but is not limited to usual physician, hospitalization, laboratory, x-ray, emergency and preventive services and out-of-area coverage.

(c) "Capitated basis" means a fixed per member per month payment or percentage of premium payment wherein the provider assumes risk for the cost of contracted services without regard to the type, value or frequency of services provided. For purposes of this definition, capitated basis includes the cost associated with operating staff model facilities.

(d) "Carrier" means a health maintenance organization, an insurer, a nonprofit hospital and medical service corporation, or other entity responsible for the payment of benefits or provision of services under a group contract.

(e) "Certificate of coverage" means a statement of the essential features and services of the health maintenance organization coverage which is given to the subscriber by the health maintenance organization, medicare provider organization or by the group contract holder.

(f) "Copayment" means an amount an enrollee must pay in order to receive a specific service which is not fully prepaid.

(g) "Deductible" means an amount an enrollee is responsible to pay out-of-pocket before the health maintenance organization begins to pay the costs associated with treatment.

(h) "Director" means the secretary of health and environment.

(i) "Disability" means an injury or illness that results in a substantial physical or mental limitation in one or more major life activities such as working or independent activities of daily living that a person was able to do prior to the injury or illness.

(j) "Enrollee" means a person who has entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health maintenance organization or the medicare provider organization for health care services.

(k) "Grievance" means a written complaint submitted in accordance with the formal grievance procedure by or on behalf of the enrollee regarding any aspect of the health maintenance organization or the medicare provider organization relative to the enrollee.

(l) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specified group. The group contract may include coverage for dependents.

(m) "Group contract holder" means the person to which a group contract has been issued.

(n) "Health care services" means basic health care services and other services, medical equipment and supplies which may include, but are not limited to, medical, surgical and dental care; psychological, obstetrical, osteopathic, optometric, optic, podiatric, nursing, occupational therapy services, physical therapy services, chiropractic services and pharmaceutical services; health education, preventive medical, rehabilitative and home health services; inpatient and outpatient hospital services, extended care, nursing home care, convalescent institutional care, laboratory and ambulance services, appliances, drugs, medicines and supplies; and any other care, service or treatment for the prevention, control or elimination of disease, the correction of defects or the maintenance of the physical or mental well-being of human beings.

(o) "Health maintenance organization" means an organization which:

> (1) Provides or otherwise makes available to enrollees health care services, including at a minimum those basic health care services which are determined by the commissioner to be generally available on an insured or prepaid basis in the geographic area served;

(2) is compensated, except for reasonable copayments, for the provision of basic health care services to enrollees solely on a predetermined periodic rate basis;

(3) provides physician services directly through physicians who are either employees or partners of such organization or under arrangements with a physician or any group of physicians or under arrangements as an independent contractor with a physician or any group of physicians;

(4) is responsible for the availability, accessibility and quality of the health care services provided or made available.

(p) "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include dependents of the subscriber.

(q) "Individual practice association" means a partnership, corporation, association or other legal entity which delivers or arranges for the delivery of basic health care services and which has entered into a services arrangement with persons who are licensed to practice medicine and surgery, dentistry, chiropractic, pharmacy, podiatry, optometry or any other health profession and a majority of whom are licensed to practice medicine and surgery. Such an arrangement shall provide:

(1) That such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(2) to the extent feasible for the sharing by such persons of medical and other records, equipment, and professional, technical and administrative staff.

(r) "Medical group" or "staff model" means a partnership, association or other group:

(1) Which is composed of health professionals licensed to practice medicine and surgery and of such other licensed health professionals, including but not limited to dentists, chiropractors, pharmacists, optometrists and podiatrists as are necessary for the provision of health services for which the group is responsible;

(2) a majority of the members of which are licensed to practice medicine and surgery; and

(3) the members of which:

(A) As their principal professional activity over 50% individually and as a group responsibility are engaged in the coordinated practice of their profession for a health maintenance organization;

(B) pool their income and distribute it among themselves according to a prearranged salary or drawing account or other plan, or are salaried employees of the health maintenance organization;

(C) share medical and other records and substantial portions of major equipment and of professional, technical and administrative staff; and (D) establish an arrangement whereby the enrollee's enrollment status is not known to the member of the group who provides health services to the enrollee.

(s) "Medicare provider organization" means an organization which:

(1) Is a provider-sponsored organization as defined by Section 4001 of the Balanced Budget Act of 1997 (PL 105-33); and

(2) provides or otherwise makes available to enrollees basic health care services pursuant to Section 4001 of the Balanced Budget Act of 1997 (PL 105-33).

(t) "Net worth" means the excess of assets over liabilities as determined by the commissioner from the latest annual report filed pursuant to K.S.A. 40-3220 and amendments thereto.

(u) "Person" means any natural or artificial person including but not limited to individuals, partnerships, associations, trusts or corporations.

(v) "Physician" means a person licensed to practice medicine and surgery under the healing arts act.

(w) "Provider" means any physician, hospital or other person which is licensed or otherwise authorized in this state to furnish health care services.

(x) "Uncovered expenditures" means the costs of health care services that are covered by a health maintenance organization for which an enrollee would also be liable in the event of the organization's insolvency as determined by the commissioner from the latest annual statement filed pursuant to K.S.A. 40-3220 and amendments thereto and which are not guaranteed, insured or assumed by any person or organization other than the carrier.

HISTORY: L. 1974, ch. 181, § 2; L. 1975, ch. 248, § 1; L. 1984, ch. 176, § 1; L. 1996, ch. 169, § 6; L. 1998, ch. 174, § 13; L. 2000, ch. 147, § 37; July 1.

40-3203. Certificate of authority required; application; contents; rules and regulations governing modifications and amendments; approval of commissioner.

(a) Except as otherwise provided by this act, it shall be unlawful for any person to provide health care services in the manner prescribed in subsection (n) or subsection (r) of K.S.A. 40-3202 and amendments thereto without first obtaining a certificate of authority from the commissioner.

(b) Applications for a certificate of authority shall be made in the form required by the commissioner and shall be verified by an officer or authorized representative of the applicant and shall set forth or be accompanied by:

(1) A copy of the basic organizational documents of the applicant such as articles of incorporation, partnership agreements, trust agreements or other applicable documents;

(2) a copy of the bylaws, regulations or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, official capacity with the organization and biographical information for all of the persons who are to be responsible for the conduct of its affairs, including all members of the governing body, the officers and directors in the case of a corporation and the partners or members in the case of a partnership or corporation;

(4) a sample or representative copy of any contract or agreement made or to be made between the health maintenance organization or medicare provider organization and any class of providers and a copy of any contract made or agreement made or to be made, excluding individual employment contracts or agreements, between third party administrators, marketing consultants or persons listed in subsection (3) and the health maintenance organization or medicare provider organization;

(5) a statement generally describing the organization, its enrollment process, its operation, its quality assurance mechanism, its internal grievance procedures, in the case of a health maintenance organization the methods it proposes to use to offer its enrollees an opportunity to participate in matters of policy and operation, the geographic area or areas to be served, the location and hours of operation of the facilities at which health care services will be regularly available to enrollees in the case of staff and group practices, the type and specialty of health care personnel and the number of personnel in each specialty category engaged to provide health care services in the case of staff and group practices, and a records system providing documentation of utilization rates for enrollees. In cases other than staff and group practices, the organization shall provide a list of names, addresses and telephone numbers of providers by specialty;

(6) copies of all contract forms the organization proposes to offer enrollees together with a table of rates to be charged;

(7) the following statements of the fiscal soundness of the organization:

(A) Descriptions of financing arrangements for operational deficits and for developmental costs if operational one year or less;

(B) a copy of the most recent unaudited financial statements of the health maintenance organization or medicare provider organization;

(C) financial projections in conformity with statutory accounting practices prescribed or otherwise permitted by the department of insurance of the state of domicile for a minimum of three years from the anticipated date of certification and on a monthly basis from the date of certification through one year. If the health maintenance organization or medicare provider organization is expected to incur a deficit, projections shall be made for each deficit year and for one year thereafter. Financial projections shall include:

(i) Monthly statements of revenue and expense for the first year on a gross dollar as well as per-member-per-month basis, with quarters consistent with standard calendar year quarters;

(ii) quarterly statements of revenue and expense for each subsequent year;

(iii) a quarterly balance sheet; and

(iv) statement and justification of assumptions;

(8) a description of the procedure to be utilized by a health maintenance organization or medicare provider organization to provide for:

(A) Offering enrollees an opportunity to participate in matters of policy and operation of a health maintenance organization;

(B) monitoring of the quality of care provided by such organization including, as a minimum, peer review; and

(C) resolving complaints and grievances initiated by enrollees;

(9) a written irrevocable consent duly executed by such applicant, if the applicant is a nonresident, appointing the commissioner as the person upon whom lawful process in any legal action against such organization on any cause of action arising in this state may be served and that such service of process shall be valid and binding in the same extent as if personal service had been had and obtained upon said nonresident in this state;

(10) a plan, in the case of group or staff practices, that will provide for maintaining a medical records system which is adequate to provide an accurate documentation of utilization by every enrollee, such system to identify clearly, at a minimum, each patient by name, age and sex and to indicate clearly the services provided, when, where, and by whom, the diagnosis, treatment and drug therapy, and in all other cases, evidence that contracts with providers require that similar medical records systems be in place;

(11) evidence of adequate insurance coverage or an adequate plan for self-insurance to respond to claims for injuries arising out of the furnishing of health care;

(12) such other information as may be required by the commissioner to make the determinations required by K.S.A. 40-3204 and amendments thereto; and

(13) in lieu of any of the application requirements imposed by this section on a medicare provider organization, the commissioner may accept any report or application filed by the medicare provider organization with the appropriate examining agency or official of another state or agency of the federal government.

(c) The commissioner may promulgate rules and regulations the commissioner deems necessary to the proper administration of this act to require a health maintenance organization or medicare provider organization, subsequent to receiving its certificate of authority to submit the information, modifications or amendments to the items described in subsection (b) to the commissioner prior to the effectuation of the modification or amendment or to require the health maintenance organization to indicate the modifications to the commissioner. Any modification or amendment for which the approval of the commissioner is required shall be deemed approved unless disapproved within 30 days, except the commissioner may postpone the action for such further time, not exceeding an additional 30 days, as necessary for proper consideration.

HISTORY: L. 1974, ch. 181, § 3; L. 1976, ch. 280, § 22; L. 1985, ch. 208, § 3; L. 1988, ch. 162, § 1; L. 1996, ch. 169, § 7; L. 1997, ch. 13, § 1; L. 1998, ch. 174, § 14; July 1.

40-3204. Notice that application incomplete, insufficient or unsatisfactory; issuance of certificate, when.

(a) The commissioner shall notify any person filing an application for a certificate of authority within 60 days of such filing if such application is not complete or sufficient and the reasons therefor, or that payment of the fees required by K.S.A. 40-3213 and amendments thereto has not been made or that the commissioner is not satisfied with the sufficiency of the information supplied pursuant to the provisions of K.S.A. 40-3203 and amendments thereto or that the organization has failed to demonstrate its ability to assure that health care services will be provided.

(b) The commissioner shall, within 60 days after the receipt of a completed application and any prescribed fees, issue a certificate of authority to any person filing such application if the commissioner finds that:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy and possess good reputations;

(2) any deficiencies identified by the commissioner in the application have been corrected;

(3) the health maintenance organization or medicare provider organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise except to the extent of reasonable requirements for copayments and/or deductibles; and

(4) in the case of a health maintenance organization, that the health maintenance organization is in compliance with K.S.A. 40-3227 and amendments thereto and in the case of a medicare provider organization, that the medicare provider organization is in compliance with such deposit or solvency requirements as the commissioner may establish by rules and regulations.

HISTORY: L. 1974, ch. 181, § 4; L. 1996, ch. 169, § 8; L. 1998, ch. 174, § 15; July 1.

40-3208. Powers.

(a) The powers of a health maintenance organization or medicare provider organization shall include but not be limited to the following:

(1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such other purposes as are necessary in the transaction of the business of the organization;

(2) the furnishing of health care services through providers which are under contract with or employed by the health maintenance organization;

(3) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration;

(4) the contracting with an insurance company licensed in this state, or with a hospital or medical service corporation or dental service corporation authorized to do business in this state, for the provision of insurance, indemnity or reimbursement against the cost of health care services provided by the health maintenance organization;

(5) the offering, in addition to health care services, of indemnity benefits covering out-of-area or emergency services; and

(6) receiving and accepting from governmental or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization.

(b) Health maintenance organizations shall provide in their arrangements with all contracting parties and providers that if there be valid medicaid coverage, providing benefits for the same loss or condition, the medicaid coverage shall be the source of last resort of any provider payment.

HISTORY: L. 1974, ch. 181, § 8; L. 1993, ch. 132, § 8; L. 1998, ch. 174, § 17; July 1.

40-3209. Certificates of coverage, contracts and other marketing documents, contents, form, filing; continuation and conversion requirements; enrollee not liable to provider for amount owed; application of 40-2209 and 40-2215.

(a) All forms of group and individual certificates of coverage and contracts issued by the organization to enrollees or other marketing documents purporting to describe the organization's health care services shall contain as a minimum:

(1) A complete description of the health care services and other benefits to which the enrollee is entitled;

(2) The locations of all facilities, the hours of operation and the services which are provided in each facility in the case of individual practice associations or medical staff and group practices, and, in all other cases, a list of providers by specialty with a list of addresses and telephone numbers;

(3) the financial responsibilities of the enrollee and the amount of any deductible, copayment or coinsurance required;

(4) all exclusions and limitations on services or any other benefits to be provided including any deductible or copayment feature and all restrictions relating to pre-existing conditions;

(5) all criteria by which an enrollee may be disenrolled or denied reenrollment;

(6) service priorities in case of epidemic, or other emergency conditions affecting demand for medical services;

(7) in the case of a health maintenance organization, a provision that an enrollee or a covered dependent of an enrollee whose coverage under a health maintenance organization group contract has been terminated for any reason but who remains in the service area and who has been continuously covered by the health maintenance organization for at least three months shall be entitled to obtain a converted contract or have such coverage continued under the group contract for a period of six months following which such enrollee or dependent shall be entitled to obtain a converted contract in accordance with the provisions of this section. The converted contract shall provide coverage at least equal to the conversion coverage options generally available from insurers or mutual nonprofit hospital and medical service corporations in the service area at the applicable premium cost. The group enrollee or enrollees shall be solely responsible for paying the premiums for the alternative coverage. The frequency of premium payment shall be the frequency customarily required by the health maintenance organization, mutual nonprofit hospital and medical service corporation or insurer for the policy form and plan selected, except that the insurer, mutual nonprofit hospital and medical service corporation or health maintenance organization shall require premium payments at least quarterly. The coverage shall be available to all enrollees of any group without medical underwriting. The requirement imposed by this subsection shall not apply to a contract which provides benefits for specific diseases or for

accidental injuries only, nor shall it apply to any employee or member or such employee's or member's covered dependents when:

(A) Such person was terminated for cause as permitted by the group contract approved by the commissioner;

(B) any discontinued group coverage was replaced by similar group coverage within 31 days; or

(C) the employee or member is or could be covered by any other insured or noninsured arrangement which provides expense incurred hospital, surgical or medical coverage and benefits for individuals in a group under which the person was not covered prior to such termination. Written application for the converted contract shall be made and the first premium paid not later than 31 days after termination of the group coverage or receipt of notice of conversion rights from the health maintenance organization, whichever is later, and shall become effective the day following the termination of coverage under the group contract. The health maintenance organization shall give the employee or member and such employee's or member's covered dependents reasonable notice of the right to convert at least once within 30 days of termination of coverage under the group contract. The group contract and certificates may include provisions necessary to identify or obtain identification of persons and notification of events that would activate the notice requirements and conversion rights created by this section but such requirements and rights shall not be invalidated by failure of persons other than the employee or member entitled to conversion to comply with any such provisions. In addition, the converted contract shall be subject to the provisions contained in paragraphs (2), (4), (5), (6), (7), (8), (9), (13), (14), (15), (16), (17) and (19) of subsection (j) of K.S.A. 40-2209, and amendments thereto;

(8) (A) group contracts shall contain a provision extending payment of such benefits until discharged or for a period not less than 31 days following the expiration date of the contract, whichever is earlier, for covered enrollees and dependents confined in a hospital on the date of termination;

(B) a provision that coverage under any subsequent replacement contract that is intended to afford continuous coverage will commence immediately following expiration of any prior contract with respect to covered services not provided pursuant to subparagraph (8)(A); and

(9) an individual contract shall provide for a 10-day period for the enrollee to examine and return the contract and have the premium refunded, but if services were received by the enrollee during the 10-day period, and the enrollee returns the contract to receive a refund of the premium paid, the enrollee must pay for such services.

(b) No health maintenance organization or medicare provider organization authorized under this act shall contract with any provider under provisions which require enrollees to guarantee payment, other than copayments and deductibles, to such provider in the event of nonpayment by the health maintenance organization or medicare provider organization for any services which have been performed under contracts between such enrollees and the health maintenance organization or medicare provider organization. Further, any contract between a health maintenance organization or medicare provider organization and a provider shall provide that if the health maintenance organization or medicare provider organization fails to pay for covered health care services as set forth in the contract between the health maintenance organization or medicare provider organization and its enrollee, the enrollee or covered dependents shall not be liable to any provider for any amounts owed by the health maintenance organization or medicare provider organization. If there is no written contract between the health maintenance organization or medicare provider organization and the provider or if the written contract fails to include the above provision, the enrollee and dependents are not liable to any provider for any amounts owed by the health maintenance organization or medicare provider organization. Any action by a provider to collect or attempt to collect from a subscriber or enrollee any sum owed by the health maintenance organization to a provider shall be deemed to be an unconscionable act within the meaning of K.S.A. 50-627 and amendments thereto.

(c) No group or individual certificate of coverage or contract form or amendment to an approved certificate of coverage or contract form shall be issued unless it is filed with the commissioner. Such contract form or amendment shall become effective within 30 days of such filing unless the commissioner finds that such contract form or amendment does not comply with the requirements of this section.

(d) Every contract shall include a clear and understandable description of the health maintenance organization's or medicare provider organization's method for resolving enrollee grievances.

(e) The provisions of subsections (A), (B), (C), (D) and (E) of K.S.A. 40-2209 and 40-2215 and amendments thereto shall apply to all contracts issued under this section, and the provisions of such sections shall apply to health maintenance organizations.

(f) In lieu of any of the requirements of subsection (a), the commissioner may accept certificates of coverage issued by a medicare provider organization in conformity with requirements imposed by any appropriate federal regulatory agency.

HISTORY: L. 1974, ch. 181, § 9; L. 1988, ch. 163, § 1; L. 1990, ch. 172, § 1; L. 1991, ch. 137, § 1; L. 1991, ch. 134, § 10; L. 1992, ch. 196, § 3; L. 1993, ch. 231, § 3; L. 1996, ch. 169, § 9; L. 1997, ch. 190, § 4; L. 1998, ch. 174, § 18; L. 2000, ch. 147, § 38; July 1.

40-3210. Prepaid per capita or aggregate fixed sum contracts authorized. Any health maintenance organization or medicare provider organization issued a certificate and otherwise in compliance with this act may enter into contracts in this state to provide an agreed upon set of health care services to enrollees or groups of enrollees in exchange for a prepaid per capita or prepaid aggregate fixed sum.

HISTORY: L. 1974, ch. 181, § 10; L. 1991, ch. 134, § 11; L. 1998, ch. 174, § 19; July 1.

40-3211. Examination of organizations and providers.

(a) The commissioner may make an examination of the affairs of any health maintenance organization or medicare provider organization and providers with whom such organization has contracts, agreements or other arrangements as often as the commissioner deems it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(b) At least once every three years and at such other times as the commissioner may require, a health maintenance organization or medicare provider organization shall obtain an on-site quality of care assessment by an independent quality review organization acceptable to the commissioner for the purpose of evaluating levels of health care delivery according to industry standards as prevailing from time to time. The findings of said independent quality review organization shall be expressed by it in a written opinion relating to the general quality of care provided by the health maintenance organization or medicare provider organization and its related contractors of health care services. Failure to obtain such quality of care assessment or the rendering of an unfavorable opinion by the independent quality review organization shall give the commissioner cause to institute action in accordance with K.S.A. 40-3205, 40-3206 or 40-3207, and amendments thereto.

(c) Every health maintenance organization or medicare provider organization and any of the medicare provider organization providers shall submit its books and records relating its operation to such examinations. Medical records of individuals and records of providers under a contract to the health maintenance organization or medicare provider organization shall be subject to such examination, but the identity of patients shall not be disclosed in any report to the commissioner or the commissioner's agents or representatives. For the purpose of examinations, the commissioner may administer oaths to, and examine the officers and agents of the health maintenance organization or medicare provider organization and the principals of such providers.

(d) The fees and expenses of examinations under this section shall be assessed against the organization being examined and remitted to the commissioner. The fees and expenses of the commissioner shall be in accordance with K.S.A. 40-223, and amendments thereto.

(e) In lieu of such examination, the commissioner may accept the report of an examination made by the appropriate examining agency or official of another state or agency of the federal government.

HISTORY: L. 1974, ch. 181, § 11; L. 1975, ch. 462, § 52; L. 1987, ch. 175, § 1; L. 1998, ch. 174, § 20; July 1.

40-3214. Construction and relationship to other laws. Except as otherwise provided in this act, health maintenance organizations and medicare provider organizations certificated under the provisions of this act shall not be subject to regulation under articles 18, 19 and 19a of chapter 40 of the Kansas Statutes Annotated or acts amendatory thereof or supplemental thereto.

Solicitation of enrollees by a duly certificated health maintenance organization or medicare provider organization or its representatives shall not be construed to be a violation of any provisions of law relating to solicitation or advertising by health professionals. A list of locations of services and a list of providers who have current agreements with the health maintenance organization may be made available to prospective enrollees, and shall be made available to prospective enrollees upon request.

Nothing in any professional practices act of any provider shall be construed to prohibit a provider from being employed by or under contract to provide health care services for a health maintenance organization or medicare provider organization granted a certificate of authority under the provisions of this act.

Any health maintenance organization authorized under this act shall not be deemed to be practicing any act for which a provider is licensed and shall be exempt from laws relating to the practice of any act for which a provider is licensed.

HISTORY: L. 1974, ch. 181, § 14; L. 1980, ch. 141, § 1; L. 1998, ch. 174, § 22; July 1.

40-3215. Rules and regulations. The commissioner shall promulgate rules and regulations necessary to carry out the provisions of this act.

HISTORY: L. 1974, ch. 181, § 15; L. 1998, ch. 174, § 23; July 1.

40-3216. Penalty. Any person who violates any provision of this act or any rule or regulation issued pursuant thereto shall be guilty of a class C misdemeanor.

HISTORY: L. 1974, ch. 181, § 16; July 1.

40-3217. Operational health maintenance organizations; issuance of certificate. Any health maintenance organization in existence and operating on the effective date of this act in this state shall apply for and be entitled to the issuance of a certificate. Such organization shall apply for said certificate within one hundred twenty (120) days after the effective date of this act, submitting with such application the information required under K.S.A. 40-3203, together with a filing fee in the amount of one hundred fifty dollars ($ 150). Any such health maintenance organization shall be in compliance with the provisions of this act within one year after the issuance of such certificate.

HISTORY: L. 1974, ch. 181, § 17; July 1.

40-3218. Contractual designation of persons to make recommended findings to commissioner. The commissioner in carrying out his obligations under the provisions of this act may by agreement or by contract designate qualified persons to make recommendations concerning the findings and determinations required to be made by him. Recommendations received pursuant to this section may be rejected or accepted in full or in part by the commissioner.

HISTORY: L. 1974, ch. 181, § 18; July 1.

40-3219. Effect of act on federal assistance. Nothing in this act shall prohibit any health maintenance organization or medicare provider organization from meeting the requirements of any federal law which would authorize the health maintenance organization or medicare provider organization to receive federal financial assistance or to enroll beneficiaries assisted by federal funds.

HISTORY: L. 1974, ch. 181, § 19; L. 1998, ch. 174, § 24; July 1.

40-3220. Annual report. Every health maintenance organization and medicare provider organization authorized under this act shall annually on or before the first day of March, file a verified report with the commissioner, showing its condition on the last day of the preceding calendar year, on forms prescribed by the commissioner. Such report shall include:

(a) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year; and

(b) such other information relating to the performance of health maintenance organizations as shall be required by the commissioner. Every health maintenance organization and medicare provider organization authorized under this act shall be subject to the provisions of K.S.A. 40-225 and amendments thereto.

HISTORY: L. 1974, ch. 181, § 20; L. 1998, ch. 174, § 25; L. 2000, ch. 147, § 39; July 1.

40-3221. Liability of officers. Any person who is an officer or principal managing director of the affairs of a health maintenance organization or medicare provider organization shall be fully and personally liable and accountable for any willful and intentional violations of the provisions of this act, by such person or by persons under such person's control. It is not intended through this legislation to modify the existing law of Kansas regarding personal or corporate liability for negligence or malpractice.

HISTORY: L. 1974, ch. 181, § 21; L. 1998, ch. 174, § 26; July 1.

40-3222. Use of certain words and initials prohibited. No person shall use in its name, contracts or literature the phrase "health maintenance organization" or the initials HMO unless such person is certified under the provisions of this act.

HISTORY: L. 1974, ch. 181, § 22; July 1.

40-3223. Open enrollment.

(a) After a health maintenance organization has been in operation twenty-four (24) months, it may have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization shall apply to the commissioner for authorization to impose such underwriting restrictions upon enrollment as may be deemed necessary by the health maintenance organization and the commissioner to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high charges for enrollee coverage for health care services. The commissioner shall approve or deny such application within thirty (30) days of the receipt thereof from the health maintenance organization.

(b) Health maintenance organizations providing or arranging for services exclusively on a group contract basis may limit the open enrollment provided for in subsection (a) to all members of the group or groups covered by such contracts.

HISTORY: L. 1974, ch. 181, § 23; July 1.

40-3224. Investments. With the exception of investments made in accordance with other provisions of this act, the investable funds of a health maintenance organization shall be invested only in securities or other instruments permitted by article 2a of chapter 40 of the Kansas Statutes Annotated, or acts amendatory thereof of supplemental thereto, or such other securities or investments as the commissioner may permit.

HISTORY: L. 1974, ch. 181, § 24; July 1.

40-3225. Fiduciary responsibilities; fidelity bond or insurance.

(a) Any director, officer or partner of a health maintenance organization or medicare provider organization who receives, collects, disburses or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the health maintenance organization or medicare provider organization.

(b) A health maintenance organization shall maintain in force a fidelity bond or fidelity insurance on such employees and officers, directors and partners in the amount not less than $ 250,000 for each health maintenance organization or a maximum of $ 5,000,000 in aggregate maintained on behalf of health maintenance organizations owned by a common parent corporation, or such sum as may be prescribed by the commissioner.

HISTORY: L. 1974, ch. 181, § 25; L. 1996, ch. 169, § 10; L. 1998, ch. 174, § 27; July 1.

40-3226. Confidentiality of medical information.

(a) Notwithstanding the provisions of K.S.A. 40-3212, and amendments thereto, any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this act, or upon the express consent of the enrollee or applicant or as otherwise provided by law, except that in no case shall the name of an enrollee or applicant be disclosed in any data pertaining to the diagnosis, treatment or health of such enrollee or applicant in any medical review procedure or in any report required under the provisions of this act or the rules and regulations issued pursuant thereto unless such enrollee or applicant has expressly consented thereto. A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim.

(b) Upon the express request of the enrollee, a complete record of any data or information pertaining to the diagnosis, treatment or health of such enrollee obtained from such person or from any provider by any health maintenance organization shall be provided to another health care provider designated by such enrollee when such enrollee is no longer an enrollee of such health maintenance organization.

HISTORY: L. 1974, ch. 181, § 26; L. 1994, ch. 81, § 2; July 1.

CHAPTER 40. INSURANCE
ARTICLE 34. HEALTH CARE PROVIDER INSURANCE

40-3401. Definitions.

As used in this act the following terms shall have the meanings respectively ascribed to them herein.

(a) "Applicant" means any health care provider.

(b) "Basic coverage" means a policy of professional liability insurance required to be maintained by each health care provider pursuant to the provisions of subsection (a) or (b) of K.S.A. 40-3402 and amendments thereto.

(c) "Commissioner" means the commissioner of insurance.

(d) "Fiscal year" means the year commencing on the effective date of this act and each year, commencing on the first day of that month, thereafter.

(e) "Fund" means the health care stabilization fund established pursuant to subsection (a) of K.S.A. 40-3403 and amendments thereto.

(f) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts with the exception of physician assistants, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a medical care facility licensed by the department of health and environment, a health maintenance organization issued a certificate of authority by the commissioner of insurance, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a pharmacist licensed by the state board of pharmacy, a licensed professional nurse who is authorized to practice as a registered nurse anesthetist, a licensed professional nurse who has been granted a temporary authorization to practice nurse anesthesia under K.S.A. 65-1153 and amendments thereto, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection, a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine, a dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899 and amendments thereto, a psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto, or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services, except that health care provider does not include (1) any state institution for the mentally retarded, (2) any state psychiatric hospital, (3) any person holding an exempt license issued by the state board of healing arts or (4) any person holding a visiting clinical professor license from the state board of healing arts.

(g) "Inactive health care provider" means a person or other entity who purchased basic coverage or qualified as a self-insurer on or subsequent to the effective date of this act but who, at the time a claim is made for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, does not have basic coverage or self-insurance in effect solely because such person is no longer engaged in rendering professional service as a health care provider.

(h) "Insurer" means any corporation, association, reciprocal exchange, inter-insurer and any other legal entity authorized to write bodily injury or property damage liability insurance in this state, including workers compensation and automobile liability insurance, pursuant to the provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated.

(i) "Plan" means the operating and administrative rules and procedures developed by insurers and rating organizations or the commissioner to make professional liability insurance available to health care providers.

(j) "Professional liability insurance" means insurance providing coverage for legal liability arising out of the performance of professional services rendered or which should have been rendered by a health care provider.

(k) "Rating organization" means a corporation, an unincorporated association, a partnership or an individual licensed pursuant to K.S.A. 40-956, and amendments thereto, to make rates for professional liability insurance.

(l) "Self-insurer" means a health care provider who qualifies as a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

(m) "Medical care facility" means the same when used in the health care provider insurance availability act as the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a medical care facility.

(n) "Mental health center" means a mental health center licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health center.

(o) "Mental health clinic" means a mental health clinic licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health clinic.

(p) "State institution for the mentally retarded" means Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

(q) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital and Rainbow mental health facility.

(r) "Person engaged in residency training" means:

(1) A person engaged in a postgraduate training program approved by the state board of healing arts who is employed by and is studying at the university of Kansas medical center only when such person is engaged in medical activities which do not include extracurricular, extra-institutional medical service for which such person receives extra compensation and which have not been approved by the dean of the school of medicine and the executive vice-chancellor of the university of Kansas medical center. Persons engaged in residency training shall be considered resident health care providers for purposes of K.S.A. 40-3401 et seq., and amendments thereto; and

(2) a person engaged in a postgraduate training program approved by the state board of healing arts who is employed by a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine or who is employed by an affiliate of the university of Kansas school of medicine as defined in K.S.A. 76-367 and amendments thereto only when such person is engaged in medical activities which do not include extracurricular, extra-institutional medical service for which such person receives extra compensation and which have not been approved by the chief operating officer of the nonprofit corporation or the chief operating officer of the affiliate and the executive vice-chancellor of the university of Kansas medical center.

(s) "Full-time physician faculty employed by the university of Kansas medical center" means a person licensed to practice medicine and surgery who holds a full-time appointment at the university of Kansas medical center when such person is providing health care.

(t) "Sexual act" or "sexual activity" means that sexual conduct which constitutes a criminal or tortious act under the laws of the state of Kansas.

HISTORY: L. 1976, ch. 231, § 1; L. 1977, ch. 165, § 1; L. 1979, ch. 186, § 22; L. 1980, ch. 142, § 1; L. 1981, ch. 199, § 1; L. 1982, ch. 207, § 1; L. 1984, ch. 177, § 1; L. 1985, ch. 166, § 1; L. 1986, ch. 183, § 14; L. 1986, ch. 229, § 24; L. 1986, ch. 231, § 4; L. 1986, ch. 184, § 1; L. 1986, ch. 181, § 2; L. 1986, ch. 181, § 3; L. 1986, ch. 181, § 4; L. 1987, ch. 176, § 1; L. 1987, ch. 177, § 1; L. 1987, ch. 242, § 1; L. 1987, ch. 178, § 1; L. 1987, ch. 178, § 2; L. 1988, ch. 246, § 12; L. 1989, ch. 143, § 1; L. 1990, ch. 174, § 1; L. 1990, ch. 175, § 1; L. 1991, ch. 139, § 1; L. 1992, ch. 156, § 2; L. 1994, ch. 181, § 3; L. 2000, ch. 162, § 14; L. 2001, ch. 204, § 1; L. 2003, ch. 128, § 19; Apr. 1, 2004.

40-3402. Professional liability insurance to be maintained by health care providers as condition to rendering services in state, exception, limits of coverage; information to be furnished by insurer; termination of coverage, notice; contents of policies issued in state; duties of certain insurance companies; surcharge and information required of certain health care providers; occurrence form policy as alternative to required claims made policy for certain persons.

(a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than $ 200,000 per claim, subject to not less than a $ 600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition to rendering professional service as a health care provider in this state, unless such health care provider is a self-insurer. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995 nor to health maintenance organizations on or after July 1, 1997. Such policy shall provide as a minimum coverage for claims made during the term of the policy which were incurred during the term of such policy or during the prior term of a similar policy. Any insurer offering such policy of professional liability insurance to any health care provider may offer to such health care provider a policy as prescribed in this section with deductible options. Such deductible shall be within such policy limits.

(1) Each insurer providing basic coverage shall within 30 days after the premium for the basic coverage is received by the insurer or within 30 days from the effective date of this act, whichever is later, notify the board of governors that such coverage is or will be in effect. Such notification shall be on a form approved by the board of governors and shall include information identifying the professional liability policy issued or to be issued, the name and address of all health care providers covered by the policy, the amount of the annual premium, the inception and expiration dates of the coverage and such other information as the board of governors shall require. A copy of the notice required by this subsection shall be furnished the named insured.

(2) In the event of termination of basic coverage by cancellation, nonrenewal, expiration or otherwise by either the insurer or named insured, notice of such termination shall be furnished by the insurer to the board of governors, the state agency which licenses, registers or certifies the named insured and the named insured. Such notice shall be provided no less than 30 days prior to the effective date of any termination initiated by the insurer or within 10 days after the date coverage is terminated at the request of the named insured and shall include the name and address of the health care provider or providers for whom basic coverage is terminated and the date basic coverage will cease to be in effect. No basic coverage shall be terminated by cancellation or failure to renew by the insurer unless such insurer provides a notice of termination as required by this subsection.

(3) Any professional liability insurance policy issued, delivered or in effect in this state on and after July 1, 1976, shall contain or be endorsed to provide basic coverage as required by subsection (a) of this section. Notwithstanding any omitted or inconsistent language, any contract of professional liability insurance shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) Unless a nonresident health care provider is a self-insurer, such health care provider shall not render professional service as a health care provider in this state unless such health care provider maintains coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995.

(1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident health care provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident health care provider who is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404 and amendments thereto directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1).

(c) Every health care provider that is a self-insurer, the university of Kansas medical center for persons engaged in residency training, as described in subsection (r)(1) of K.S.A. 40-3401 and amendments thereto, the employers of persons engaged in residency training, as described in subsection (r)(2) of K.S.A. 40-3401 and amendments thereto, the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or a medical care facility or mental health center for self-insurers under subsection (e) of K.S.A. 40-3414 and amendments thereto shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404 and amendments thereto directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1) and (a)(2).

(d) In lieu of a claims made policy otherwise required under this section, a person engaged in residency training who is providing services as a health care provider but while providing such services is not covered by the self-insurance provisions of subsection (d) of K.S.A. 40-3414 and amendments thereto may obtain basic coverage under an occurrence form policy if such policy provides professional liability insurance coverage and limits which are substantially the same as the professional liability insurance coverage and limits required by subsection (a) of K.S.A. 40-3402 and amendments thereto. Where such occurrence form policy is in effect, the provisions of the health care provider insurance availability act referring to claims made policies shall be construed to mean occurrence form policies.

HISTORY: L. 1976, ch. 231, § 2; L. 1984, ch. 238, § 2; L. 1985, ch. 166, § 2; L. 1986, ch. 229, § 26; L. 1986, ch. 179, § 3; L. 1986 ch. 184, § 2; L. 1989, ch. 143, § 2; L. 1990, ch. 175, § 2; L. 1991, ch. 139, § 2; L. 1994, ch. 155, § 1; L. 1995, ch. 145, § 1; L. 1997, ch. 134, § 1; July

40-3403. Health care stabilization fund, establishment and administration; board of governors, membership, organization, meetings, executive director and staff and general powers and duties; duties of commissioner of insurance; liability of fund; payments from fund; qualification of health care provider for coverage under fund, termination; liability of provider for acts of other providers; university of Kansas medical center private practice foundation reserve fund, establishment, transfers from; provider coverage options, election; eligibility of psychiatric hospitals and certain inactive providers for coverage; termination of fund liability for certain providers.

(a) For the purpose of paying damages for personal injury or death arising out of the rendering of or the failure to render professional services by a health care provider, self-insurer or inactive health care provider subsequent to the time that such health care provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the health care stabilization fund. The fund shall be held in trust in the state treasury and accounted for separately from other state funds. The board of governors shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

(b) (1) There is hereby created a board of governors which shall be composed of such members and shall have such powers, duties and functions as are prescribed by this act. The board of governors shall:

(A) Administer the fund and exercise and perform other powers, duties and functions required of the board under the health care provider insurance availability act;

(B) provide advice, information and testimony to the appropriate licensing or disciplinary authority regarding the qualifications of a health care provider;

(C) prepare and publish, on or before October 1 of each year, a summary of the fund's activity during the preceding fiscal year, including but not limited to the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the fund, the number of judgments paid from the fund, the number of settlements paid from the fund and the amount in the fund at the end of the fiscal year; and

(D) have the authority to grant exemptions from the provisions of subsection (m) of this section when a health care provider temporarily leaves the state for the purpose of obtaining additional education or training or to participate in religious, humanitarian or government service programs. Whenever a health care provider has previously left the state for one of the reasons specified in this paragraph and

returns to the state and recommences practice, the board of governors may refund any amount paid by the health care provider pursuant to subsection (m) of this section if no claims have been filed against such health care provider during the provider's temporary absence from the state.

(2) The board shall consist of 10 persons appointed by the commissioner of insurance, as provided by this subsection (b) and as follows:

(A) Three members who are licensed to practice medicine and surgery in Kansas who are doctors of medicine and who are on a list of nominees submitted to the commissioner by the Kansas medical society;

(B) three members who are representatives of Kansas hospitals and who are on a list of nominees submitted to the commissioner by the Kansas hospital association;

(C) two members who are licensed to practice medicine and surgery in Kansas who are doctors of osteopathic medicine and who are on a list of nominees submitted to the commissioner by the Kansas association of osteopathic medicine;

(D) one member who is licensed to practice chiropractic in Kansas and who is on a list of nominees submitted to the commissioner by the Kansas chiropractic association;

(E) one member who is a licensed professional nurse authorized to practice as a registered nurse anesthetist who is on a list of nominees submitted to the commissioner by the Kansas association of nurse anesthetists.

(3) When a vacancy occurs in the membership of the board of governors created by this act, the commissioner shall appoint a successor of like qualifications from a list of three nominees submitted to the commissioner by the professional society or association prescribed by this section for the category of health care provider required for the vacant position on the board of governors. All appointments made shall be for a term of office of four years, but no member shall be appointed for more than two successive four-year terms. Each member shall serve until a successor is appointed and qualified. Whenever a vacancy occurs in the membership of the board of governors created by this act for any reason other than the expiration of a member's term of office, the commissioner shall appoint a successor of like qualifications to fill the unexpired term. In each case of a vacancy occurring in the membership of the board of governors, the commissioner shall notify the professional society or association which represents the category of health care provider required for the vacant position and request a list of three nominations of health care providers from which to make the appointment.

(4) The board of governors shall organize on July 1 of each year and shall elect a chairperson and vice-chairperson from among its membership. Meetings shall be called by the chairperson or by a written notice signed by three members of the board.

(5) The board of governors, in addition to other duties imposed by this act, shall study and evaluate the operation of the fund and make such recommendations to the legislature as may be appropriate to ensure the viability of the fund.

(6) (A) The board shall appoint an executive director who shall be in the unclassified service under the Kansas civil service act and may appoint such attorneys, legal assistants, claims managers and compliance auditors who shall also be in the unclassified service under the Kansas civil service act. Such executive director, attorneys, legal assistants, claims managers and compliance auditors shall receive compensation fixed by the board, in accordance with appropriation acts of the legislature, not subject to approval of the governor.

(B) The board may appoint such additional employees, and provide all office space, services, equipment, materials and supplies, and all budgeting, personnel, purchasing and related management functions required by the board in the exercise of the powers, duties and functions imposed or

authorized by the health care provider insurance availability act or may enter into a contract with the commissioner of insurance for the provision, by the commissioner, of all or any part thereof.

(7) The commissioner shall:

(A) Provide technical and administrative assistance to the board of governors with respect to administration of the fund upon request of the board;

(B) provide such expertise as the board may reasonably request with respect to evaluation of claims or potential claims.

(c) Subject to subsections (d), (e), (f), (i), (k), (m), (n), (o), (p) and (q), the fund shall be liable to pay:

(1) Any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable resident health care providers or resident self-insurers for any personal injury or death arising out of the rendering of or the failure to render professional services within or without this state;

(2) subject to the provisions of subsection (m), any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable nonresident health care providers or nonresident self-insurers for any such injury or death arising out of the rendering or the failure to render professional services within this state but in no event shall the fund be obligated for claims against nonresident health care providers or nonresident self-insurers who have not complied with this act or for claims against nonresident health care providers or nonresident self-insurers that arose outside of this state;

(3) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a resident inactive health care provider, an optometrist or pharmacist who purchased coverage pursuant to subsection (n) or a physical therapist who purchased coverage pursuant to subsection (o), for any such injury or death arising out of the rendering of or failure to render professional services;

(4) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a nonresident inactive health care provider, an optometrist or pharmacist who purchased coverage pursuant to subsection (n) or a physical therapist who purchased coverage pursuant to subsection (o), for any injury or death arising out of the rendering or failure to render professional services within this state, but in no event shall the fund be obligated for claims against: (A) Nonresident inactive health care providers who have not complied with this act; or (B) nonresident inactive health care providers for claims that arose outside of this state, unless such health care provider was a resident health care provider or resident self-insurer at the time such act occurred;

(5) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees incurred in defending the fund against claims;

(6) any amounts expended for reinsurance obtained to protect the best interests of the fund purchased by the board of governors, which purchase shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, but shall not be subject to the provisions of K.S.A. 75-4101 and amendments thereto;

(7) reasonable and necessary actuarial expenses incurred in administering the act, including expenses for any actuarial studies contracted for by the legislative coordinating council, which expenditures shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto;

(8) periodically to the plan or plans, any amount due pursuant to subsection (a)(3) of K.S.A. 40-3413 and amendments thereto;

(9) reasonable and necessary expenses incurred by the board of governors in the administration of the fund or in the performance of other powers, duties or functions of the board under the health care provider insurance availability act;

(10) return of any unearned surcharge;

(11) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or any nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine from claims for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider;

(12) notwithstanding the provisions of subsection (m), any amount due from a judgment or settlement for an injury or death arising out of the rendering of or failure to render professional services by a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center or any nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine;

(13) subject to the provisions of K.S.A. 65-429 and amendments thereto, reasonable and necessary expenses for the development and promotion of risk management education programs and for the medical care facility licensure and risk management survey functions carried out under K.S.A. 65-429 and amendments thereto;

(14) notwithstanding the provisions of subsection (m), any amount, but not less than the required basic coverage limits, owed pursuant to a judgment or settlement for any injury or death arising out of the rendering of or failure to render professional services by a person, other than a person described in clause (12) of this subsection (c), who was engaged in a postgraduate program of residency training approved by the state board of healing arts but who, at the time the claim was made, was no longer engaged in such residency program;

(15) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person described in clause (14) of this subsection (c);

(16) expenses incurred by the commissioner in the performance of duties and functions imposed upon the commissioner by the health care provider insurance availability act, and expenses incurred by the commissioner in the performance of duties and functions under contracts entered into between the board and the commissioner as authorized by this section; and

(17) periodically to the state general fund reimbursements of amounts paid to members of the health care stabilization fund oversight committee for compensation, travel expenses and subsistence expenses pursuant to subsection (e) of K.S.A. 40-3403b, and amendments thereto.

(d) All amounts for which the fund is liable pursuant to subsection (c) shall be paid promptly and in full except that, if the amount for which the fund is liable is $ 300,000 or more, it shall be paid, by installment payments of $ 300,000 or 10% of the amount of the judgment including interest thereon, whichever is greater, per fiscal year, the first installment to be paid within 60 days after the fund becomes liable and each subsequent installment to be paid annually on the same date of the year the first installment was paid, until the claim has been paid in full. Any attorney fees payable from such installment shall be similarly prorated.

(e) In no event shall the fund be liable to pay in excess of $ 3,000,000 pursuant to any one judgment or settlement against any one health care provider relating to any injury or death arising out of the rendering of or the failure to render professional services on and after July 1, 1984, and before July 1, 1989, subject to an aggregate limitation for all judgments or settlements arising from all claims made in any one fiscal year in the amount of $ 6,000,000 for each health care provider.

(f) The fund shall not be liable to pay in excess of the amounts specified in the option selected by the health care provider pursuant to subsection (l) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such health care provider on or after July 1, 1989.

(g) A health care provider shall be deemed to have qualified for coverage under the fund:

(1) On and after July 1, 1976, if basic coverage is then in effect;

(2) subsequent to July 1, 1976, at such time as basic coverage becomes effective; or

(3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

(h) A health care provider who is qualified for coverage under the fund shall have no vicarious liability or responsibility for any injury or death arising out of the rendering of or the failure to render professional services inside or outside this state by any other health care provider who is also qualified for coverage under the fund. The provisions of this subsection shall apply to all claims filed on or after July 1, 1986.

(i) Notwithstanding the provisions of K.S.A. 40-3402 and amendments thereto, if the board of governors determines due to the number of claims filed against a health care provider or the outcome of those claims that an individual health care provider presents a material risk of significant future liability to the fund, the board of governors is authorized by a vote of a majority of the members thereof, after notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, to terminate the liability of the fund for all claims against the health care provider for damages for death or personal injury arising out of the rendering of or the failure to render professional services after the date of termination. The date of termination shall be 30 days after the date of the determination by the board of governors. The board of governors, upon termination of the liability of the fund under this subsection, shall notify the licensing or other disciplinary board having jurisdiction over the health care provider involved of the name of the health care provider and the reasons for the termination.

(j) (1) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(11), the board of governors shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4) of this subsection (j), from the state general fund to the health care stabilization fund.

(2) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(12), the board of governors shall certify to the director of accounts and reports the amount of such payment which is equal to the basic coverage liability of self-insurers, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4) of this subsection (j), from the state general fund to the health care stabilization fund.

(3) The university of Kansas medical center private practice foundation reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than $ 500,000 on July 1 of any year, the private practice corporations or foundations referred to in subsection (c) of K.S.A. 40-3402, and amendments thereto, shall remit the amount necessary to increase such balance to $ 500,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable. Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any private practice corporation or foundation or any of its full-time physician faculty employed by the university of Kansas, the director of accounts and reports shall transfer an amount equal to the amount paid from the university of Kansas medical center private practice foundation reserve fund to the health care stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

(4) The graduate medical education administration reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than $ 40,000 on July 1 of any year, the nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care

facilities affiliated with the university of Kansas school of medicine shall remit the amount necessary to increase such balance to $ 40,000 to the state treasurer for credit to such reserve fund as soon after such July 1 date as is practicable. Upon receipt of each such remittance, the state treasurer shall credit the same to such reserve fund. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, the state treasurer shall certify to the board of governors that such reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to such reserve fund. Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine the director of accounts and reports shall transfer an amount equal to the amount paid from the graduate medical education administration reserve fund to the health care stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance in such reserve fund.

(5) Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(14) or (c)(15), the board of governors shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the amount certified from the state general fund to the health care stabilization fund.

(k) Notwithstanding any other provision of the health care provider insurance availability act, no psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto shall be assessed a premium surcharge or be entitled to coverage under the fund if such hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404 and amendments thereto prior to January 1, 1988.

(l) On or after July 1, 1989, every health care provider shall make an election to be covered by one of the following options provided in this subsection (l) which shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989. Such election shall be made at the time the health care provider renews the basic coverage in effect on July 1, 1989, or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the board of governors and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The health care provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. Any election of fund coverage limits, whenever made, shall be with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after the effective date of such election of fund coverage limits. Such election shall be made for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. The election of fund coverage limits for a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the University of Kansas School of Medicine shall be deemed to be effective at the highest option. Such options shall be as follows:

(1) OPTION 1. The fund shall not be liable to pay in excess of $ 100,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $ 300,000 for such provider.

(2) OPTION 2. The fund shall not be liable to pay in excess of $ 300,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $ 900,000 for such provider.

(3) OPTION 3. The fund shall not be liable to pay in excess of $ 800,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $ 2,400,000 for such health care provider.

(m) The fund shall not be liable for any amounts due from a judgment or settlement against resident or nonresident inactive health care providers who first qualify as an inactive health care provider on or after July 1, 1989, unless such health care provider has been in compliance with K.S.A. 40-3402, and amendments thereto, for a period of not less than five years. If a health care provider has not been in compliance for five years, such health care provider may make application and payment for the coverage for the period while they are nonresident health care providers, nonresident self-insurers or resident or nonresident inactive health care providers to the fund. Such payment shall be made within 30 days after the health care provider ceases being an active health care provider and shall be made in an amount determined by the board of governors to be sufficient to fund anticipated claims based upon reasonably prudent actuarial principles. The provisions of this subsection shall not be applicable to any health care provider which becomes inactive through death or retirement, or through disability or circumstances beyond such health care provider's control, if such health care provider notifies the board of governors and receives approval for an exemption from the provisions of this subsection. Any period spent in a postgraduate program of residency training approved by the state board of healing arts shall not be included in computation of time spent in compliance with the provisions of K.S.A. 40-3402, and amendments thereto.

(n) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1991, against a licensed optometrist or pharmacist relating to any injury or death arising out of the rendering of or failure to render professional services by such optometrist or pharmacist prior to July 1, 1991, unless such optometrist or pharmacist qualified as an inactive health care provider prior to July 1, 1991.

(o) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1995, against a physical therapist registered by the state board of healing arts relating to any injury or death arising out of the rendering of or failure to render professional services by such physical therapist prior to July 1, 1995, unless such physical therapist qualified as an inactive health care provider prior to July 1, 1995.

(p) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1997, against a health maintenance organization relating to any injury or death arising out of the rendering of or failure to render professional services by such health maintenance organization prior to July 1, 1997, unless such health maintenance organization qualified as an inactive health care provider prior to July 1, 1997, and obtained coverage pursuant to subsection (m). Health maintenance organizations not qualified as inactive health care providers prior to July 1, 1997, may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1997, and payment within 30 days from notice of the calculated amount as determined by the board of governors to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.

(q) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall in no event be liable for any claims against any health care provider based upon or relating to the health care provider's sexual acts or activity, but in such cases the fund may pay reasonable and necessary expenses for attorney fees incurred in defending the fund against such claim. The fund may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

HISTORY: L. 1976, ch. 231, § 3; L. 1980, ch. 143, § 1; L. 1983, ch. 160, § 1; L. 1984, ch. 238, § 3; L. 1984, ch. 178, § 1; L. 1986, ch. 229, § 27; L. 1986, ch. 179, § 2; L. 1986, ch. 184, § 3; L. 1986, ch. 181, § 5; L. 1986, ch. 181, § 6; L. 1987, ch. 176, § 2; L. 1987, ch. 177, § 2; L. 1987, ch. 178, § 3; L. 1988, ch. 155, § 8; L. 1988, ch. 356, § 123; L. 1989, ch. 143, § 3; L. 1990, ch. 174, § 2; L. 1990, ch. 175, § 3; L. 1991, ch. 139, § 3; L. 1992, ch. 23, § 1; L. 1994, ch. 155, § 2; L. 1994, ch. 328, § 1; L. 1995, ch. 145, § 2; L. 1996, ch. 254, § 7; L. 1996, ch. 254, § 8; L. 1997, ch. 134, § 2; L. 1998, ch. 58, § 1; L. 2001, ch. 204, § 2; May 31.

40-3403a. Termination of fund coverage; equivalent insurance required. Any health care provider whose fund coverage has been terminated under subsection (i) of K.S.A. 40-3403 and amendments thereto shall, as a condition of licensure, maintain professional liability insurance coverage equivalent to that provided by the fund and shall submit to the board of governors satisfactory proof of such coverage, as required by the commissioner.

HISTORY: L. 1986, ch. 229, § 21; L. 1995, ch. 145, § 3; July 1.

40-3403b. Health care stabilization fund oversight committee; members, compensation and expenses; duties; legislative staff assistance; information provided for actuarial review, confidentiality, exemption from legal process.

(a) There is hereby created a health care stabilization fund oversight committee to consist of eleven members, one of whom shall be the chairperson of the board of governors or another member of the board of governors designated by the chairperson, one of whom shall be appointed by the president of the state senate, one of whom shall be appointed by the minority leader of the state senate, one of whom shall be appointed by the speaker of the state house of representatives, one of whom shall be appointed by the minority leader of the state house of representatives and six of whom shall be persons appointed by the legislative coordinating council. The four members appointed by the president and minority leader of the state senate and the speaker and minority leader of the state house of representatives shall be members of the state legislature. Of the six members appointed by the legislative coordinating council, four shall either be health care providers or be employed by health care providers, one shall be a representative of the insurance industry and one shall be appointed from the public at large who is not affiliated with any health care provider or the insurance industry, but none of such six members shall be members of the state legislature. Members serving on the committee on July 1, 1991, shall continue to serve at the pleasure of the appointing authority.

(b) The legislative coordinating council shall designate a chairperson of the committee from among the members thereof. The committee shall meet upon the call of the chairperson. It shall be the responsibility of the committee to make an annual report to the legislative coordinating council on or before September 1 of each year and to perform such additional duties as the legislative coordinating council shall direct. The report required to be made to the legislative coordinating council shall include recommendations to the legislature on the advisability of continuation or termination of the fund or any provisions of this act, an analysis of the market for insurance for health care providers, recommendations on ways to reduce claim and operational costs of the fund, and legislation necessary to implement recommendations of the committee.

(c) The board of governors shall provide any consulting actuarial firm contracting with the legislative coordinating council with such information or materials pertaining to the health care stabilization fund deemed necessary by the actuarial firm for performing the requirements of any actuarial reviews for the health care stabilization fund oversight committee notwithstanding any confidentiality prohibition, restriction or limitation imposed on such information or materials by any other law. The consulting actuarial firm and all employees and former employees thereof shall be subject to the same duty of confidentiality imposed by law on other persons or state agencies with regard to information and materials so provided and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality. Any reports of the consulting actuarial firm shall be made in a manner which will not reveal directly or indirectly the name of any persons or entities or individual reserve information involved in claims or actions for damages for personal injury or loss due to error, omission or negligence in the performance of professional services by health care providers. Information provided to the actuary shall not be subject to discovery, subpoena or other means of legal compulsion in any civil proceedings and shall be returned by the actuary to the health care stabilization fund.

(d) The staff of the legislative research department, the office of the revisor of statutes and the division of legislative administrative services shall provide such assistance as may be requested by the committee and to the extent authorized by the legislative coordinating council.

(e) Members of the committee attending meetings of the committee, or attending a subcommittee meeting thereof authorized by the committee, shall be paid compensation, travel expenses and subsistence expenses as provided in K.S.A. 75-3212, and amendments thereto.

(f) This section shall be a part of and supplemental to the health care provider insurance availability act.

HISTORY: L. 1989, ch. 143, § 6; L. 1990, ch. 176, § 1; L. 1991, ch. 139, § 4; L. 1994, ch. 155, § 3; Jan. 1, 1995.

40-3404. Annual premium surcharge; collection by insurer; penalty for failure of insurer to comply; basis of amount of premium surcharge.

(a) Except for any health care provider whose participation in the fund has been terminated pursuant to subsection (i) of K.S.A. 40-3403 and amendments thereto, the board of governors shall levy an annual premium surcharge on each health care provider who has obtained basic coverage and upon each self-insurer for each fiscal year. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on or after July 1, 1995, nor to health maintenance organizations on and after July 1, 1997. Such premium surcharge shall be an amount based upon a rating classification system established by the board of governors which is reasonable, adequate and not unfairly discriminating. The annual premium surcharge upon the university of Kansas medical center for persons engaged in residency training, as described in paragraph (1) of subsection (r) of K.S.A. 40-3401, and amendments thereto, shall be based on an assumed aggregate premium of $ 600,000. The annual premium surcharge upon the employers of persons engaged in residency training, as described in paragraph (2) of subsection (r) of K.S.A. 40-3401, and amendments thereto, shall be based on an assumed aggregate premium of $ 400,000. The surcharge on such $ 400,000 amount shall be apportioned among the employers of persons engaged in residency training, as described in paragraph (2) of subsection (r) of K.S.A. 40-3401, and amendments thereto, based on the number of residents employed as of July 1 of each year. The annual premium surcharge upon any nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the University of Kansas School of Medicine shall be based upon an assumed aggregate premium of $ 10,000. The surcharge on such assumed aggregate premium shall be apportioned among all such nonprofit corporations.

(b) In the case of a resident health care provider who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and amendments thereto. The amount of the premium surcharge shall be shown separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the board of governors within 30 days after the annual premium for the basic coverage is received by the insurer, but in the event basic coverage is in effect at the time this act becomes effective, such surcharge shall be based upon the unearned premium until policy expiration and annually thereafter. Within 15 days immediately following the effective date of this act, the board of governors shall send to each insurer information necessary for their compliance with this subsection. The certificate of authority of any insurer who fails to comply with the provisions of this subsection shall be suspended pursuant to K.S.A. 40-222, and amendments thereto, until such insurer shall pay the annual premium surcharge due and payable to the board of governors. In the case of a nonresident health care provider or a self-insurer, the premium surcharge shall be collected in the manner prescribed in K.S.A. 40-3402, and amendments thereto.

(c) In setting the amount of such surcharge, the board of governors may require any health care provider who has paid a surcharge for less than 24 months to pay a higher surcharge than other health care providers.

HISTORY: L. 1976, ch. 231, § 4; L. 1980, ch. 143, § 2; L. 1983, ch. 160, § 2; L. 1984, ch. 238, § 4; L. 1985, ch. 166, § 3; L. 1986, ch. 229, § 29; L. 1986, ch. 179, § 4; L. 1986, ch. 184, § 4; L. 1986, ch. 181, § 7; L. 1987, ch. 176, § 3; L. 1990, ch. 175, § 4; L. 1991, ch. 139, § 5; L. 1994, ch. 155, § 4; L. 1995, ch. 145, § 4; L. 1997, ch. 134, § 3; L. 2001, ch. 204, § 4; May 31.

40-3406. Investment of health care stabilization fund moneys. After consultation with the board of governors the director of investments may invest and reinvest moneys in the fund in accordance with investment policies established by the pooled money investment board under K.S.A. 75-4232, and amendments thereto, in the following:

(a) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of the United States sponsored enterprises which under federal law may be accepted as security for public funds, including investments in mortgage-backed securities;

(b) repurchase agreements with a Kansas bank or primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and

securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds;

(c) commercial paper that does not exceed 270 days to maturity and which has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm;

(d) interest-bearing time deposits in any commercial bank located in Kansas;

(e) the municipal investment pool fund, under K.S.A. 12-1677a, and amendments thereto;

(f) corporate bonds that are rated in one of the two highest credit rating categories by a nationally recognized investment rating firm.

HISTORY: L. 1976, ch. 231, § 6; L. 1987, ch. 295, § 4; L. 1989, ch. 48, § 85; L. 1996, ch. 254, § 9; May 23.

40-3407. Payments from fund; claim payments.

(a) Except for investment purposes, all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board of governors, or the chairperson's designee, and, with respect to claim payments, accompanied by

(1) a certified copy of a final judgment against a health care provider or inactive health care provider for which the fund is liable; or

(2) a certified copy of a court approved settlement against a health care provider or inactive health care provider for which the fund is liable.

(b) For investment purposes amounts shall be paid from the fund upon vouchers approved by the chairperson of the pooled money investment board.

HISTORY: L. 1976, ch. 231, § 7; L. 1994, ch. 155, § 5; Jan. 1, 1995.

40-3408. Liability of insurer or self-insurer for injury or death arising out of act or omission of health care provider, limitation; fund coverage excess over liability insurance coverage; permissive exclusions from coverage.

(a) The insurer of a health care provider covered by the fund or self-insurer shall be liable only for the first $ 200,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, subject to an annual aggregate of $ 600,000 for all such claims against the health care provider. However, if any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July 1, 1984.

(b) If any inactive health care provider has liability insurance in effect which is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act.

(c) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, an insurer that provides coverage to a health care provider may exclude from coverage any liability incurred by such provider:

(1) From the rendering of or the failure to render professional services by any other health care provider who is required by K.S.A. 40-3402 and amendments thereto to maintain professional liability insurance in effect as a condition to rendering professional services as a health care provider in this state; or

(2) based upon or relating to the health care provider's sexual acts or activity, but in such cases the insurer may provide reasonable and necessary expenses for attorney fees incurred in defending against such claim. The insurer may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

HISTORY: L. 1976, ch. 231, § 8; L. 1984, ch. 238, § 5; L. 1986, ch. 229, § 30; L. 1990, ch. 174, § 3; L. 1997, ch. 134, § 4; July 1.

40-3409. Service upon board of governors required in action filed in state for injury or death arising out of act or omission of health care provider; time for filing; effect of failure to make service; notification of board of governors required in action filed outside of state; copy of petition involving certain health care providers forwarded to state board of healing arts; defense of action; costs; submission of certain information to board of healing arts.

(a) (1) In any action filed in this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider covered by the fund or any inactive health care provider covered by the fund, the plaintiff shall serve a copy of the petition upon the board of governors by registered mail within 10 days from filing the same, and if such service is not made the fund shall not be liable for any amount due from a judgment or a settlement nor, in such case, shall the health care provider or the provider's insurer or the inactive health care provider or the provider's insurer be liable for such amount that, if such service had been made, would have been paid by the fund;

(2) in any action filed outside of this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider or any inactive health care provider covered by the fund, the inactive health care provider, the self-insurer or the insurer of a health care provider or an inactive health care provider shall notify the board of governors, as soon as it is reasonably practicable, that such summons or petition has been filed. If the petition names as a defendant in the action a health care provider who is licensed, registered or certified by the state board of healing arts, the board of governors shall forward a copy of the petition to the state board of healing arts.

(b) Such action shall be defended by the insurer or the self-insurer, but if the board of governors believes it to be in the best interests of the fund, the board of governors may employ independent counsel to represent the interests of the fund. The cost of employing such counsel shall be paid from the fund. The board of governors is authorized to employ independent counsel in any such action against an inactive health care provider covered by the fund.

(c) The attorneys of record and the board of governors shall submit to the state board of healing arts expert witness reports which have been made available to the opposing parties in the case and, upon the request of the state board of healing arts, any depositions, interrogatories, admissions or other relevant information concerning the case which has been made available to the opposing parties in the case shall also be submitted. The board of governors shall not be required to furnish information not in the possession of the board of governors. Any report or other information made available to the state board of healing arts in accordance with this subsection shall be subject to K.S.A. 65-2898a and amendments thereto. Reasonable expenses incurred in reproducing such reports or other information shall be paid by the state board of healing arts.

HISTORY: L. 1976, ch. 231, § 9; L. 1983, ch. 213, § 3; L. 1985, ch. 167, § 1; L. 1994, ch. 155, § 6; Jan. 1, 1995.

40-3410. Negotiation of amount of claim to be paid from fund; settlement; procedure for court approval. When the insurer of a health care provider or inactive health care provider covered by the fund has agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle liability on a claim and the claimant's demand is in an amount in excess of such settlement, or where a claim is against an inactive health care provider covered by the fund who does not have liability insurance in effect which is applicable to the claim, or where it would otherwise be in the best interest of the fund, the claimant and the board of governors may negotiate on an amount to be paid from the fund. The board of governors may employ independent counsel to represent the interest of the fund in any such

negotiations. In the event the claimant and the board of governors agree upon an amount the following procedure shall be followed:

(a) A petition shall be filed by the claimant with the court in which the action is pending against the health care provider or the inactive health care provider, or if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between the claimant and the board of governors.

(b) The court shall set such petition for hearing as soon as the court's calendar permits, and notice of the time, date and place of hearing shall be given to the claimant, the health care provider or inactive health care provider, and to the board of governors.

(c) At such hearing the court shall approve the proposed settlement if the court finds it to be valid, just and equitable.

(d) In the event the settlement is not approved, the procedure set forth in K.S.A. 40-3411 and amendments thereto shall be followed.

HISTORY: L. 1976, ch. 231, § 10; L. 1994, ch. 155, § 7; Jan. 1, 1995.

40-3411. Commencement of actions upon failure to reach settlement or obtain court approval thereof on amount to be paid from fund; defense of action; attorneys' fees; obligation of provider to attend hearings and trial and give evidence; costs.

(a) In any claim in which the insurer of a health care provider or inactive health care provider covered by the fund has agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle liability on a claim and the claimant's demand is in an amount in excess of such settlement, to which the board of governors does not agree, or where the claim is against an inactive health care provider covered by the fund who does not have liability insurance in effect which is applicable to the claim and the claimant and board of governors cannot agree upon a settlement, an action must be commenced by the claimant against the health care provider or inactive health care provider in a court of appropriate jurisdiction for such damages as are reasonable in the premises. If an action is already pending against the health care provider or inactive health care provider, the pending action shall be conducted in all respects as if the insurer or self-insurer had not agreed to settle.

(b) Any such action against a health care provider covered by the fund or inactive health care provider covered by the fund who has liability insurance in effect which is applicable to the claim shall be defended by the insurer or self-insurer in all respects as if the insurer or self-insurer had not agreed to settle its liability. Notwithstanding any other provision of law, the insurer or self-insurer shall be reimbursed from the fund for the costs of such defense incurred after the settlement agreement was reached, including a reasonable attorney's fee not to exceed the maximum hourly rate established by the board of governors. The board of governors is authorized to employ independent counsel in any such action against a health care provider or an inactive health care provider covered by the fund. If the primary carrier or self-insurer determines that the policy limits or the self-insured amount of basic coverage should be tendered to the fund in order to relieve itself of further costs of defense, it may do so in the manner specified by the board of governors. In the event of such a tender, the fund shall become responsible for the conduct of the defense. The board of governors may employ the attorney retained by the primary carrier or self-insurer or appoint other counsel to represent such health care provider. In any event, the board of governors shall pay attorneys' fees at a rate not to exceed the maximum hourly rate established by the board of governors. Under such circumstances, the fund shall have no liability for attorneys' fees to any attorney not so appointed.

(c) In any such action the health care provider or the inactive health care provider against whom claim is made shall be obligated to attend hearings and trials, as necessary, and to give evidence.

(d) The costs of the action shall be assessed against the fund if the recovery is in excess of the amount offered by the board of governors to settle the case and against the claimant if the recovery is less than such amount.

HISTORY: L. 1976, ch. 231, § 11; L. 1983, ch. 160, § 3; L. 1994, ch. 181, § 4; L. 1994, ch. 328, § 2; Jan. 1, 1995.

40-3412. Actions against health care providers or inactive health care providers; no direct action against fund or insurer; inadmissible evidence; fund not liable for certain damages.

(a) Any action for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider or inactive health care provider shall be maintained against such health care provider or inactive health care provider. No claimant shall have any right of action directly against the fund. No claimant shall have any right of action under this act directly against an insurer.
(b) Evidence that a portion of any verdict would be payable from insurance or the fund shall be inadmissible in any such action.

(c) Nothing herein shall be construed to impose any liability in the fund in excess of that specifically provided for herein for negligent failure to settle a claim or for failure to settle a claim in good faith.

(d) The fund shall have no obligations whatsoever for payment for punitive damages.

(e) The fund shall not be liable to pay amounts due from a judgment against an inactive health care provider arising from the rendering of professional services as a health care provider contrary to the provisions of this act.

(f) Any action for damages or for approval of a settlement as set forth in K.S.A. 40-3409, 40-3410 or 40-3411 shall be brought in a court of appropriate jurisdiction and venue.

HISTORY: L. 1976, ch. 231, § 12; July 1.

40-3413. Apportionment of risk among insurers; preparation of plan; contents; approval or disapproval; amendment; preparation by commissioner of insurance, when; order to discontinue unfair or unreasonable activities or activities inconsistent with act; governing board, membership; commissions on insurance written under plan.

(a) Every insurer and every rating organization shall cooperate in the preparation of a plan or plans for the equitable apportionment among such insurers of applicants for professional liability insurance and such other liability insurance as may be included in or added to the plan, who are in good faith entitled to such insurance but are unable to procure the same through ordinary methods. Such plan or plans shall be prepared and filed with the commissioner and the board of governors within a reasonable time but not exceeding 60 calendar days from the effective date of this act. Such plan or plans shall provide:

(1) Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise including the authority to make assessments against the insurers participating in the plan or plans;

(2) rates and rate modifications applicable to such risks which shall be reasonable, adequate and not unfairly discriminatory;

(3) a method whereby periodically the plan shall compare the premiums earned to the losses and expenses sustained by the plan. If there is any surplus of premiums over losses and expenses received for that year such surplus shall be transferred to the fund. If there is any excess of losses and expenses over premiums earned such losses shall be transferred from the fund, however such transfers shall not occur more often than once each three months;

(4) the limits of liability which the plan shall be required to provide, but in no event shall such limits be less than those limits provided for in subsection (a) of K.S.A. 40-3402 and amendments thereto;

(5) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner.

(b) The commissioner and board of governors shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsection (a). As soon as reasonably possible after the plan has

been filed the commissioner, consistent with the recommendations of the board of governors, shall in writing approve or disapprove the plan. Any plan shall be deemed approved unless disapproved within 30 days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in subsection (a), but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected specifying in what respect the commissioner finds that such plan fails to meet such requirements, and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in the order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

(c) If no plan meeting the standards set forth in subsection (a) is submitted to the commissioner and board of governors within 60 calendar days from the effective date of this act or within the period stated in any order disapproving an existing plan, the commissioner with the assistance of the board of governors shall after a hearing, if necessary to carry out the purpose of this act, prepare and promulgate a plan meeting such requirements.

(d) If, after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner and board of governors find that any activity or practice of any insurer or rating organization in connection with the operation of such plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this act, the commissioner and board of governors may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring discontinuance of such activity or practice.

(e) For every such plan or plans, there shall be a governing board which shall meet at least annually to review and prescribe operating rules. Such board shall consist of nine members to be appointed by the commissioner as follows: Three members shall be representatives of foreign insurers, two members shall be representatives of domestic insurers, two members shall be representatives of the general public, one member shall be a licensed insurance agent actively engaged in the solicitation of casualty insurance and one member shall be a health care provider. The members shall be appointed for a term of two years.

(f) An insurer participating in the plan approved by the commissioner may pay a commission with respect to insurance written under the plan to an insurance agent licensed for any other insurer participating in the plan or to any insurer participating in the plan. Such commission shall be reasonably equivalent to the usual customary commission paid on similar types of policies issued in the voluntary market.

HISTORY: L. 1976, ch. 231, § 13; L. 1977, ch. 166, § 1; L. 1980, ch. 144, § 1; L. 1982, ch. 208, § 1; L. 1984, ch. 178, § 2; L. 1987, ch. 179, § 1; L. 1988, ch. 356, § 124; L. 1989, ch. 144, § 1; L. 1992, ch. 23, § 2; L. 1995, ch. 145, § 5; July 1.

40-3414. Qualification of health care provider or system as self-insurer; cancellation of certificate of self-insurance, grounds; payment of surcharge; Kansas soldiers' home, Kansas veterans' home and persons engaged in residency training and persons engaged in a postgraduate training program as self-insurers; health maintenance organizations and related groups; private practice foundations and faculty of university of Kansas medical center.

(a) Any health care provider, or any health care system organized and existing under the laws of this state which owns and operates two or more medical care facilities licensed by the department of health and environment, whose aggregate annual insurance premium is or would be $ 100,000 or more for basic coverage calculated in accordance with rating procedures approved by the commissioner pursuant to K.S.A. 40-3413 and amendments thereto, may qualify as a self-insurer by obtaining a certificate of self-insurance from the board of governors. Upon application of any such health care provider or health care system, on a form prescribed by the board of governors, the board of governors may issue a certificate of self-insurance if the board of governors is satisfied that the applicant is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a health care provider obtained against such applicant arising from the applicant's rendering of professional services as a health care provider. In making such determination the board of governors shall consider (1) the financial condition of the applicant, (2) the procedures adopted and followed by the applicant to process and handle claims and potential claims, (3) the amount and liquidity of assets reserved for the settlement of claims or potential claims and (4) any other

relevant factors. The certificate of self-insurance may contain reasonable conditions prescribed by the board of governors. Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel a certificate of self-insurance upon reasonable grounds therefor. Failure to pay any judgment for which the self-insurer is liable arising from the self-insurer's rendering of professional services as a health care provider, the failure to comply with any provision of this act or the failure to comply with any conditions contained in the certificate of self-insurance shall be reasonable grounds for the cancellation of such certificate of self-insurance. The provisions of this subsection shall not apply to the Kansas soldiers' home, the Kansas veterans' home or to any person who is a self-insurer pursuant to subsection (d) or (e).

(b) Any such health care provider or health care system that holds a certificate of self-insurance shall pay the applicable surcharge set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto.

(c) The Kansas soldiers' home and the Kansas veterans' home shall be self-insurers and shall pay the applicable surcharge set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto.

(d) Persons engaged in residency training as provided in subsections (r)(1) and (2) of K.S.A. 40-3401, and amendments thereto, shall be self-insured by the state of Kansas for occurrences arising during such training, and such person shall be deemed a self-insurer for the purposes of the health care provider insurance availability act. Such self-insurance shall be applicable to a person engaged in residency training only when such person is engaged in medical activities which do not include extracurricular, extra-institutional medical service for which such person receives extra compensation and which have not been approved as provided in subsections (r)(1) and (2) of K.S.A. 40-3401, and amendments thereto.

(e) (1) A person engaged in a postgraduate training program approved by the state board of healing arts at a medical care facility or mental health center in this state may be self-insured by such medical care facility or mental health center in accordance with this subsection (e) and in accordance with such terms and conditions of eligibility therefor as may be specified by the medical care facility or mental health center and approved by the board of governors. A person self-insured under this subsection (e) by a medical care facility or mental health center shall be deemed a self-insurer for purposes of the health care provider insurance availability act. Upon application by a medical care facility or mental health center, on a form prescribed by the board of governors, the board of governors may authorize such medical care facility or mental health center to self-insure persons engaged in postgraduate training programs approved by the state board of healing arts at such medical care facility or mental health center if the board of governors is satisfied that the medical care facility or mental health center is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a health care provider obtained against a person engaged in such a postgraduate training program and arising from such person's rendering of or failure to render professional services as a health care provider.

(2) In making such determination the board of governors shall consider (A) the financial condition of the medical care facility or mental health center, (B) the procedures adopted by the medical care facility or mental health center to process and handle claims and potential claims, (C) the amount and liquidity of assets reserved for the settlement of claims or potential claims by the medical care facility or mental health center and (D) any other factors the board of governors deems relevant. The board of governors may specify such conditions for the approval of an application as the board of governors deems necessary. Upon approval of an application, the board of governors shall issue a certificate of self-insurance to each person engaged in such postgraduate training program at the medical care facility or mental health center who is self-insured by such medical care facility or mental health center.

(3) Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel, upon reasonable grounds therefor, a certificate of self-insurance issued pursuant to this subsection (e) or the authority of a medical care facility or mental health center to self-insure persons engaged in such postgraduate training programs at the medical care facility or mental health center. Failure of a person engaged in such postgraduate training program to comply with the terms and conditions of eligibility to be self-insured by the medical care facility or mental health center, the failure of a medical care facility or mental health center to pay any judgment for which such medical care facility or mental health center is liable as self-insurer of such person, the failure to comply with any provisions of the health care provider insurance availability act or the failure to comply with any conditions for approval of the application or any

conditions contained in the certificate of self-insurance shall be reasonable grounds for cancellation of such certificate of self-insurance or the authority of a medical care facility or mental health center to self-insure such persons.

(4) A medical care facility or mental health center authorized to self-insure persons engaged in such postgraduate training programs shall pay the applicable surcharge set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto on behalf of such persons.

(5) As used in this subsection (e), "medical care facility" does not include the university of Kansas medical center or those community hospitals or medical care facilities described in subsection (r)(2) of K.S.A. 40-3401, and amendments thereto.

(f) For the purposes of subsection (a), "health care provider" may include each health care provider in any group of health care providers who practice as a group to provide physician services only for a health maintenance organization, any professional corporations, partnerships or not-for-profit corporations formed by such group and the health maintenance organization itself. The premiums for each such provider, health maintenance organization and group corporation or partnership may be aggregated for the purpose of being eligible for and subject to the statutory requirements for self-insurance as set forth in this section.

(g) The provisions of subsections (a) and (f), relating to health care systems, shall not affect the responsibility of individual health care providers as defined in subsection (f) of K.S.A. 40-3401 and amendments thereto or organizations whose premiums are aggregated for purposes of being eligible for self-insurance from individually meeting the requirements imposed by K.S.A. 40-3402 and amendments thereto with respect to the ability to respond to injury or damages to the extent specified therein and K.S.A. 40-3404 and amendments thereto with respect to the payment of the health care stabilization fund surcharge.

(h) Each private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center and each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed a self-insurer for the purposes of the health care provider insurance availability act. The private practice corporation or foundation of which the full-time physician faculty is a member and each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall pay the applicable surcharge set forth in subsection (a) of K.S.A. 40-3404, and amendments thereto, on behalf of the private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center or on behalf of a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine.

(i) (1) Subject to the provisions of paragraph (4), for the purposes of the health care provider insurance availability act, each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been a health care provider as defined in K.S.A. 40-3401, and amendments thereto, from and after July 1, 1997.

(2) Subject to the provisions of paragraph (4), for the purposes of the health care provider insurance availability act, each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been a self insurer within the meaning of subsection (h) of this section, and amendments thereto, from and after July 1, 1997.

(3) Subject to the provisions of paragraph (4), for the purposes of the health care provider insurance availability act, the election of fund coverage limits for each nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be deemed to have been effective at the highest option, as provided in subsection (l) of K.S.A. 40-3403, and amendments thereto, from and after July 1, 1997.

(4) No nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall be required to pay to the fund any annual premium surcharge for any period prior to the effective date of this act. Any annual premium surcharge for the period commencing on the effective date of this act and ending on June 30, 2001, shall be prorated.

HISTORY: L. 1976, ch. 231, § 14; L. 1981, ch. 199, § 2; L. 1982, ch. 209, § 1; L. 1984, ch. 177, § 2; L. 1985, ch. 166, § 4; L. 1986, ch. 184, § 5; L. 1988, ch. 155, § 9; L. 1988, ch. 356, § 125; L. 1989, ch. 143, § 4; L. 1990, ch. 175, § 5; L. 1995, ch. 145, § 6; L. 1997, ch. 118, § 10; L. 2001, ch. 204, § 3; May 31.

40-3415. Consultation and assistance in maintaining compliance with act. The board of governors, the commissioner, the attorney general, the health care stabilization fund oversight committee and the officers and employees of the state agencies which license, register, certify or otherwise regulate health care providers are authorized and directed to consult with and assist each other in maintaining compliance with the provisions of this act.

HISTORY: L. 1976, ch. 231, § 15; L. 1984, ch. 238, § 6; L. 1989, ch. 143, § 5; July 1.

40-3416. Report of suspected violations to regulatory agencies; investigation; report to attorney general; injunctive relief. When the board of governors is informed or reasonably suspects that a health care provider is rendering professional services in violation of K.S.A. 40-3402, and amendments thereto, such board shall report the suspected violation to the state agency which licenses, registers or certifies such health care provider. Upon receipt of such report or other evidence of a violation of K.S.A. 40-3402 and amendments thereto, the state agency shall make such investigation as it deems necessary and take such other official action as deemed appropriate. If a violation is found to exist, the state agency shall promptly notify the attorney general of this state. Upon such notice the attorney general or county attorney of the proper county shall, in the name of the state, institute and maintain an action to enjoin the health care provider from rendering professional services in this state in the district court of the district in which such health care provider is rendering professional services.

HISTORY: L. 1976, ch. 231, § 16; L. 1995, ch. 145, § 7; July 1.

40-3417. Rules and regulations.

(a) Except as otherwise provided by subsection (b), the commissioner may adopt such rules and regulations as may be deemed necessary to carry out the purposes of this act.

(b) The board of governors may adopt such rules and regulations as may be deemed necessary for the administration of the fund and the powers, duties and functions of the board of governors under the health care provider insurance availability act.

HISTORY: L. 1976, ch. 231, § 17; L. 1994, ch. 155, § 9; Jan. 1, 1995.

40-3418. Severability of act. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

HISTORY: L. 1976, ch. 231, § 18; July 1.

40-3418a. Severability of act. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

HISTORY: L. 1989, ch. 143, § 9; July 1.

40-3419. Title of act. K.S.A. 40-3401 to 40-3419, inclusive, shall be known and may be cited as the health care provider insurance availability act.

HISTORY: L. 1976, ch. 231, § 19; July 1.

40-3420. Professional corporation which reorganizes as not-for-profit corporation is continuing concern for purposes of obtaining basic coverage under health care provider insurance availability act.

(a) Any professional corporation organized under the professional corporation law of Kansas that reorganizes as a Kansas not-for-profit corporation and seeks to comply with the provisions of the health care provider insurance availability act shall be considered to be a continuing concern for the purposes of obtaining basic coverage pursuant to the health care provider insurance availability act and shall not be considered to be an inactive health care provider. Any insurer issuing basic coverage to such corporation shall provide coverage for all claims made during the term of the policy issued which arose while the not-for-profit corporation was operating in this state as a professional corporation under the professional corporation law of Kansas.

(b) This section shall be part of and supplemental to the health care provider insurance availability act.

HISTORY: L. 1982, ch. 207, § 2; April 29.

CHAPTER 45. PUBLIC RECORDS, DOCUMENTS AND INFORMATION
ARTICLE 2. RECORDS OPEN TO PUBLIC

45-215. Title of act. K.S.A. 45-215 through 45-223 shall be known and may be cited as the open records act.

HISTORY: L. 1984, ch. 187, § 1; Feb. 9.

45-216. Public policy that records be open.

(a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

(b) Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

HISTORY: L. 1984, ch. 187, § 2; Feb. 9.

45-217. Definitions. As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) “Clearly warranted invasion of personal privacy” means revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.

(c) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of

inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405 and amendments thereto.

(d) "Custodian" means the official custodian or any person designated by the official custodian to carry out the duties of custodian of this act.

(e) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(f) (1) "Public agency" means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity;

(B) any municipal judge, judge of the district court, judge of the court of appeals or justice of the supreme court; or

(C) any officer or employee of the state or political or taxing subdivision of the state if the state or political or taxing subdivision does not provide the officer or employee with an office which is open to the public at least 35 hours a week.

(g) (1) "Public record" means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund.

(2) "Public record" shall not include records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state.

(3) "Public record" shall not include records of employers related to the employer's individually identifiable contributions made on behalf of employees for workers compensation, social security, unemployment insurance or retirement. The provisions of this subsection shall not apply to records of employers of lump-sum payments for contributions as described in this subsection paid for any group, division or section of an agency.

(h) "Undercover agent" means an employee of a public agency responsible for criminal law enforcement who is engaged in the detection or investigation of violations of criminal law in a capacity where such employee's identity or employment by the public agency is secret.

HISTORY: L. 1984, ch. 187, § 3; L. 1992, ch. 321, § 22; L. 1994, ch. 293, § 4; July 1.

45-218. Inspection of records; request; response; refusal, when; fees.

(a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall removal original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220.
(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.

HISTORY: L. 1984, ch. 187, § 4; Feb. 9.

45-219. Abstracts or copies of records; fees.

(a) Any person may make abstracts or obtain copies of any public record to which such person has access under this act. If copies are requested, the public agency may require a written request and advance payment of the prescribed fee. A public agency shall not be required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices, unless such items or devices were shown or played to a public meeting of the governing body thereof, but the public agency shall not be required to provide such items or devices which are copyrighted by a person other than the public agency.

(b) Copies of public records shall be made while the records are in the possession, custody and control of the custodian or a person designated by the custodian and shall be made under the supervision of such custodian or person. When practical, copies shall be made in the place where the records are kept. If it is impractical to do so, the custodian shall allow arrangements to be made for use of other facilities. If it is necessary to use other facilities for copying, the cost thereof shall be paid by the person desiring a copy of the records. In addition, the public agency may charge the same fee for the services rendered in supervising the copying as for furnishing copies under subsection (c) and may establish a reasonable schedule of times for making copies at other facilities.

(c) Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following:

> (1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available.
>
> (2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.
>
> (3) Fees for access to or copies of public records of public agencies within the legislative branch of the state government shall be established in accordance with K.S.A. 46-1207a and amendments thereto.

(4) Fees for access to or copies of public records of public agencies within the judicial branch of the state government shall be established in accordance with rules of the supreme court.

(5) Fees for access to or copies of public records of a public agency within the executive branch of the state government shall be established by the agency head. Any person requesting records may appeal the reasonableness of the fees charged for providing access to or furnishing copies of such records to the secretary of administration whose decision shall be final. A fee for copies of public records which is equal to or less than $ .25 per page shall be deemed a reasonable fee.

(d) Except as otherwise authorized pursuant to K.S.A. 75-4215 and amendments thereto, each public agency within the executive branch of the state government shall remit all moneys received by or for it from fees charged pursuant to this section to the state treasurer in accordance with K.S.A. 75-4215 and amendments thereto. Unless otherwise specifically provided by law, the state treasurer shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund or an appropriate fee fund as determined by the agency head.

(e) Each public agency of a political or taxing subdivision shall remit all moneys received by or for it from fees charged pursuant to this act to the treasurer of such political or taxing subdivision at least monthly. Upon receipt of any such moneys, such treasurer shall deposit the entire amount thereof in the treasury of the political or taxing subdivision and credit the same to the general fund thereof, unless otherwise specifically provided by law.

(f) Any person who is a certified shorthand reporter may charge fees for transcripts of such person's notes of judicial or administrative proceedings in accordance with rates established pursuant to rules of the Kansas supreme court.

HISTORY: L. 1984, ch. 187, § 5; L. 1984, ch. 282; § 2; L. 1994, ch. 100, § 1; L. 1995, ch. 135, § 1; July 1.

45-220. Procedures for obtaining access to or copies of records; request; office hours; provision of information on procedures.

(a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 45-221 or K.S.A. 2003 Supp. 45-230, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

(1) The requester has a right of access to the records and the basis of that right; or

(2) the requester does not intend to, and will not:

(A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or

(B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require that any person desiring to inspect or obtain copies of the agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

HISTORY: L. 1984, ch. 187, § 6; L. 1984, ch. 282, §3; L. 2003, ch. 126, § 2; July 1.

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open.

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

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

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

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

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

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

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

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

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

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

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

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

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

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(47) Information that would reveal the location of a shelter or safehouse or similar place where persons are provided protection from abuse.

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

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

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to

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

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

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

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

HISTORY: L. 1984, ch. 187, § 7; L. 1984, ch. 282, § 4; L. 1986, ch. 193, § 1; L. 1987, ch. 176, § 4; L. 1989, ch. 154, § 1; L. 1991, ch. 149, § 12; L. 1994, ch. 107, § 8; L. 1995, ch. 44, § 1; L. 1995, ch. 257, § 6; L. 1996, ch. 256, § 15; L. 1997, ch. 126, § 44; L. 1997, ch. 181, § 15; L. 2000, ch. 156, § 3; L. 2001, ch. 211, § 13; L. 2002, ch. 178, § 1; L. 2003, ch. 109, § 22; July 1.

45-222. Civil remedies to enforce act; attorney fees.

(a) The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus or other appropriate order, in an action brought by any person, the attorney general or a county or district attorney.

(b) In any action hereunder, the court shall determine the matter de novo. The court on its own motion, or on motion of either party, may view the records in controversy in camera before reaching a decision.

(c) In any action hereunder, the court shall award attorney fees to the plaintiff if the court finds that the agency's denial of access to the public record was not in good faith and without a reasonable basis in fact or law. The award shall be assessed against the public agency that the court determines to be responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court shall award to the defendant attorney fees if the court finds that the plaintiff maintained the action not in good faith and without a reasonable basis in fact or law.

(e) Except as otherwise provided by law, proceedings arising under this section shall be assigned for hearing and trial at the earliest practicable date.

HISTORY: L. 1984, ch. 187, § 8; L. 1984, ch. 282, § 6; L. 1990, ch. 190, § 1; L. 2000, ch. 156, § 4; July 1.

45-223. Civil penalties for violations.

(a) Any public agency subject to this act that knowingly violates any of the provisions of this act or that intentionally fails to furnish information as required by this act shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed $ 500 for each violation.

(b) Any civil penalty sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Any civil penalty sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county in which the proceedings were instigated.

HISTORY: L. 1984, ch. 187, § 9; L. 2000, ch. 156, § 5; July 1.

45-224. Continuation of fees and procedures adopted under prior act. All fees, schedules of times for making of copies, hours during which public records may be inspected or copies obtained, procedures for requesting access to or obtaining copies of public records or other policies or procedures which were prescribed or adopted by any public agency pursuant to chapter 171 of the session laws of 1983, insofar as the same are authorized or in accordance with the provisions of this act, shall constitute the fees, schedules, hours and policies or procedures of such public agency for the purposes of this act until changed, modified or revoked by the public agency in accordance with the provisions of this act.

HISTORY: L. 1984, ch. 187, § 16; Feb. 9.

45-225. Severability of provisions. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

HISTORY: L. 1984, ch. 187, § 13; Feb. 9.

45-226. Local freedom of information officer.

(a) The governing body of every public agency in Kansas which maintains public records shall designate a local freedom of information officer.

(b) The local freedom of information officer or the local freedom of information officer's designee shall:

(1) Prepare and provide educational materials and information concerning the open records act;

(2) be available to assist the public agency and members of the general public to resolve disputes relating to the open records act;

(3) respond to inquiries relating to the open records act;

(4) establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise make available to the public under the open records act. In establishing such requirements for the content of the brochure, the local freedom of information officer shall include plainly written basic information about the rights of a requestor, the responsibilities of a public agency, and the procedures for inspecting and obtaining a copy of public records under the open records act.

(c) This section shall be a part of and supplemental to the Kansas open records act.

HISTORY: L. 2000, ch. 156, § 1; July 1.

45-227. Brochure concerning public records.

(a) An official custodian shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the local freedom of information officer that contains basic information about the rights of a requestor, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the open records act. The official custodian shall display or distribute or otherwise make available to the public the

brochure at one or more places in the administrative offices of the governmental body where it is available to members of the public who request public information in person under this act.

(b) This section shall be a part of and supplemental to the Kansas open records act.

HISTORY: L. 2000, ch. 156, § 2; July 1.

45-228. Investigation of alleged violations; powers. In investigating alleged violations of the Kansas open records act, the attorney general or county or district attorney may:

(a) Subpoena witnesses, evidence, documents or other material;

(b) take testimony under oath;

(c) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violations;

(d) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material; and

(e) serve interrogatories.

HISTORY: L. 2000, ch. 156, § 6; July 1.

45-229. Legislative review of exceptions to disclosure.

(a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if:

(1) The public record is of a sensitive or personal nature concerning individuals;

(2) the public record is necessary for the effective and efficient administration of a governmental program; or

(3) the public record affects confidential information.

The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

(b) Subject to the provisions of subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.

(c) For purposes of this section, an exception is substantially amended if the amendment expands the scope of the exception to include more records or information. An exception is not substantially amended if the amendment narrows the scope of the exception.

(d) This section is not intended to repeal an exception that has been amended following legislative review before the scheduled repeal of the exception if the exception is not substantially amended as a result of the review.

(e) In the year before the expiration of an exception, the revisor of statutes shall certify to the president of the senate and the speaker of the house of representatives, by July 15, the language and statutory citation of each exception which will expire in the following year which meets the criteria of an exception as defined in this section. Any exception that is not identified and certified to the president of the senate and the speaker of the house of representatives is not subject to legislative review and shall not expire. If the revisor of statutes fails to certify an exception that the revisor subsequently determines should have been certified, the revisor shall include the exception in the following year's certification after that determination.

(f) "Exception" means any provision of law which creates an exception to disclosure or limits disclosure under the open records act pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any other provision of law.

(g) A provision of law which creates or amends an exception to disclosure under the open records law shall not be subject to review and expiration under this act if such provision:

(1) Is required by federal law;

(2) applies solely to the legislature or to the state court system.

(h) (1) The legislature shall review the exception before its scheduled expiration and consider as part of the review process the following:

(A) What specific records are affected by the exception;

(B) whom does the exception uniquely affect, as opposed to the general public;

(C) what is the identifiable public purpose or goal of the exception;

(D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;

(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:

(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

(i) Exceptions contained in the following statutes as certified by the Revisor of Statutes to the President of the Senate and the Speaker of the House of Representatives pursuant to subsection (e) of this section on June 1, 2004, are hereby continued in existence until July 1, 2010, at which time such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-4516, 16-715, 16A-2-304, 17-1312E, 17-2227, 17-5832, 17-7503, 17-7505, 17-7511, 17-7514, 17-76,139, 19-4321, 21-2511, 22-3711, 22-4707, 22-4909, 22A-243, 22A-244, 23-605, 23-9,312, 25-4161, 25-4165, 31-405, 34-251, 38-1508, 38-1520, 38-1565, 38-1609, 38-1610, 38-1618, 38-1664, 39-709B, 39-719E, 39-934, 39-1434, 39-1704, 40-222, 40-2,156, 40-2C20, 40-2C21, 40-2D20, 40-2D21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403B, 40-3421, 40-3613, 40-3805, 40-4205, 44-510J, 44-550B, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 56-1A606, 56-1A607, 56A-1201, 56A-1202, 58-4114, 59-2135, 59-2802, 59-2979, 59-29B79, 60-3333, 60-3335, 60-3336, 65-102B, 65-118, 65-119, 65-153F, 65-170G, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157A, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422D, 65-2438, 65-2836, 65-2839A, 65-2898A, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4608, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67A05, 65-6803, 65-6804, 66-101C, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220A, 66-2010, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433F, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-7405A, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 75-104, 75-712, 75-7B15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12B11, 76-3305, 79-1119, 79-1437F, 79-15,118, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 AND 79-5206.

HISTORY: L. 2000, ch. 156, § 8; July 1.

CHAPTER 58. PERSONAL AND REAL PROPERTY
ARTICLE 6. POWERS AND LETTERS OF ATTORNEY
DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

58-625. Durable power of attorney for health care decisions; meaning. A durable power of attorney for health care decisions is a power of attorney by which a principal designates another as the principal's agent in writing and the writing contains the words "this power of attorney for health care decisions shall not be affected by subsequent disability or incapacity of the principal" or "this power of attorney for health care decisions shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

HISTORY: L. 1989, ch. 181, § 1; July 1.

58-626. Same; acts of agent during disability or incapacity of principal. All acts done by an agent pursuant to a durable power of attorney for health care decisions during any period of disability or incapacity of the principal have the same effect as if the principal were competent and not disabled.

HISTORY: L. 1989, ch. 181, § 2; July 1.

58-627. Same; power of court-appointed guardian; principal authorized to nominate conservator or guardian; court appointment.

(a) If, following execution of a durable power of attorney for health care decisions, a court of the principal's domicile appoints a guardian charged with the responsibility for the principal's person, the guardian has the same power to revoke or amend the durable power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney for health care decisions, a conservator or guardian for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The

court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney for health care decisions except for good cause or disqualification.

HISTORY: L. 1989, ch. 181, § 3; July 1.

58-628. Same; effect of voluntary revocation by principal; actual knowledge required. A voluntary revocation by a principal of a durable power of attorney for health care decisions does not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the revocation, acts in good faith under the power.

HISTORY: L. 1989, ch. 181, § 4; July 1

58-629. Same; authority of agent; limitations on agent's power; persons not to be designated as agents; witnesses and acknowledgment; effect of death of principal.

(a) A durable power of attorney for health care decisions may convey to the agent the authority to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body;

(2) make all necessary arrangements for the principal at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for the physical, mental and emotional well being of the principal; and

(3) request, receive and review any information, verbal or written, regarding the principal's personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

(b) The powers of the agent herein shall be limited to the extent set out in writing in the durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate a previously existing declaration by the principal in accordance with the natural death act. No agent powers conveyed pursuant to this section shall be effective until the occurrence of the principal's impairment as determined by the principal's attending physician, as defined in subsection (a) of K.S.A. 65-28,102 and amendments thereto, unless the durable power of attorney for health care decisions specifically provides otherwise. Nothing in this act shall be construed as prohibiting an agent from providing treatment by spiritual means through prayer alone and care consistent therewith, in lieu of medical care and treatment, in accordance with the tenets and practices of any church or religious denomination of which the principal is a member.

(c) In exercising the authority under the durable power of attorney for health care decisions, the agent has a duty to act consistent with the expressed desires of the principal.

(d) Neither the treating health care provider, as defined by subsection (c) of K.S.A. 65-4921 and amendments thereto, nor an employee of the treating health care provider, nor an employee, owner, director or officer of a facility described [in] subsection (a)(2) in K.S.A. 58-629 may be designated as the agent to make health care decisions under a durable power of attorney for health care decisions unless:

(1) Related to the principal by blood, marriage or adoption; or

(2) the principal and agent are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

(e) A durable power of attorney for health care decisions shall be:

(1) Dated and signed in the presence of two witnesses at least 18 years of age neither of whom shall be the agent, related to the principal by blood, marriage or adoption, entitled to any portion of the estate of the principal according to the laws of intestate succession of this state or under any will of the principal or codicil thereto, or directly financially responsible for the principal's health care; or

(2) acknowledged before a notary public.

(f) Death of the principal shall not prohibit or invalidate acts of the agent in arranging for organ donation, autopsy or disposition of body.

(g) Any person who in good faith acts pursuant to the terms of a durable power of attorney for health care decisions without knowledge of its invalidity shall be immune from liability that may be incurred or imposed from such action.

HISTORY: L. 1989, ch. 181, § 5; L. 1994, ch. 224, § 1; L. 2002, ch. 114, § 57; July 1.

58-630. Same; effect if valid under laws of state of principal's residence; acts by agent in this state. Any durable power of attorney for health care decisions which is valid under the laws of the state of the principal's residence at the time the durable power of attorney for health care decisions was signed, shall be a durable power of attorney for health care decisions under this act. All acts taken by an agent in this state under such a durable power of attorney for health care decisions, which would be valid under the laws of this state, shall be valid acts. All acts taken by an agent for a principal whose residence is Kansas at the time the durable power of attorney for health care decisions is signed shall be valid if valid under Kansas law.

HISTORY: L. 1989, ch. 181, § 6; July 1.

58-631. Same; durable power of attorney executed before July 1, 1989, not affected by this act. A durable power of attorney executed before July 1, 1989, that specifically authorizes the attorney in fact or agent to make decisions relating to the health care of the principal shall not be limited or otherwise affected by the provisions of this act.

HISTORY: L. 1989, ch. 181, § 7; July 1.

58-632. Same; form. A durable power of attorney for health care decisions shall be in substantially the following form:

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS
GENERAL STATEMENT OF AUTHORITY GRANTED

I, , designate and appoint:

Name

Address:

Telephone Number:

to be my agent for health care decisions and pursuant to the language stated below, on my behalf to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body;

(2) make all necessary arrangements at any hospital, psychiatric hospital or psychiatric treatment facility, hospice, nursing home or similar institution; to employ or discharge health care personnel to include

physicians, psychiatrists, psychologists, dentists, nurses, therapists or any other person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care as the agent shall deem necessary for my physical, mental and emotional well being; and

(3) request, receive and review any information, verbal or written, regarding my personal affairs or physical or mental health including medical and hospital records and to execute any releases of other documents that may be required in order to obtain such information.

In exercising the grant of authority set forth above my agent for health care decisions shall:

(Here may be inserted any special instructions or statement of the principal's desires to be followed by the agent in exercising the authority granted).

LIMITATIONS OF AUTHORITY

(1) The powers of the agent herein shall be limited to the extent set out in writing in this durable power of attorney for health care decisions, and shall not include the power to revoke or invalidate any previously existing declaration made in accordance with the natural death act.

(2) The agent shall be prohibited from authorizing consent for the following items:

(3) This durable power of attorney for health care decisions shall be subject to the additional following limitations:

EFFECTIVE TIME

This power of attorney for health care decisions shall become effective (immediately and shall not be affected by my subsequent disability or incapacity or upon the occurrence of my disability or incapacity).

REVOCATION

Any durable power of attorney for health care decisions I have previously made is hereby revoked.

(This durable power of attorney for health care decisions shall be revoked by an instrument in writing executed, witnessed or acknowledged in the same manner as required herein or set out another manner of revocation, if desired.)

EXECUTION

Executed this _____, at _____, Kansas.

_____

Principal.

This document must be: (1) Witnessed by two individuals of lawful age who are not the agent, not related to the principal by blood, marriage or adoption, not entitled to any portion of principal's estate and not financially responsible for principal's health care; OR (2) acknowledged by a notary public.

_____ _____

Witness Witness

Address:_____ Address:_____

(OR)

STATE OF _____) SS.

COUNTY OF _____)

This instrument was acknowledged before me on _____ by _____.
(date) (name of person)

_____ (Signature of notary public)
(Seal, if any)

My appointment expires:_____

Copies

HISTORY: L. 1989, ch. 181, § 8; July 1.

CHAPTER 59. PROBATE CODE
ARTICLE 14. MANAGEMENT AND SALE OF ASSETS

59-1401. Possession of property by executor or administrator; marshaling assets; duties prior to final distribution. The executor or administrator shall:

(a) Have a right to the possession of all the property of a resident decedent, except the homestead and allowances to the surviving spouse and minor children;

(b) marshal all tangible personal property owned by a resident decedent located in the state of Kansas and all intangible personal property owned by a resident decedent wherever located, either directly or by ancillary administration; (c) take possession, within six months from the date of appointment, of all tangible personal property located in this state and all intangible property wherever located, to be held, administered and finally distributed as provided by law, but nothing herein shall require an executor or administrator of a resident decedent to take possession of intangible personal property being administered in another jurisdiction, if the court in which such administration is pending refuses to authorize delivery of possession; (d) pay the taxes and collect the rents and earnings on the property until the estate is settled or until delivered by order of the court to the heirs, devisees and legatees; and (e) keep in tenantable repair the buildings and fixtures under the executor's or administrator's control and may protect them by insurance. The executor or administrator, alone or with the heirs or devisees, may maintain an action for the possession of the real estate or to quiet title to it.

HISTORY: L. 1939, ch. 180, § 99; L. 1957, ch. 321, § 2; L. 1967, ch. 314, § 10; L. 1972, ch. 215, § 9; L. 1985, ch. 191, § 20; July 1.

CHAPTER 59. PROBATE CODE
ARTICLE 22. PROBATE PROCEDURE ALLOWANCE OF DEMANDS

59-2236. Notice to creditors.

(a) The publication notice to creditors shall be to all persons concerned. It shall state the date of the filing of the petition for administration or petition for probate of a will and shall notify the creditors of the decedent to exhibit their demands against the estate within four months from the date of the first published notice as provided by law and that, if their demands are not thus exhibited, they shall be forever barred. The notice to creditors required by this section shall be combined with the notice for probate or administration required by K.S.A. 59-2222 and amendments thereto, except that, if the notice required pursuant to K.S.A. 59-2222 and amendments thereto is waived pursuant to K.S.A. 59-2223 and amendments thereto, the notice to creditors required by K.S.A. 59-709 and amendments thereto and this section shall be published separately.

(b) Actual notice required by subsection (b) of K.S.A. 59-709, and amendments thereto, may include, but not be limited to, mailing a copy of the published notice, by first class mail, to creditors within a reasonable time after their identities and addresses are ascertained.

HISTORY: L. 1939, ch. 180, § 212; L. 1972, ch. 215, § 15; L. 1975, ch. 299, § 20; L. 1976, ch. 245, § 4; L. 1985, ch. 191, § 37; L. 1989, ch. 173, § 4; July 1.

59-2237. Exhibition of demands and hearing thereon; allowance without hearing, when.

(a) Any person may exhibit a demand against the estate of a decedent by filing a petition for its allowance in the proper district court. Such demand shall be deemed duly exhibited from the date of the filing of the petition. The petition shall contain a statement of all offsets which the estate is entitled. The person exhibiting the demand shall provide a copy of the demand, as filed, to the personal representative of the estate. The court shall from time to time as it deems advisable, and must at the request of the executor or administrator, or at the request of any creditor having exhibited demand, fix the time and place for the hearing of such demands. Notice of the time and place of the demand hearing shall be given in such manner and to such persons as the court shall direct.

(b) The verification of any demand may be deemed prima facie evidence of its validity unless a written defense thereto is filed. Upon the adjudication of any demand, the court shall enter its judgment allowing or disallowing it. Such judgment shall show the date of adjudication, the amount allowed, the amount disallowed and classification if allowed. Judgments relating to contingent demands shall state the nature of the contingency.

(c) Any demand not exceeding $ 5,000, other than a demand by the executor or administrator, duly itemized and verified and which is timely filed, may be paid by the executor or administrator without compliance with any of the provisions of this act relating to petition, notice of hearing, allowance by the court or otherwise. If a written defense to the petition of the executor or administrator for a final settlement and accounting is timely filed by any interested party which takes issue with payment of the demand by the executor or administrator, at the hearing on the petition the burden of proof shall be upon the executor or administrator to establish that the demand was due and owing by the estate. If the demand, or any part thereof, is disallowed by the court, the accounting of the executor or administrator shall not be allowed as to the disallowed demand, or part thereof.

HISTORY: L. 1939, ch. 180, § 213; L. 1941, ch. 284, § 10; L. 1943, ch. 213, § 3; L. 1974, ch. 238, § 1; L. 1976, ch. 242, § 35; L. 1987, ch. 212, § 1; L. 1989, ch. 173, § 5; L. 2000, ch. 25, § 6; July 1.

59-2238. Actions pending against decedent at time of death; revivor of actions.

(1) Any action pending against any person at the time of such person's death, which by law survives against the executor or administrator, shall be considered a demand legally exhibited against such estate from the time such action shall be revived. Such action shall be revived in the court in which it was pending and such court shall retain jurisdiction to try and determine said action.

(2) Any action commenced against any executor or administrator after the death of the decedent shall be considered a demand legally exhibited against such estate from the time of serving the original process on such executor or administrator.

(3) The judgment creditor shall file a certified copy of the judgment obtained in an action such as described in subsection (1) or (2) of this section in the proper district court within thirty (30) days after said judgment becomes final.

HISTORY: L. 1939, ch. 180, § 214; L. 1951, ch. 343, § 1; L. 1976, ch. 242, § 36; Jan. 10, 1977.

59-2239. Claims against estate; time for filing; when barred.

(1) All demands, including demands of the state, against a decedent's estate, whether due or to become due, whether absolute or contingent, including any demand arising from or out of any statutory liability of decedent or on account of or arising from any liability as surety, guarantor or indemnitor, and including the individual demands of executors and administrators, not exhibited as required by this act within four months after the date of the first published notice to creditors as herein provided, shall be forever barred from payment, except that the provisions of the testator's will requiring the payment of a demand exhibited later shall control. No creditor shall have any claim against or lien upon the property of a decedent other than liens existing at the date of the decedent's death, unless a petition is filed for the probate of the decedent's will pursuant to K.S.A. 59-2220 and amendments thereto or for the administration of the decedent's estate pursuant to K.S.A. 59-2219 and amendments thereto within six months after the death of the decedent and such creditor has exhibited the creditor's demand in the manner and within the time prescribed by this section, except as otherwise provided by this section.

(2) Nothing in this section shall affect or prevent the enforcement of a claim arising out of tort against the personal representative of a decedent within the period of the statute of limitations provided for an action on such claim. For the purpose of enforcing such claims, the estate of the decedent may be opened or reopened, a special administrator appointed, and suit filed against the administrator within the period of the statute of limitations for such action. Any recovery by the claimant in such action shall not affect the distribution of the assets of the estate of the decedent unless a claim was filed in the district court within the time allowed for filing claims against the estate under subsection (1) or an action commenced as provided in subsection (2) of K.S.A. 59-2238 and amendments thereto. The action may be filed in any court of competent jurisdiction and the rules of pleading and procedure in the action shall be the same as apply in civil actions. Any such special administration shall be closed and the special administrator promptly discharged when the statute of limitations for filing such actions has expired and no action has been filed or upon conclusion of any action filed. All court costs incurred in a proceeding under this subsection shall be taxed to the petitioner.

HISTORY: L. 1939, ch. 180, § 215; L. 1972, ch. 215, § 16; L. 1976, ch. 245, § 5; L. 1976, ch. 242, § 37; L. 1985, ch. 191, § 38; July 1.

CHAPTER 59. PROBATE CODE
ARTICLE 29B. CARE AND TREATMENT FOR PERSONS WITH AN ALCOHOL OR SUBSTANCE ABUSE PROBLEM

59-29b79. Disclosure of records.

(a) The district court records, and any treatment records or medical records of any patient or former patient that are in the possession of any district court or treatment facility shall be privileged and shall not be disclosed except:

(1) Upon the written consent of

(A) the patient or former patient, if an adult who has no legal guardian;

(B) the patient's or former patient's legal guardian, if one has been appointed; or

(C) a parent, if the patient or former patient is under 18 years of age, except that a patient or former patient who is 14 or more years of age and who was voluntarily admitted upon their own application made pursuant to subsection (b)(2)(B) of K.S.A. 2003 Supp. 59-29b49 and amendments thereto shall have capacity to consent to release of their records without parental consent. The head of any treatment facility who has the records may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient.

(2) Upon the sole consent of the head of the treatment facility who has the records if the head of the treatment facility makes a written determination that such disclosure is necessary for the treatment of the patient or former patient.

(3) To any state or national accreditation agency or for a scholarly study, but the head of the treatment facility shall require, before such disclosure is made, a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information.

(4) Upon the order of any court of record after a determination has been made by the court issuing the order that such records are necessary for the conduct of proceedings before the court and are otherwise admissible as evidence.

(5) In proceedings under this act, upon the oral or written request of any attorney representing the patient, or former patient.

(6) As otherwise provided for in this act.

(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, are applicable to treatment records or medical records of any patient or former patient, the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto, shall control the disposition of information contained in such records.

(c) Willful violation of this section is a class C misdemeanor.

HISTORY: L. 1998, ch. 134, § 33; July 1.

59-29b80. Civil and criminal liability. Any person acting in good faith and without negligence shall be free from all liability, civil or criminal, which might arise out of acting pursuant to this act. Any person who for a corrupt consideration or advantage, or through malice, shall make or join in making or advise the making of any false petition, report or order provided for in this act shall be guilty of a class A misdemeanor.

HISTORY: L. 1998, ch. 134, § 34; July 1.

CHAPTER 59. PROBATE CODE
ARTICLE 29. CARE AND TREATMENT FOR MENTALLY ILL PERSONS
CARE AND TREATMENT ACT FOR MENTALLY ILL PERSONS

59-2946. Definitions. When used in the care and treatment act for mentally ill persons:

(a) "Discharge" means the final and complete release from treatment, by either the head of a treatment facility acting pursuant to K.S.A. 2003 Supp. 59-2950 and amendments thereto or by an order of a court issued pursuant to K.S.A. 2003 Supp. 59-2973 and amendments thereto.

(b) "Head of a treatment facility" means the administrative director of a treatment facility or such person's designee.

(c) "Law enforcement officer" shall have the meaning ascribed to it in K.S.A. 22-2202, and amendments thereto.

(d) (1) "Mental health center" means any community mental health center organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015 and amendments thereto, or mental health clinic organized pursuant to the provisions of K.S.A. 65-211 through 65-215 and amendments thereto, or a mental health clinic organized as a not-for-profit or a for-profit corporation pursuant to K.S.A. 17-1701 through 17-1775 and amendments thereto or K.S.A. 17-6001 through 17-6010 and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto.

(2) "Participating mental health center" means a mental health center which has entered into a contract with the secretary of social and rehabilitation services pursuant to the provisions of K.S.A. 39-1601 through 39-1612 and amendments thereto.

(e) "Mentally ill person" means any person who is suffering from a mental disorder which is manifested by a clinically significant behavioral or psychological syndrome or pattern and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment.

(f) (1) "Mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e), who also lacks capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; mental retardation; organic personality syndrome; or an organic mental disorder.

(2) "Lacks capacity to make an informed decision concerning treatment" means that the person, by reason of the person's mental disorder, is unable, despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by an inability to weigh the possible risks and benefits.

(3) "Likely to cause harm to self or others" means that the person, by reason of the person's mental disorder:

(a) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty; or

(b) is substantially unable, except for reason of indigency, to provide for any of the person's basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person's ability to function on the person's own.

No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be a mentally ill person subject to involuntary commitment for care and treatment under this act unless substantial evidence is produced upon which the district court finds that the proposed patient is likely in the reasonably foreseeable future to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty.

(g) "Patient" means a person who is a voluntary patient, a proposed patient or an involuntary patient.

(1) "Voluntary patient" means a person who is receiving treatment at a treatment facility pursuant to K.S.A. 2003 Supp. 59-2949 and amendments thereto.

(2) "Proposed patient" means a person for whom a petition pursuant to K.S.A. 2003 Supp. 59-2952 or 59-2957 and amendments thereto has been filed.

(3) "Involuntary patient" means a person who is receiving treatment under order of a court or a person admitted and detained by a treatment facility pursuant to an application filed pursuant to subsection (b) or (c) of K.S.A. 2003 Supp. 59-2954 and amendments thereto.

(h) "Physician" means a person licensed to practice medicine and surgery as provided for in the Kansas healing arts act or a person who is employed by a state psychiatric hospital or by an agency of the United States and who is authorized by law to practice medicine and surgery within that hospital or agency.

(i) "Psychologist" means a licensed psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

(j) "Qualified mental health professional" means a physician or psychologist who is employed by a participating mental health center or who is providing services as a physician or psychologist under a contract with a participating mental health center, a licensed masters level psychologist, a licensed clinical psychotherapist, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, a licensed professional counselor, a licensed clinical professional counselor, a licensed specialist social worker or a licensed master social worker or a registered nurse who has a specialty in psychiatric nursing, who is employed by a participating mental health center and who is acting under the direction of a physician or psychologist who is employed by, or under contract with, a participating mental health center.

(1) "Direction" means monitoring and oversight including regular, periodic evaluation of services.

(2) "Licensed master social worker" means a person licensed as a master social worker by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(3) "Licensed specialist social worker" means a person licensed in a social work practice specialty by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.

(4) "Licensed masters level psychologist" means a person licensed as a licensed masters level psychologist by the behavioral sciences regulatory board under K.S.A. 74-5361 through 74-5373 and amendments thereto.

(5) "Registered nurse" means a person licensed as a registered professional nurse by the board of nursing under K.S.A. 65-1113 through 65-1164 and amendments thereto.

(k) "Secretary" means the secretary of social and rehabilitation services.

(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility or Topeka state hospital.

(m) "Treatment" means any service intended to promote the mental health of the patient and rendered by a qualified professional, licensed or certified by the state to provide such service as an independent practitioner or under the supervision of such practitioner.

(n) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, state psychiatric hospital, psychologist, physician or other institution or person authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

(o) The terms defined in K.S.A. 2003 Supp. 59-3051 and amendments thereto shall have the meanings provided by that section.

HISTORY: L. 1996, ch. 167, § 2; L. 1997, ch. 142, § 5; L. 1998, ch. 163, § 1; L. 2001, ch. 154, § 5; L. 2002, ch. 114, § 62; July 1.

59-2947. Computation of time. In computing the date upon or by which any act must be done or hearing held by under provisions of this article, the day on which an act or event occurred and from which a designated period of time is to be calculated shall not be included, but the last day in a designated period of time shall be included unless that day falls on a Saturday, Sunday or legal holiday, in which case the next day which is not a Saturday, Sunday or legal holiday shall be considered to be the last day.

HISTORY: L. 1996, ch. 167, § 3; Apr. 18.

59-2948. Civil rights of persons subject to the provisions of this act.

(a) The fact that a person may have voluntarily accepted any form of psychiatric treatment, or become subject to a court order entered under authority of this act, shall not be construed to mean that such person shall have lost any civil right they otherwise would have as a resident or citizen, any property right or their legal capacity, except as may be specified within any court order or as otherwise limited by the provisions of this act or the reasonable rules and regulations which the head of a treatment facility may for good cause find necessary to make for the orderly operations of that facility. No person held in custody under the provisions of this act shall be denied the right to apply for a writ of habeas corpus.

(b) There shall be no implication or presumption that a patient within the terms of this act is for that reason alone a person in need of a guardian or a conservator as provided for in K.S.A. 2003 Supp. 59-3050 through 59-3095, and amendments thereto.

HISTORY: L. 1996, ch. 167, § 4; L. 2002, ch. 114, § 63; July 1.

59-2949. Voluntary admission to treatment facility; application; written information to be given voluntary patient.

(a) A mentally ill person may be admitted to a treatment facility as a voluntary patient when there are available accommodations and the head of the treatment facility determines such person is in need of treatment therein, and that the person has the capacity to consent to treatment, except that no such person shall be admitted to a state psychiatric hospital without a written statement from a qualified mental health professional authorizing such admission.

(b) Admission shall be made upon written application:

(1) If such person is 18 years of age or older the person may make such application for themself; or

(2) (A) If such person is less than 18 years of age, a parent may make such application for their child; or

(B) if such person is less than 18 years of age, but 14 years of age or older the person may make such written application on their own behalf without the consent or written application of their parent, legal guardian or any other person. Whenever a person who is 14 years of age or older makes written application on their own behalf and is admitted as a voluntary patient, the head of the treatment facility shall promptly notify the child's parent, legal guardian or other person known to the head of the treatment facility to be interested in the care and welfare of the minor of the admittance of that child; or

(3) if such person has a legal guardian, the legal guardian may make such application provided that if the legal guardian is required to obtain authority to do so pursuant to K.S.A. 2003 Supp. 59-3077, and amendments thereto. If the legal guardian is seeking admission of their ward upon an order giving the guardian continuing authority to admit the ward to a treatment facility, as defined in K.S.A. 2003 Supp. 59-3077, and amendments thereto, the head of the treatment facility may require a statement from the patient's attending physician or from the local health officer of the area in which the patient resides confirming that the patient is in need of psychiatric treatment in a treatment facility before accepting the ward for admission, and shall divert any such person to a less restrictive treatment alternative, as may be appropriate.

(c) No person shall be admitted as a voluntary patient under the provisions of this act to any treatment facility unless the head of the treatment facility has informed such person or such person's parent, legal guardian, or other person known to the head of the treatment facility to be interested in the care and welfare of a minor, in writing, of the following:

(1) The rules and procedures of the treatment facility relating to the discharge of voluntary patients;

(2) the legal rights of a voluntary patient receiving treatment from a treatment facility as provided for in K.S.A. 2003 Supp. 59-2978 and amendments thereto; and

(3) in general terms, the types of treatment which are available or would not be available to a voluntary patient from that treatment facility.

(d) Nothing in this act shall be construed as to prohibit a proposed or involuntary patient with capacity to do so from making an application for admission as a voluntary patient to a treatment facility. Any proposed or involuntary patient desiring to do so shall be afforded an opportunity to consult with their attorney prior to making any such application. If the head of the treatment facility accepts the application and admits the patient as a voluntary patient, then the head of the treatment facility shall notify, in writing, the patient's attorney, the patient's legal guardian, if the patient has a legal guardian, and the district court which has jurisdiction over the patient of the patient's voluntary status. When a notice of voluntary admission is received, the court shall file the same which shall terminate the proceedings.

HISTORY: L. 1996, ch. 167, § 5; L. 2002, ch. 114, § 64; July 1.

59-2950. Discharge of a voluntary patient. The head of a treatment facility shall discharge any voluntary patient whose treatment in the facility is determined by the head of the treatment facility to have reached maximum benefit. Prior to the discharge, the head of the treatment facility shall give written notice of the date and time of the discharge to the patient and, if appropriate, to the patient's parent, legal guardian or other person known to the head of the treatment facility to be interested in the care and welfare of a minor patient.

HISTORY: L. 1996, ch. 167, § 6; Apr. 18.

59-2951. Right to discharge of voluntary patient; procedure.

(a) A voluntary patient shall be entitled to be discharged from a treatment facility, by the head of the treatment facility, by no later than the third day, excluding Saturdays, Sundays and holidays, after receipt of the patient's written request for discharge. If the voluntary patient is a patient in a state psychiatric hospital, that hospital shall immediately give either oral or facsimile notice to the participating mental health center serving the area where the patient intends to reside and shall consider any recommendations from that mental health center which may be received prior to the time set for discharge as specified in the notice.

(b) (1) If the voluntary patient is an adult admitted upon the application of a legal guardian or pursuant to an order of the court issued pursuant to K.S.A. 2003 Supp. 59-3077, and amendments thereto, any request for discharge must be made, in writing, by the legal guardian.

(2) If the voluntary patient is a minor, the written request for discharge shall be made by the child's parent or legal guardian except if the minor was admitted upon their own written application to become a voluntary patient made pursuant to K.S.A. 2003 Supp. 59-2949 and amendments thereto, then the minor may make the request. In the case of a minor 14 or more years of age who had made written application to become a voluntary patient on their own behalf and who has requested to be discharged, the head of the treatment facility shall promptly inform the child's parent, legal guardian, or other person known to the head of the treatment facility to be interested in the care and welfare of the minor of the minor's request for discharge.

HISTORY: L. 1996, ch. 167, § 7; L. 2002, ch. 114, § 65; July 1.

59-2952. Petition for involuntary commitment of a voluntary patient. The head of a treatment facility or other person may file a petition pursuant to K.S.A. 2003 Supp. 59-2957 and amendments thereto seeking involuntary commitment of a voluntary patient who now lacks capacity to make an informed decision concerning treatment and who is refusing reasonable treatment efforts or has requested discharge from the treatment facility. A petition filed by the head of a state psychiatric hospital, or such person's designee, accompanied by a statement from a physician or psychologist employed at the hospital that the physician or psychologist believes the person to be a mentally ill person

subject to involuntary commitment does not need to be accompanied by a written statement from a qualified mental health professional authorizing admission to a state psychiatric hospital.

HISTORY: L. 1996, ch. 167, § 8; L. 1998, ch. 134, § 39; July 1.

59-2953. Investigation; emergency detention; authority and duty of law enforcement officers.

(a) Any law enforcement officer who has a reasonable belief formed upon investigation that a person is a mentally ill person and because of such person's mental illness is likely to cause harm to self or others if allowed to remain at liberty may take the person into custody without a warrant. The officer shall transport the person to a treatment facility where the person shall be examined by a physician or psychologist on duty at the treatment facility, except that no person shall be transported to a state psychiatric hospital for examination, unless a written statement from a qualified mental health professional authorizing such an evaluation at a state psychiatric hospital has been obtained. If no physician or psychologist is on duty at the time the person is transported to the treatment facility, the person shall be examined within a reasonable time not to exceed 17 hours. If a written statement is made by the physician or psychologist at the treatment facility that after preliminary examination the physician or psychologist believes the person likely to be a mentally ill person subject to involuntary commitment for care and treatment and because of the person's mental illness is likely to cause harm to self or others if allowed to remain at liberty, and if the treatment facility is willing to admit the person, the law enforcement officer shall present to the treatment facility the application provided for in subsection (b) of K.S.A. 2003 Supp. 59-2954 and amendments thereto. If the physician or psychologist on duty at the treatment facility does not believe the person likely to be a mentally ill person subject to involuntary commitment for care and treatment the law enforcement officer shall return the person to the place where the person was taken into custody and release the person at that place or at another place in the same community as requested by the person or if the law enforcement officer believes that it is not in the best interests of the person or the person's family or the general public for the person to be returned to the place the person was taken into custody, then the person shall be released at another place the law enforcement officer believes to be appropriate under the circumstances. The person may request to be released immediately after the examination, in which case the law enforcement officer shall immediately release the person, unless the law enforcement officer believes it is in the best interests of the person or the person's family or the general public that the person be taken elsewhere for release.

(b) If the physician or psychologist on duty at the treatment facility states that, in the physician's or psychologist's opinion, the person is likely to be a mentally ill person subject to involuntary commitment for care and treatment but the treatment facility is unwilling to admit the person, the treatment facility shall nevertheless provide a suitable place at which the person may be detained by the law enforcement officer. If a law enforcement officer detains a person pursuant to this subsection, the law enforcement officer shall file the petition provided for in subsection (a) of K.S.A. 2003 Supp. 59-2957 and amendments thereto, by the close of business of the first day that the district court is open for the transaction of business or shall release the person. No person shall be detained by a law enforcement officer pursuant to this subsection in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

HISTORY: L. 1996, ch. 167, § 9; L. 1998, ch. 134, § 40; July 1.

59-2954. Emergency observation and treatment; authority of treatment facility's procedure.

(a) A treatment facility may admit and detain any person for emergency observation and treatment upon an ex parte emergency custody order issued by a district court pursuant to K.S.A. 2003 Supp. 59-2958 and amendments thereto.

(b) A treatment facility may admit and detain any person presented for emergency observation and treatment upon written application of a law enforcement officer having custody of that person pursuant to K.S.A. 2003 Supp. 59-2953 and amendments thereto, except that a state psychiatric hospital shall not admit and detain any such person unless a written statement from a qualified mental health professional authorizing such admission to a state psychiatric hospital has been obtained. The application shall state:

(1) The name and address of the person sought to be admitted, if known;

(2) the name and address of the person's spouse or nearest relative, if known;

(3) the officer's belief that the person may be a mentally ill person subject to involuntary commitment and because of the person's mental illness is likely to cause harm to self or others if not immediately detained;

(4) the factual circumstances in support of that belief and the factual circumstances under which the person was taken into custody including any known pending criminal charges; and

(5) the fact that the law enforcement officer will file the petition provided for in K.S.A. 2003 Supp. 59-2957 and amendments thereto, by the close of business of the first day thereafter that the district court is open for the transaction of business, or that the officer has been informed by a parent, legal guardian or other person that such parent, legal guardian or other person, whose name shall be stated in the application will file the petition provided for in K.S.A. 2003 Supp. 59-2957 and amendments thereto within that time.

(c) A treatment facility may admit and detain any person presented for emergency observation and treatment upon the written application of any individual, except that a state psychiatric hospital shall not admit and detain any such person, unless a written statement from a qualified mental health professional authorizing such admission to a state psychiatric hospital has been obtained. The application shall state:

(1) The name and address of the person sought to be admitted, if known;

(2) the name and address of the person's spouse or nearest relative, if known;

(3) the applicant's belief that the person may be a mentally ill person subject to involuntary commitment and because of the person's mental illness is likely to cause harm to self or others if not immediately detained;

(4) the factual circumstances in support of that belief;

(5) any pending criminal charges, if known;

(6) the fact that the applicant will file the petition provided for in K.S.A. 2003 Supp. 59-2957 and amendments thereto by the close of business of the first day thereafter that the district court is open for the transaction of business; and

(7) if the application is to a treatment facility other than a state psychiatric hospital it shall also be accompanied by a statement in writing of a physician, psychologist, or qualified mental health professional finding that the person is likely to be a mentally ill person subject to involuntary commitment for care and treatment under this act.

(d) Any treatment facility or personnel thereof who in good faith renders treatment in accordance with law to any person admitted pursuant to subsection (b) or (c), shall not be liable in a civil or criminal action based upon a claim that the treatment was rendered without legal consent.

HISTORY: L. 1996, ch. 167, § 10; L. 1998, ch. 134, § 41; July 1.

59-2955. Notice of right to communicate upon admission; notice of admission; notice of rights.

(a) Whenever any person is involuntarily admitted to or detained at a treatment facility pursuant to subsection (b) or (c) of K.S.A. 2003 Supp. 59-2954 and amendments thereto, or pursuant to an ex parte emergency custody order issued pursuant to K.S.A. 2003 Supp. 59-2958 and amendments thereto, the head of the treatment facility shall:

(1) Immediately advise the person in custody that such person is entitled to immediately contact the person's legal counsel, legal guardian, personal physician or psychologist, minister of religion, including a Christian Science practitioner or immediate family as defined in subsection (b) or any combination thereof. If the person desires to make such contact, the head of the treatment facility shall make available to the person reasonable means for making such immediate communication;

(2) provide notice of the person's involuntary admission including a copy of the document authorizing the involuntary admission to that person's attorney or legal guardian, immediately upon learning of the existence and whereabouts of such attorney or legal guardian, unless that attorney or legal guardian was the person who signed the application resulting in the patient's admission. If authorized by the patient pursuant to K.S.A. 65-5601 through 65-5605 and amendments thereto, the head of the treatment facility also shall provide notice to the patient's immediate family, as defined in subsection (b), immediately upon learning of the existence and whereabouts of such family, unless the family member to be notified was the person who signed the application resulting in the patient's admission; and

(3) immediately advise the person in custody of such person's rights provided for in K.S.A. 2003 Supp. 59-2978 and amendments thereto.

(b) "Immediate family" means the spouse, adult child or children, parent or parents, and sibling or siblings, or any combination thereof.

HISTORY: L. 1996, ch. 167, § 11; L. 1998, ch. 134, § 42; July 1.

59-2956. Emergency observation; discharge. The head of the treatment facility shall discharge any person admitted pursuant to subsection (a) of K.S.A. 2003 Supp. 59-2954 and amendments thereto when the ex parte emergency custody order expires, and shall discharge any person admitted pursuant to subsection (b) or (c) of K.S.A. 2003 Supp. 59-2954 and amendments thereto not later than the close of business of the first day that the district court is open for the transaction of business after the admission date of the person, unless a district court orders that such person remain in custody under an ex parte emergency custody order issued pursuant to the provisions of K.S.A. 2003 Supp. 59-2958 and amendments thereto, or a temporary custody order issued pursuant to the provisions of K.S.A. 2003 Supp. 59-2959 and amendments thereto.

HISTORY: L. 1996, ch. 167, § 12; Apr. 18.

59-2957. Petition for determination of mental illness; request for ex parte emergency custody order; content.

(a) A verified petition to determine whether or not a person is a mentally ill person subject to involuntary commitment for care and treatment under this act may be filed in the district court of the county wherein that person resides or wherein such person may be found.

(b) The petition shall state:

(1) The petitioner's belief that the named person is a mentally ill person subject to involuntary commitment and the facts upon which this belief is based;

(2) to the extent known, the name, age, present whereabouts and permanent address of the person named as possibly a mentally ill person subject to involuntary commitment; and if not known, any information the petitioner might have about this person and where the person resides;

(3) to the extent known, the name and address of the person's spouse or nearest relative or relatives, or legal guardian, or if not known, any information the petitioner might have about a spouse, relative or relatives or legal guardian and where they might be found;

(4) to the extent known, the name and address of the person's legal counsel, or if not known, any information the petitioner might have about this person's legal counsel;

(5) to the extent known, whether or not this person is able to pay for medical services, or if not known, any information the petitioner might have about the person's financial circumstances or indigency;

(6) to the extent known, the name and address of any person who has custody of the person, and any known pending criminal charge or charges or of any arrest warrant or warrants outstanding or, if there are none, that fact or if not known, any information the petitioner might have about any current criminal justice system involvement with the person;

(7) the name or names and address or addresses of any witness or witnesses the petitioner believes has knowledge of facts relevant to the issue being brought before the court; and

(8) if the petitioner wishes to recommend to the court that the proposed patient should be sent to a treatment facility other than a state psychiatric hospital, then the name and address of the treatment facility to which the petitioner recommends that the proposed patient be sent for treatment if the proposed patient is found to be a mentally ill person subject to involuntary commitment for care and treatment under this act.

(c) The petition shall be accompanied by:

(1) A signed certificate from a physician, psychologist, or qualified mental health professional designated by the head of a participating mental health center, stating that such professional has personally examined the person and any available records and has found that the person, in such professional's opinion, is likely to be a mentally ill person subject to involuntary commitment for care and treatment under this act, unless the court allows the petition to be accompanied by a verified statement by the petitioner that the petitioner had attempted to have the person seen by a physician, psychologist or such qualified mental health professional, but that the person failed to cooperate to such an extent that the examination was impossible to conduct;

(2) if admission to a treatment facility other than a state psychiatric hospital is sought, if it is then available, a statement of consent to the admission of the proposed patient to the treatment facility named by the petitioner pursuant to subsection (b)(8) signed by the head of that treatment facility or other documentation which shows the willingness of the treatment facility to admitting the proposed patient for care and treatment; and

(3) if applicable, a copy of any notice given pursuant to K.S.A. 2003 Supp. 59-2951 and amendments thereto in which the named person has sought discharge from a treatment facility into which they had previously entered voluntarily, or a statement from the treating physician or psychologist that the person was admitted as a voluntary patient but now lacks capacity to make an informed decision concerning treatment and is refusing reasonable treatment efforts, and including a description of the treatment efforts being refused.

(d) The petition may include a request that an ex parte emergency custody order be issued pursuant to K.S.A. 2003 Supp. 59-2958 and amendments thereto. If such request is made the petition shall also include:

(1) A brief statement explaining why the person should be immediately detained or continue to be detained;

(2) the place where the petitioner requests that the person be detained or continue to be detained;

(3) if applicable, because detention is requested in a treatment facility other than a state psychiatric hospital, a statement that the facility is willing to accept and detain such person; and

(4) if applicable, because admission to a state psychiatric hospital is sought, the necessary statement from a qualified mental health professional authorizing admission and emergency care and treatment.

(e) The petition may include a request that a temporary custody order be issued pursuant to K.S.A. 2003 Supp. 59-2959 and amendments thereto.

HISTORY: L. 1996, ch. 167, § 13; L. 1997, ch. 152, § 5; L. 1998, ch. 134, § 43; July 1.

59-2958. Ex parte emergency custody order.

(a) At the time the petition for the determination of whether a person is a mentally ill person subject to involuntary commitment for care and treatment under this act is filed, or any time thereafter prior to the trial upon the petition as

provided for in K.S.A. 2003 Supp. 59-2965 and amendments thereto, the petitioner may request in writing that the district court issue an ex parte emergency order including either or both of the following: (1) An order directing any law enforcement officer to take the person named in the order into custody and transport the person to a designated treatment facility or other suitable place willing to receive and detain the person; (2) an order authorizing any named treatment facility or other place to detain or continue to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

(b) No ex parte emergency custody order shall provide for the detention of any person at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.

(c) No ex parte emergency custody order shall provide for the detention of any person in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

(d) If no other suitable facility at which such person may be detained is willing to accept the person, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

(e) An ex parte emergency custody order issued under this section shall expire at 5:00 p.m. of the second day the district court is open for the transaction of business after the date of its issuance, which expiration date shall be stated in the order.

(f) The district court shall not issue successive ex parte emergency custody orders.

(g) In lieu of issuing an ex parte emergency custody order, the court may allow the person with respect to whom the request was made to remain at liberty, subject to such conditions as the court may impose.

HISTORY: L. 1996, ch. 167, § 14; L. 1997, ch. 152, § 6; L. 1998, ch. 134, § 44; July 1.

59-2959. Temporary custody order; request for; procedure.

(a) At the time that the petition for determination of mental illness is filed, or any time thereafter prior to the trial upon the petition as provided for in K.S.A. 2003 Supp. 59-2965 and amendments thereto, the petitioner may request in writing that the district court issue a temporary custody order. The request shall state:

(1) The reasons why the person should be detained prior to the hearing on the petition;

(2) whether an ex parte emergency custody order has been requested or was granted; and

(3) the present whereabouts of the person named in the petition.

(b) Upon the filing of a request for a temporary custody order, the court shall set the matter for a hearing which shall be held not later than the close of business of the second day the district court is open for the transaction of business after the filing of the request. The petitioner and the person with respect to whom the request has been filed shall be notified of the time and place of the hearing and that they shall each be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. If the person with respect to whom the request has been filed has not yet retained or been appointed an attorney, the court shall appoint an attorney for the person.

(c) At the hearing scheduled upon the request, the person with respect to whom the request has been filed shall be present unless the attorney for the person requests that the person's presence be waived and the court finds that the person's presence at the hearing would be injurious to the person's welfare. The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the person at the hearing would be injurious to such person's welfare. However, if the person with respect to whom the request has been filed states in writing to the court or to such person's attorney that such person wishes to be present at the hearing, the person's presence cannot be waived.

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the person with respect to whom the request has been filed. All persons not necessary for the conduct of the proceedings may be excluded. The court shall receive all relevant and material evidence which may be offered. The rules governing evidentiary and procedural matters shall be applied to hearings under this section in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties. The facts or data upon which a duly qualified expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and if of a type reasonably relied upon by experts in their particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data unless the court requires otherwise. If requested on cross-examination, the expert shall disclose the underlying facts or data.

If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney determines to be of aid to the court in determining whether or not there is probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, and that it would be in the best interests of the person to be detained until the trial upon the petition.

(d) After the hearing, if the court determines from the evidence that:

(1) There is probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, and that it is in the best interests of the person to be detained until the trial upon the petition, the court shall issue a temporary custody order;

(2) there is probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, but that it would not be in their best interests to be detained until the trial upon the petition, the court may allow the person to be at liberty, subject to such conditions as the court may impose;

(3) there is not probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, the court shall terminate the proceedings and release the person.

(e) (1) A temporary custody order issued pursuant to this section may direct any law enforcement officer or any other person designated by the court to take the person named in the order into custody and transport them to a designated treatment facility, and authorize the designated treatment facility to detain and treat the person until the trial upon the petition.

(2) No temporary custody order shall provide for the detention and treatment of any person at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.

(3) No temporary custody order shall provide for the detention of any person in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

(4) If no other suitable facility at which such person may be detained is willing to accept the person, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the trial upon the petition.

HISTORY: L. 1996, ch. 167, § 15; Apr. 18.

59-2960. Preliminary orders; continuances and advancement of trial.

(a) Upon the filing of the petition provided for in K.S.A. 2003 Supp. 59-2957 and amendments thereto, the district court shall issue the following:

(1) An order fixing the time and place of the trial upon the petition. Such hearing, in the court's discretion, may be conducted in a courtroom, a treatment facility or at some other suitable place. The time fixed in the order shall in no event be earlier than seven days or later than 14 days after the date of the filing of the petition. If a demand for a trial by jury is later filed by the proposed patient, the court may continue the trial and fix a new time and place of the trial at a time that may exceed beyond the 14 days but shall be fixed within a reasonable time not exceeding 30 days from the date of the filing of the demand.

(2) An order that the proposed patient appear at the time and place of the hearing and providing that the proposed patient's presence will be required at the hearing unless the attorney for the proposed patient shall make a request that the proposed patient's presence be waived and the court finds that the proposed patient's presence at the hearing would be injurious to the proposed patient's welfare. The order shall further provide that notwithstanding the foregoing provision, if the proposed patient requests in writing to the court or to such person's attorney that the proposed patient wishes to be present at the hearing, the proposed patient's presence cannot be waived.

(3) An order appointing an attorney to represent the proposed patient at all stages of the proceedings and until all orders resulting from such proceedings are terminated. The court shall give preference, in the appointment of this attorney, to any attorney who has represented the proposed patient in other matters if the court has knowledge of that prior representation. The proposed patient shall have the right to engage an attorney of the proposed patient's own choice and, in such event, the attorney appointed by the court shall be relieved of all duties by the court.

(4) An order that the proposed patient shall appear at a time and place that is in the best interests of the patient where the proposed patient will have the opportunity to consult with the proposed patient's court-appointed attorney, which time shall be at least five days prior to the date set for the trial under K.S.A. 2003 Supp. 59-2965 and amendments thereto.

(5) An order for a mental evaluation as provided for in K.S.A. 2003 Supp. 59-2961 and amendments thereto.

(6) A notice as provided for in K.S.A. 2003 Supp. 59-2963 and amendments thereto.

(7) If the petition also contains allegations as provided for in K.S.A. 2003 Supp. 59-3058, 59-3059, 59-3060, 59-3061 or 59-3062, and amendments thereto, those orders necessary to make a determination of the need for a legal guardian or conservator, or both, to act on behalf of the proposed patient. For these purposes, the trials required by K.S.A. 2003 Supp. 59-2965 and 59-3067, and amendments thereto, may be consolidated.

(b) Nothing in this section shall prevent the court from granting an order of continuance, for good cause shown, to any party for no longer than seven days, except that such limitation does not apply to a request for an order of continuance made by the proposed patient or to a request made by any party if the proposed patient absents him or herself such that further proceedings can not be held until the proposed patient has been located. The court also, upon the request of any party, may advance the date of the hearing if necessary and in the best interests of all concerned.

HISTORY: L. 1996, ch. 167, § 16; L. 2002, ch. 114, § 66; July 1.

59-2961. Order for a mental evaluation; procedure.

(a) The order for a mental evaluation required by subsection (a)(5) of K.S.A. 2003 Supp. 59-2960 and amendments thereto, shall be served in the manner provided for in subsections (c) and (d) of K.S.A. 2003 Supp. 59-2963 and amendments thereto. It shall order the proposed patient to submit to a mental evaluation to be conducted by a physician, psychologist or qualified mental health professional designated by the head of a participating mental health center and to undergo such other physical or other evaluations as may be ordered by the court, except that any proposed patient who is not subject to a temporary custody order issued pursuant to K.S.A. 2003 Supp. 59-2959 and amendments thereto and who requests a hearing pursuant to K.S.A. 2003 Supp. 59-2962 and amendments thereto, need not submit to such

evaluations until that hearing has been held and the court finds that there is probable cause to believe that the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under this act. The evaluation may be conducted at a treatment facility, the home of the proposed patient or any other suitable place that the court determines is not likely to have a harmful effect on the welfare of the proposed patient. A state psychiatric hospital shall not be ordered to evaluate any proposed patient, unless a written statement from a qualified mental health professional authorizing such an evaluation at a state psychiatric hospital has been filed with the court.

(b) At the time designated by the court in the order, but in no event later than three days prior to the date of the trial provided for in K.S.A. 2003 Supp. 59-2965 and amendments thereto, the examiner shall submit to the court a report, in writing, of the evaluation which report also shall be made available to counsel for the parties at least three days prior to the trial. The report also shall be made available to the proposed patient and to whomever the patient directs, unless for good cause recited in the order, the court orders otherwise. Such report shall state that the examiner has made an examination of the proposed patient and shall state the opinion of the examiner on the issue of whether or not the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under the act and the examiner's opinion as to the least restrictive treatment alternative which will protect the proposed patient and others and allow for the improvement of the proposed patient if treatment is ordered.

HISTORY: L. 1996, ch. 167, § 17; L. 1998, ch. 134, § 45; July 1.

59-2962. Mental evaluation; hearing in noncustodial circumstances. Whenever a proposed patient who is not subject to a temporary custody order issued pursuant to K.S.A. 2003 Supp. 59-2959 and amendments thereto requests a hearing pursuant to this section, a hearing shall be held within a reasonable time thereafter. The petitioner and the proposed patient shall be notified of the time and place of the hearing, afforded an opportunity to testify, and to present and cross-examine witnesses. The proposed patient shall be present at the hearing, and the proposed patient's presence cannot be waived. All persons not necessary for the conduct of the proceedings may be excluded. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the welfare of the proposed patient. The court shall receive all relevant and material evidence which may be offered. If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney determines to be of aid to the court in determining whether or not there is probable cause to believe that the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under this act. If the court determines from the evidence that there is probable cause to believe that the proposed patient is a mentally ill person subject to involuntary commitment, the court shall issue the order for a mental evaluation; otherwise, the court shall terminate the proceedings.

HISTORY: L. 1996, ch. 167, § 18; Apr. 18.

59-2963. Notice; contents.

(a) Notice as required by subsection (a)(6) of K.S.A. 2003 Supp. 59-2960 and amendments thereto shall be given to the proposed patient named in the petition, the proposed patient's legal guardian if there is one, the attorney appointed to represent the proposed patient, the proposed patient's spouse or nearest relative and to such other persons as the court directs. The notice shall also be given to the participating mental health center for the county where the proposed patient resides.

(b) The notice shall state:

(1) That a petition has been filed, alleging that the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under the act and requesting that the court order treatment;

(2) the date, time and place of the trial;

(3) the name of the attorney appointed to represent the proposed patient and the time and place where the proposed patient shall have the opportunity to consult with this attorney;

(4) that the proposed patient has a right to a jury trial if a written demand for such is filed with the court at least four days prior to the time set for trial; and

(5) that if the proposed patient demands a jury trial, the trial date may have to be continued by the court for a reasonable time in order to empanel a jury, but that this continuance will not exceed 30 days from the date of the filing of the demand.

(c) The court may order any of the following persons to serve the notice upon the proposed patient:

(1) The physician or psychologist currently administering to the proposed patient, if the physician or psychologist consents to doing so;

(2) the head of the participating mental health center or the designee thereof;

(3) the local health officer or such officer's designee;

(4) the secretary of social and rehabilitation services or the secretary's designee if the proposed patient is being detained at a state psychiatric hospital;

(5) any law enforcement officer; or

(6) the attorney of the proposed patient.

(d) The notice shall be served personally on the proposed patient as soon as possible, but not less than six days prior to the date of the trial, and immediate return thereof shall be made to the court by the person serving notice. Unless otherwise ordered by the court, notice shall be served on the proposed patient by a nonuniformed person.

(e) Notice to all other persons may be made by mail or in such other manner as directed by the court.

HISTORY: L. 1996, ch. 167, § 19; L. 1998, ch. 134, § 46; July 1.

59-2964. Continuance of hearings; order of referral for short-term treatment.

(a) The patient at any time may request, in writing, that any further proceedings be continued for not more than three months so that the court may make an order of continuance and referral for short-term treatment. The written request must be acknowledged before a notary public or a judge of the district court. The patient may request successive orders of continuance and referral. Upon receipt of such a request, the court may order the patient referred for short-term treatment to a designated treatment facility for a specified period of time not to exceed three months from the date the request is signed by the patient. An order of referral for short-term treatment in a treatment facility other than a state psychiatric hospital shall be conditioned upon the consent of the head of that treatment facility to accept the patient. No order may be issued for referral to a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such admission and treatment at a state psychiatric hospital has been filed with the court. The court may not issue an order of referral unless the attorney representing the patient has filed a statement, in writing, that the attorney has explained to the patient the nature of an order of referral and the right of the patient to have the further proceedings conducted as scheduled.

(b) If the patient's request for an order for referral for short-term treatment is made prior to the hearing required to be held pursuant to the provisions of K.S.A. 2003 Supp. 59-2959 or 59-2962 and amendments thereto, and granted, it shall constitute a waiver of the patient's right to this hearing.

(c) Within any order of continuance and referral, the court shall confirm the new date and time set for the trial and direct that a copy of the court's order shall be given to the patient, to the attorney representing the patient, the petitioner or the county or district attorney as appropriate, the patient's legal guardian if there is one, the patient's spouse or nearest relative as appropriate, the head of the treatment facility to which the patient is being referred, and such other persons as

the court directs. Any trial so continued shall then be held on the date set at the end of the referral period, unless again continued by the court upon the patient's request for another order of continuance and referral, or on the date set in any order of continuance necessitated by the patient's demand for a jury trial.

(d) Not later than 14 days prior to the date set for the trial provided for in K.S.A. 2003 Supp. 59-2965 and amendments thereto by any order of continuance and referral, unless the proposed patient has been accepted as a voluntary patient by the treatment facility or unless the proposed patient has filed a written request for another successive period of continuance and referral, the facility treating the proposed patient shall submit a written report of its findings and recommendations to the court, which report also shall be made available to counsel for the parties. The report also shall be made available to the proposed patient and to whomever the patient directs, unless for good cause recited in the order, the court orders otherwise.

HISTORY: L. 1996, ch. 167, § 20; L. 1998, ch. 134, § 47; July 1.

59-2965. Trial upon the petition; procedure.

(a) Trial upon the petition shall be held at the time and place specified in the court's order issued pursuant to subsection (a) of K.S.A. 2003 Supp. 59-2960 and amendments thereto unless a continuance as provided in K.S.A. 2003 Supp. 59-2960 or 59-2964 and amendments thereto, has been granted. The hearing shall be held to the court only, unless the proposed patient, at least 4 days prior to the time set for the hearing, demands, in writing, a jury trial.

(b) The jury, if one is demanded, shall consist of 6 persons. The jury panel shall be selected as provided by law. Notwithstanding the provision within K.S.A. 43-166 otherwise, a panel of prospective jurors may be assembled by the clerk upon less than 20 days notice in this circumstance. From such panel 12 qualified jurors, who have been passed for cause, shall be empaneled. Prior service as a juror in any court shall not exempt, for that reason alone, any person from jury service hereunder. From the panel so obtained, the proposed patient or the proposed patient's attorney shall strike one name; then the petitioner, or the petitioner's attorney, shall strike one name; and so on alternatively until each has stricken 3 names so as to reach the jury of 6 persons. During this process, if either party neglects or refuses to aid in striking the names, the court shall strike a name on behalf of such party.

(c) The proposed patient shall be present at the hearing unless the attorney for the proposed patient requests that the proposed patient's presence be waived and the court finds the person's presence at the hearing would be injurious to their welfare. The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed patient at the hearing would be injurious to their welfare. However, if the proposed patient states in writing to the court or such person's attorney that such patient wishes to be present at the hearing, the person's presence cannot be waived. The petitioner and the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. All persons not necessary for the conduct of the proceedings may be excluded. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the welfare of the proposed patient. The court shall receive all relevant and material evidence which may be offered, including the testimony or written findings and recommendations of the examiner who evaluated the proposed patient pursuant to the court's order issued under K.S.A. 2003 Supp. 59-2961 and amendments thereto. Such evidence shall not be privileged for the purpose of this hearing.

(d) The rules governing evidentiary and procedural matters at hearings under this section shall be applied in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties.

(e) If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney shall determine to be of aid to the court in determining whether or not the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under this act.

HISTORY: L. 1996, ch. 167, § 21; Apr. 18.

59-2966. Order for treatment; dismissal.

(a) Upon the completion of the trial, if the court or jury finds by clear and convincing evidence that the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under this act, the court shall order treatment for such person for a specified period of time not to exceed three months from the date of the trial at a treatment facility, except that the court shall not order treatment at a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such treatment at a state psychiatric hospital has been filed with the court. An order for treatment in a treatment facility other than a state psychiatric hospital shall be conditioned upon the consent of the head of that treatment facility to accepting the patient. In the event no other appropriate treatment facility has agreed to provide treatment for the patient, and no qualified mental health professional has authorized treatment at a state psychiatric hospital, the participating mental health center for the county in which the patient resides shall be given responsibility for providing or securing treatment for the patient or if no county of residence can be determined for the patient, then the participating mental health center for the county in which the patient was taken into custody or in which the petition was filed shall be given responsibility for providing or securing treatment for the patient.

(b) A copy of the order for treatment shall be provided to the head of the treatment facility.

(c) When the court orders treatment, it shall retain jurisdiction to modify, change or terminate such order, unless venue has been changed pursuant to K.S.A. 2003 Supp. 59-2971 and amendments thereto and then the receiving court shall have continuing jurisdiction.

(d) If the court finds from the evidence that the proposed patient has not been shown to be a mentally ill person subject to involuntary commitment for care and treatment under this act the court shall release the person and terminate the proceedings.

HISTORY: L. 1996, ch. 167, § 22; L. 1997, ch. 152, § 7; L. 1998, ch. 134, § 48; July 1.

59-2967. Order for outpatient treatment; revocation; reviews.

(a) An order for outpatient treatment may be entered by the court at any time in lieu of any type of order which would have required inpatient care and treatment if the court finds that the patient is likely to comply with an outpatient treatment order and that the patient will not likely be a danger to the community or be likely to cause harm to self or others while subject to an outpatient treatment order.

(b) No order for outpatient treatment shall be entered unless the head of the outpatient treatment facility has consented to treat the patient on an outpatient basis under the terms and conditions set forth by the court, except that no order for outpatient treatment shall be refused by a participating mental health center.

(c) If outpatient treatment is ordered, the order may state specific conditions to be followed by the patient, but shall include the general condition that the patient is required to comply with all directives and treatment as required by the head of the outpatient treatment facility or the head's designee. The court may also make such orders as are appropriate to provide for monitoring the patient's progress and compliance with outpatient treatment. Within any outpatient order for treatment the court shall specify the period of treatment as provided for in subsection (a) of K.S.A. 2003 Supp. 59-2966 or subsection (f) of K.S.A. 2003 Supp. 59-2969 and amendments thereto.

(d) The court shall retain jurisdiction to modify or revoke the order for outpatient treatment at any time on its own motion, on the motion of any counsel of record or upon notice from the treatment facility of any need for new conditions in the order for outpatient treatment or of material noncompliance by the patient with the order for outpatient treatment. However, if the venue of the matter has been transferred to another court, then the court having venue of the matter shall have such jurisdiction to modify or revoke the outpatient treatment order. Revocation or modification of an order for outpatient treatment may be made ex parte by order of the court in accordance with the provisions of subsections (e) or (f).

(e) The treatment facility shall immediately report to the court any material noncompliance by the patient with the outpatient treatment order. Such notice may be verbal or by telephone but shall be followed by a verified written or

facsimile notice sent to the court, to counsel for all parties and, as appropriate, to the head of the inpatient treatment facility designated to receive the patient, by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic communication was made to the court. Upon receipt of verbal, telephone, or verified written or facsimile notice of material noncompliance, the court may enter an ex parte emergency custody order providing for the immediate detention of the patient in a designated inpatient treatment facility except that the court shall not order the detention of the patient at a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such detention at a state psychiatric hospital has been filed with the court. Any ex parte emergency custody order issued by the court under this subsection shall expire at 5:00 p.m. of the second day the district court is open for the transaction of business after the patient is taken into custody. The court shall not enter successive ex parte emergency custody orders.

(f) (1) Upon the taking of a patient into custody pursuant to an ex parte emergency custody order revoking a previously issued order for outpatient treatment and ordering the patient to involuntary inpatient care the court shall set the matter for hearing not later than the close of business on the second day the court is open for business after the patient is taken into custody. Notice of the hearing shall be given to the patient, the patient's attorney, the patient's legal guardian, the petitioner or the county or district attorney as appropriate, the head of the outpatient treatment facility and the head of the inpatient treatment facility, similarly as provided for in K.S.A. 2003 Supp. 59-2963 and amendments thereto.

(2) Upon the entry of an ex parte order modifying a previously issued order for outpatient treatment, but allowing the patient to remain at liberty, a copy of the order shall be served upon the patient, the patient's attorney, the county or district attorney and the head of the outpatient treatment facility similarly as provided for in K.S.A. 2003 Supp. 59-2963 and amendments thereto. Thereafter, any party to the matter, including the petitioner, the county or district attorney or the patient, may request a hearing on the matter if the request is filed within five days from the date of service of the ex parte order upon the patient. The court may also order such a hearing on its own motion within five days from the date of service of the notice. If no request or order for hearing is filed within the five-day period, the ex parte order and the terms and conditions set out in the ex parte order shall become the final order of the court substituting for any previously entered order for outpatient treatment. If a hearing is requested, a formal written request for revocation or modification of the outpatient treatment order shall be filed by the county or district attorney or the petitioner and a hearing shall be held thereon within 5 days after the filing of the request.

(g) The hearing held pursuant to subsection (f) shall be conducted in the same manner as hearings provided for in K.S.A. 2003 Supp. 59-2959 and amendments thereto. Upon the completion of the hearing, if the court finds by clear and convincing evidence that the patient violated any condition of the outpatient treatment order, the court may enter an order for inpatient treatment, except that the court shall not order treatment at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such treatment at a state psychiatric hospital has been filed with the court, or may modify the order for outpatient treatment with different terms and conditions in accordance with this section.

(h) The outpatient treatment facility shall comply with the provisions of K.S.A. 2003 Supp. 59-2969 and amendments thereto concerning the filing of written reports for each period of treatment during the time any outpatient treatment order is in effect and the court shall receive and process such reports in the same manner as reports received from an inpatient treatment facility.

HISTORY: L. 1996, ch. 167, § 23; L. 1997, ch. 152, § 8; L. 1998, ch. 134, § 49; July 1.

59-2968. Admissions to a state psychiatric hospital; moratorium; procedure.

(a) All admissions to a state psychiatric hospital upon any order of a court shall be to the state psychiatric hospital designated by the secretary of social and rehabilitation services. The time and manner of the admission shall be arranged by the participating mental health center authorizing such admission and coordinated with the hospital and the official or agent who shall transport the person.

(b) No patient shall be admitted to a state psychiatric hospital pursuant to any of the provisions of this act, including any court-ordered admissions, if the secretary has notified the supreme court of the state of Kansas and each district court which has jurisdiction over all or part of the catchment area served by a state psychiatric hospital, that the census of a particular treatment program of that state psychiatric hospital has reached capacity and that no more patients may be admitted. Following notification that a state psychiatric hospital program has reached its capacity and no more patients may be admitted, any district court which has jurisdiction over all or part of the catchment area served by that state psychiatric hospital, and any participating mental health center which serves all or part of that same catchment area, may request that patients needing that treatment program be placed on a waiting list maintained by that state psychiatric hospital.

(c) In each such case, as a vacancy at that state psychiatric hospital occurs, the district court and participating mental health center shall be notified, in the order of their previous requests for placing a patient on the waiting list, that a patient may be admitted to the state psychiatric hospital. As soon as the state psychiatric hospital is able to admit patients on a regular basis to a treatment program for which notice has been previously given under this section, the superintendent of the state psychiatric hospital shall inform the supreme court and each affected district court that the moratorium on admissions is no longer in effect.

HISTORY: L. 1996, ch. 167, § 24; Apr. 18.

59-2969. Hearing to review status of patient; procedure.

(a) At least 14 days prior to the end of each period of treatment, as set out in the court order for such treatment, the head of the treatment facility furnishing treatment to the patient shall cause to be filed with the court a written report summarizing the treatment provided and the findings and recommendations of the treatment facility concerning the need for further treatment for the patient. Upon the filing of this written report, the court shall notify the patient's attorney of record that this written report has been filed. If there is no attorney of record for the patient, the court shall appoint an attorney and notify such attorney that the written report has been filed.

(b) When the attorney for the patient has received notice that the treatment facility has filed with the district court its written report, the attorney shall consult with the patient to determine whether the patient desires a hearing. If the patient desires a hearing, the attorney shall file a written request for a hearing with the district court, which request shall be filed not later than the last day ending any period of treatment as specified in the court's order for treatment issued pursuant to K.S.A. 59-2966 or 59-2967 and amendments thereto, or the court's last entered order for continued treatment issued pursuant to subsection (f). If the patient does not desire a hearing, the patient's attorney shall file with the court a written statement that the attorney has consulted with the patient; the manner in which the attorney has consulted with the patient; that the attorney has fully explained to the patient the patient's right to a hearing as set out in this section and that if the patient does not request such a hearing that further treatment will likely be ordered, but that having been so advised the patient does not desire a hearing. Thereupon, the court may renew its order for treatment and may specify the next period of treatment as provided for in subsection (f). A copy of the court's order shall be given to the patient, the attorney for the patient, the patient's legal guardian, the petitioner or the county or district attorney, as appropriate, and to the head of the treatment facility treating the patient as the court directs.

(c) Upon receiving a written request for a hearing, the district court shall set the matter for hearing and notice of such hearing shall be given similarly as provided for in K.S.A. 2003 Supp. 59-2963 and amendments thereto. Notice shall also be given promptly to the head of the treatment facility treating the patient. The hearing shall be held as soon as reasonably practical, but in no event more than 10 days following the filing of the written request for a hearing. The patient shall remain in treatment during the pendency of any such hearing, unless discharged by the head of the treatment facility pursuant to K.S.A. 2003 Supp. 59-2973 and amendments thereto.

(d) The district court having jurisdiction of any case may, on its own motion or upon written request of any interested party, including the head of the treatment facility where a patient is being treated, hold a hearing to review the patient's status earlier than at the times set out in subsection (b) above, if the court determines that a material change of circumstances has occurred necessitating an earlier hearing, however, the patient shall not be entitled to have more than one review hearing within each period of treatment as specified in any order for treatment, order for out-patient treatment or order for continued treatment.

(e) The hearing shall be conducted in the same manner as hearings provided for in K.S.A. 2003 Supp. 59-2965 and amendments thereto, except that the hearing shall be to the court and the patient shall not have the right to demand a jury. At the hearing it shall be the petitioner's or county or district attorney's or treatment facility's burden to show that the patient remains a mentally ill person subject to involuntary commitment for care and treatment under this act.

(f) Upon completion of the hearing, if the court finds by clear and convincing evidence that the patient continues to be a mentally ill person subject to involuntary commitment for care and treatment under this act, the court shall order continued treatment for a specified period of time not to exceed three months for any initial order for continued treatment, nor more than six months in any subsequent order for continued treatment, at an inpatient treatment facility as provided for in K.S.A. 2003 Supp. 59-2966 and amendments thereto, or at an outpatient treatment facility if the court determines that outpatient treatment is appropriate under K.S.A. 2003 Supp. 59-2967 and amendments thereto, and a copy of the court's order shall be provided to the head of the treatment facility. If the court finds that it has not been shown by clear and convincing evidence that the patient continues to be a mentally ill person subject to involuntary commitment for care and treatment under this act, it shall release the patient. A copy of the court's order of release shall be provided to the patient, the patient's attorney, the patient's legal guardian or other person known to be interested in the care and welfare of a minor patient, and to the head of the treatment facility at which the patient had been receiving treatment.

HISTORY: L. 1996, ch. 167, § 25; L. 1997, ch. 152, § 9; L. 1998, ch. 134, § 50; July 1.

59-2970. Transportation. The court may issue orders providing for the transportation of patients as necessary to effectuate the provisions of this act. All orders of ex parte emergency custody, temporary custody, referral or treatment may authorize a relative or other suitable person to transport the individual named in the order to the place of detention or treatment specified in the order. All orders for transportation shall be served by the person transporting the individual named in the order upon the person in charge of the place of detention or treatment or such person's designee and due return of execution thereof shall be made to the court. A female being transported shall be accompanied by a female attendant, unless she is accompanied by an adult relative. An individual shall not be transported in a marked police car or sheriff's car if other means of transportation are available. The least amount of restraint necessary shall be used in transporting the patient.

HISTORY: L. 1996, ch. 167, § 26; Apr. 18.

59-2971. Change of venue.

(a) At any time after the petition provided for in K.S.A. 2003 Supp. 59-2957 and amendments thereto has been filed venue may be transferred in accordance with this section.

(1) Prior to trial required by K.S.A. 2003 Supp. 59-2965 and amendments thereto. Before the expiration of two full working days following the probable cause hearing held pursuant to K.S.A. 2003 Supp. 59-2959 or 59-2962 and amendments thereto, the district court then with jurisdiction, on its own motion or upon the written request of any person, may transfer the venue of the case to the district court of the county where the patient is being detained, evaluated or treated in a treatment facility under the authority of an order issued pursuant to K.S.A. 2003 Supp. 59-2958, 59-2959 or 59-2964 and amendments thereto. Thereafter the district court may on its own motion or upon the written request of any person transfer venue to another district court only for good cause shown.

When an order changing venue is issued, the district court issuing the order shall immediately send to the district court to which venue is changed a facsimile of all pleadings and orders in the case. The district court shall also immediately send a facsimile of the order transferring venue to the treatment facility where the patient is being detained, evaluated or treated.

(2) After trial required by K.S.A. 2003 Supp. 59-2965 and amendments thereto, the district court may on its own motion or upon the written request of any person transfer venue to another district court for good cause shown. When an order changing venue is issued, the district court issuing the order shall immediately send to

the district court to which venue is changed a facsimile of the petition for determination of mental illness subject to involuntary commitment for care and treatment, the most recent notice of hearing issued by the court, the order changing venue, the current order of treatment, the most recent written report summarizing treatment and any order allowing withdrawal of the patient's attorney. The transferring district court shall also immediately send a facsimile of the order transferring venue to the treatment facility where the patient is being detained, evaluated or treated. No later than 5:00 p.m. of the second full day the district court transferring venue is open for business following the issuance of the order transferring venue, the district court transferring venue shall send to the receiving district court the entire file of the case by restricted mail.

(b) The district court issuing an order transferring venue, if not in the county of residence of the proposed patient, shall transmit to the district court in the county of residence of the proposed patient a statement of any court costs incurred by the county of the district court issuing the order and, if the county of residence is not the receiving county, a certified copy of all pleadings and orders in the case.

(c) Any district court to which venue is transferred shall proceed in the case as if the petition had been originally filed therein and shall cause notice of the change of venue to be given to the persons named in and in the same manner as provided for in K.S.A. 2003 Supp. 59-2963 and amendments thereto. In the event that notice of a change of location of a hearing due to a change of venue cannot be served at least 48 hours prior to any hearing previously scheduled by the transferring court or because of scheduling conflicts the hearing can not be held by the receiving court on the previously scheduled date, then the receiving court shall continue the hearing for up to seven full working days to allow adequate time for notice to be given and the hearing held.

(d) Any district court to which venue is transferred, if not in the county of residence of the patient, shall transmit to the district court in the county of residence of the patient a statement of any court costs incurred and a certified copy of all pleadings and orders entered in the case after transfer.

HISTORY: L. 1996, ch. 167, § 27; L. 1997, ch. 152, § 10; May 8.

59-2972. Transfer by secretary of social and rehabilitation services.

(a) The secretary of social and rehabilitation services or the secretary's designee may transfer any patient from any state psychiatric hospital under the secretary's control to any other state psychiatric hospital whenever the secretary or the secretary's designee considers it to be in the best interests of the patient. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the hospital to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer.

(b) The secretary of social and rehabilitation services or the designee of the secretary may transfer any involuntary patient from any state psychiatric hospital to any state institution for the mentally retarded whenever the secretary of social and rehabilitation services or the designee of the secretary considers it to be in the best interests of the patient. Any patient transferred as provided for in this subsection shall remain subject to the same statutory provisions as were applicable at the psychiatric hospital from which the patient was transferred and in addition thereto shall abide by and be subject to all the rules and regulations of the retardation institution to which the patient has been transferred. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the institution to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer. No patient shall be transferred from a state psychiatric hospital to a state institution for the mentally retarded unless the superintendent of the receiving institution has found, pursuant to K.S.A. 76-12b01 through 76-12b11 and amendments thereto, that the patient is mentally retarded and in need of care and training and that placement in the institution is the least restrictive alternative available. Nothing in this subsection shall prevent the secretary of social and rehabilitation services or the designee of the secretary from allowing a patient at a state psychiatric hospital to be admitted as a voluntary resident to a state institution

for the mentally retarded, or from then discharging such person from the state psychiatric hospital pursuant to K.S.A. 2003 Supp. 59-2973 and amendments thereto, as may be appropriate.

HISTORY: L. 1996, ch. 167, § 28; L. 1997, ch. 152, § 11; L. 1998, ch. 134, § 51; July 1.

59-2973. Discharge.

(a) When any proposed patient or involuntary patient has been admitted to any treatment facility pursuant to K.S.A. 2003 Supp. 59-2954, 59-2958, 59-2959, 59-2964, 59-2966 or 59-2967 and amendments thereto, the head of the treatment facility shall discharge and release the patient when the patient is no longer in need of treatment, except that no patient shall be discharged from a state psychiatric hospital without the hospital receiving and considering recommendations from the participating mental health center serving the area where the patient intends to reside.

(b) Nothing in this section shall be construed to amend or modify or repeal any law relating to the confinement of persons charged with or convicted of a criminal offense.

HISTORY: L. 1996, ch. 167, § 29; Apr. 18.

59-2974. Notice of discharge. The head of the treatment facility shall notify, in writing, the patient, the patient's attorney, the petitioner or the petitioner's attorney, the county or district attorney as appropriate, and the district court which has jurisdiction over the patient of the patient's discharge pursuant to K.S.A. 2003 Supp. 59-2973 and amendments thereto. When a notice of discharge is received, the court shall file the same which shall terminate the proceedings, unless there has been issued a superseding inpatient or outpatient treatment order not being discharged by the notice.

HISTORY: L. 1996, ch. 167, § 30; Apr. 18.

59-2975. Unauthorized absence; procedure. If any involuntary patient leaves the place of the patient's detention or treatment without the authority of the head of the treatment facility, the head of the treatment facility shall notify the sheriff of the county in which the treatment facility is located of the involuntary patient's unauthorized absence and request that the patient be taken into custody and returned to the treatment facility. If oral notification is given, it shall be confirmed in writing as soon thereafter as reasonably possible.

HISTORY: L. 1996, ch. 167, § 31; Apr. 18.

59-2976. Administration of medications and other treatments.

(a) Medications and other treatments shall be prescribed, ordered and administered only in conformity with accepted clinical practice. Medication shall be administered only upon the written order of a physician or upon a verbal order noted in the patient's medical records and subsequently signed by the physician. The attending physician shall review regularly the drug regimen of each patient under the physician's care and shall monitor any symptoms of harmful side effects. Prescriptions for psychotropic medications shall be written with a termination date not exceeding 30 days thereafter but may be renewed.

(b) During the course of treatment the responsible physician or psychologist or such person's designee shall reasonably consult with the patient, the patient's legal guardian, or a minor patient's parent and give consideration to the views the patient, legal guardian or parent expresses concerning treatment and any alternatives. No medication or other treatment may be administered to any voluntary patient without the patient's consent, or the consent of such patient's legal guardian or of such patient's parent if the patient is a minor.

(c) Consent for medical or surgical treatments not intended primarily to treat a patient's mental disorder shall be obtained in accordance with applicable law.

(d) Whenever any patient is receiving treatment pursuant to K.S.A. 2003 Supp. 59-2954, 59-2958, 59-2959, 59-2964, 59-2966 or 59-2967 and amendments thereto, and the treatment facility is administering to the patient any medication or other treatment which alters the patient's mental state in such a way as to adversely affect the patient's judgment or hamper the patient in preparing for or participating in any hearing provided for by this act, then two days prior to and during any such hearing, the treatment facility may not administer such medication or other treatment unless such medication or other treatment is necessary to sustain the patient's life or to protect the patient or others. Prior to the hearing, a report of all such medications or other treatment which have been administered to the patient, along with a copy of any written consent(s) which the patient may have signed, shall be submitted to the court. Counsel for the patient may preliminarily examine the attending physician regarding the administration of any medication to the patient within two days of the hearing with regard to the affect that medication may have had upon the patient's judgment or ability to prepare for or participate in the hearing. On the basis thereof, if the court determines that medication or other treatment has been administered which adversely affects the patient's judgment or ability to prepare for or participate in the hearing, the court may grant to the patient a reasonable continuance in order to allow for the patient to be better able to prepare for or participate in the hearing and the court shall order that such medication or other treatment be discontinued until the conclusion of the hearing, unless the court finds that such medication or other treatment is necessary to sustain the patient's life or to protect the patient or others, in which case the court shall order that the hearing proceed.

(e) Whenever a patient receiving treatment pursuant to K.S.A. 2003 Supp. 59-2954, 59-2958, 59-2959, 59-2964, 59-2966 or 59-2967 and amendments thereto, objects to taking any medication prescribed for psychiatric treatment, and after full explanation of the benefits and risks of such medication continues their objection, the medication may be administered over the patient's objection; except that the objection shall be recorded in the patient's medical record and at the same time written notice thereof shall be forwarded to the medical director of the treatment facility or the director's designee. Within five days after receiving such notice, excluding Saturdays, Sundays and legal holidays, the medical director or designee shall deliver to the patient and the patient's physician the medical director's or designee's written decision concerning the administration of that medication, and a copy of that decision shall be placed in the patient's medical record.

(f) In no case shall experimental medication be administered without the patient's consent, which consent shall be obtained in accordance with subsection (a)(6) of K.S.A. 2003 Supp. 59-2978 and amendments thereto.

HISTORY: L. 1996, ch. 167, § 32; Apr. 18.

59-2977. Restraints; seclusion.

(a) Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the treatment facility or a physician or psychologist to be necessary to prevent immediate substantial bodily injury to the patient or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. Restraint or seclusion shall never be used as a punishment or for the convenience of staff. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent such injury to the patient or others, and the use of restraint or seclusion in a treatment facility shall not exceed 3 hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12:00 midnight and 8:00 a.m. When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or psychologist, which shall be no less than once per each 15 minutes. The head of the treatment facility or a physician or psychologist shall sign a statement explaining the treatment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the patient.

(b) The provisions of subsection (a) shall not prevent, for a period not exceeding 2 hours without review and approval thereof by the head of the treatment facility or a physician or psychologist:

(1) Staff at the state security hospital from confining patients in their rooms when it is considered necessary for security or proper institutional management;

(2) the use of such restraints as necessary for a patient who is likely to cause physical injury to self or others without the use of such restraints;

(3) the use of restraints when needed primarily for examination or treatment or to insure the healing process; or

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

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

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

HISTORY: L. 1996, ch. 167, § 33; Apr. 18.

59-2978. Rights of patients.

(a) Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear the patient's own clothes, keep and use the patient's own personal possessions including toilet articles and keep and be allowed to spend the patient's own money;

(2) to communicate by all reasonable means with a reasonable number of persons at reasonable hours of the day and night, including both to make and receive confidential telephone calls, and by letter, both to mail and receive unopened correspondence, except that if the head of the treatment facility should deny a patient's right to mail or to receive unopened correspondence under the provisions of subsection (b), such correspondence shall be opened and examined in the presence of the patient;

(3) to conjugal visits if facilities are available for such visits;

(4) to receive visitors in reasonable numbers and at reasonable times each day;

(5) to refuse involuntary labor other than the housekeeping of the patient's own bedroom and bathroom, provided that nothing herein shall be construed so as to prohibit a patient from performing labor as a part of a therapeutic program to which the patient has given their written consent and for which the patient receives reasonable compensation;

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

(7) to have explained, the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered;

(8) to communicate by letter with the secretary of social and rehabilitation services, the head of the treatment facility and any court, attorney, physician, psychologist, or minister of religion, including a Christian Science practitioner. All such communications shall be forwarded at once to the addressee without examination and communications from such persons shall be delivered to the patient without examination;

(9) to contact or consult privately with the patient's physician or psychologist, minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(10) to be visited by the patient's physician, psychologist, minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(11) to be informed orally and in writing of their rights under this section upon admission to a treatment facility; and

(12) to be treated humanely consistent with generally accepted ethics and practices.

(b) The head of the treatment facility may, for good cause only, restrict a patient's rights under this section, except that the rights enumerated in subsections (a)(5) through (a)(12), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the head of the treatment facility under any circumstances. Each treatment facility shall adopt regulations governing the conduct of all patients being treated in such treatment facility, which regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and copies of such statement shall be made available to the patient or to the parent, or legal guardian if such patient is a minor or has a legal guardian, and to the patient's attorney. In addition, notice of any restriction of a patient's rights shall be communicated to the patient in a timely fashion.

(c) Any person willfully depriving any patient of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b) or in accordance with a properly obtained court order, shall be guilty of a class C misdemeanor.

HISTORY: L. 1996, ch. 167, § 34; Apr. 18.

59-2979. Disclosure of records.

(a) The district court records, and any treatment records or medical records of any patient or former patient that are in the possession of any district court or treatment facility shall be privileged and shall not be disclosed except:

(1) Upon the written consent of (A) the patient or former patient, if an adult who has no legal guardian; (B) the patient's or former patient's legal guardian, if one has been appointed; or (C) a parent, if the patient or former patient is under 18 years of age, except that a patient or former patient who is 14 or more years of age and who was voluntarily admitted upon their own application made pursuant to subsection (b)(2)(B) of K.S.A. 2003 Supp. 59-2949 and amendments thereto shall have capacity to consent to release of their records without parental consent. The head of any treatment facility who has the records may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient.

(2) Upon the sole consent of the head of the treatment facility who has the records if the head of the treatment facility makes a written determination that such disclosure is necessary for the treatment of the patient or former patient.

(3) To any state or national accreditation agency or for a scholarly study, but the head of the treatment facility shall require, before such disclosure is made, a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information.

(4) Upon the order of any court of record after a determination has been made by the court issuing the order that such records are necessary for the conduct of proceedings before the court and are otherwise admissible as evidence.

(5) In proceedings under this act, upon the oral or written request of any attorney representing the patient, or former patient.

(6) To appropriate administrative or professional staff of the department of corrections whenever patients have been administratively transferred to the state security hospital or other state psychiatric hospitals pursuant to the provisions of K.S.A. 75-5209 and amendments thereto. The patient's or former patient's consent shall not be necessary to release information to the department of corrections.

(7) As otherwise provided for in this act.

(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto are applicable to treatment records or medical records of any patient or former patient, the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto shall control the disposition of information contained in such records.

(c) Willful violation of this section is a class C misdemeanor.

HISTORY: L. 1996, ch. 167, § 35; Apr. 18.

59-2980. Civil and criminal liability. Any person acting in good faith and without negligence shall be free from all liability, civil or criminal, which might arise out of acting pursuant to this act. Any person who for a corrupt consideration or advantage, or through malice, shall make or join in making or advise the making of any false petition, report or order provided for in this act shall be guilty of a class A misdemeanor.

HISTORY: L. 1996, ch. 167, § 36; Apr. 18.

59-2981. Costs; payment by residence county, when. In each proceeding the court shall allow and order paid to any individual or treatment facility as part of the costs thereof a reasonable fee and expenses for any professional services ordered performed by the court pursuant to this act other than those performed by any individual or hospital under the jurisdiction of the secretary of social and rehabilitation services, and including the fee of counsel for the patient when counsel is appointed by the court and the costs of the county or district attorney incurred in cases involving change of venue. Other costs and fees shall be allowed and paid as are allowed by law for similar services in other cases. The costs shall be taxed to the estate of the patient, to those bound by law to support such patient or to the county of the residence of the patient as the court having jurisdiction shall direct, except that if a proposed patient is found not to be a mentally ill person subject to involuntary commitment under this act, the costs shall not be assessed against such patient's estate but may at the discretion of the court be assessed against the petitioner or may be paid from the general fund of the county of the residence of the proposed patient. Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county except that it may refuse to approve the same for payment only on the ground that the patient is not a resident of that county. In such case it shall transmit the statement of costs to the secretary of social and rehabilitation services who shall determine the question of residence and certify the secretary's findings to each district court. Whenever a district court has sent a statement of costs to the district court of another county and such costs have not been paid within 90 days after the statement was sent, the district court that sent the statement may transmit such statement of costs to the secretary for determination and certification as provided above. If the claim for costs is not paid within 30 days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county. The findings made by the secretary of social and rehabilitation services as to the residence of the patient shall be applicable only to the assessment of costs. Any county of residence which pays from its general fund court costs to the district court of another county may recover the same in any court of competent jurisdiction from the estate of the patient or from those bound by law to support such patient, unless the court shall find that the proceedings in which such costs were incurred were instituted without probable cause and not in good faith.

HISTORY: L. 1996, ch. 167, § 37; Apr. 18.

59-2982. Notice of death of patients in treatment facilities. In the event of the death of a patient in a treatment facility, the head of the treatment facility shall immediately give notice of the date, time, place and cause of such death, to the extent known, to the nearest known relative of the patient, and, as appropriate, to the court having jurisdiction over the patient, the attorney for the patient, and to the county or district attorney and as otherwise provide for by law, to the coroner for the county in which the patient died.

HISTORY: L. 1996, ch. 167, § 38; Apr. 18.

59-2983. Applicability to persons in custody on criminal charges. Nothing in this act shall be construed to apply to any person alleged or thought to be a mentally ill person subject to involuntary commitment for care and treatment under this act who is in custody on a criminal charge, except with the consent of either the prosecuting attorney or trial court.

HISTORY: L. 1996, ch. 167, § 39; Apr. 18.

59-2984. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

HISTORY: L. 1996, ch. 167, § 40; Apr. 18.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 2. RULES OF CIVIL PROCEDURE

60-245. Subpoenas.

(a) Form; issuance.

(1) Every subpoena shall:

(A) State the name of the court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending and the file number of the action;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place specified in the subpoena; and

(D) set forth the text of subsections (c) and (d) of this section.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. Subpoena and production of records of a business which is not a party shall be in accordance with K.S.A. 60-245a and amendments thereto.

(2) A subpoena commanding attendance at a trial or hearing shall issue from the district court in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the district court in which the action is pending or the officer before whom the deposition is to be taken or, if the deposition is to be taken outside the state, from an officer authorized by the law of the other state to issue the subpoena. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the district court in which the action is pending or, if the production or inspection is to be made outside the state, an officer authorized by the law of the other state to issue the subpoena.

(3) Every subpoena issued by the court shall be issued by the clerk under the seal of the court or by a judge. Upon request of a party, the clerk shall issue a blank subpoena. The blank subpoena shall bear the seal of the court, the title and file number of the action and the clerk's signature or a facsimile of the clerk's signature. The party to whom a blank subpoena is issued shall fill it in before service.

(b) Service. Service of a subpoena upon a person named therein may be made anywhere within the state, shall be made in accordance with K.S.A. 60-303, and amendments thereto, and shall, if the person's attendance is commanded, be accompanied by the fees for one day's attendance and the mileage allowed by law. When sought independently of a

deposition, prior notice of any commanded production of documents or inspection of premises before trial shall be served on each party in the manner prescribed by subsection (b) of K.S.A. 60-205 and amendments thereto.

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, a reasonable attorney fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subsection (d)(2), a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) Fails to allow reasonable time for compliance;

(ii) requires a resident of this state who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person or requires a nonresident who is not a party or an officer of a party to travel to a place more than 100 miles from the place where the nonresident was served with the subpoena, is employed or regularly transacts business, except that, subject to the provisions of subsection (c)(3)(B)(iii), such a nonparty may in order to attend trial be commanded to travel to the place of trial;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) Requires disclosure of a trade secret or other confidential research, development or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be

otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(4) A person confined in prison may be required to appear for examination by deposition only in the county where the person is imprisoned.

(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that such information is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon the person may be considered a contempt of the court in which the action is pending or the court of the county in which the deposition is to be taken. Punishment for contempt shall be in accordance with K.S.A. 20-1204 and amendments thereto. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by subsection (c)(3)(A)(iii).

HISTORY: L. 1963, ch. 303, 60-245; amended by Supreme Court order dated July 20, 1972; amended by Supreme Court order dated July 28, 1976; L. 1982, ch. 243, § 1; L. 1985, ch. 196, § 2; L. 1990, ch. 202, § 2; L. 1997, ch. 173, § 24; July 1.

60-245a. Subpoena of records of a business not a party.

(a) As used in this section:

(1) "Business" means any kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(2) "Business records" means writings made by personnel or staff of a business, or persons acting under their control, which are memoranda or records of acts, conditions or events made in the regular course of business at or about the time of the act, condition or event recorded.

(b) A subpoena duces tecum which commands the production of business records in an action in which the business is not a party shall inform the person to whom it is directed that the person may serve upon the attorney designated in the subpoena written objection to production of any or all of the business records designated in the subpoena within 14 days after the service of the subpoena or at or before the time for compliance, if the time is less than 14 days after service. If such objection is made, the business records need not be produced except pursuant to an order of the court upon motion with notice to the person to whom the subpoena was directed.

Unless the personal attendance of a custodian of the business records and the production of original business records are required under subsection (d), it is sufficient compliance with a subpoena of business records if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described in the subpoena and mails a copy of the affidavit accompanying the records to the party or attorney requesting them within 14 days after receipt of the subpoena.

The records described in the subpoena shall be accompanied by the affidavit of a custodian of the records, stating in substance each of the following: (1) The affiant is a duly authorized custodian of the records and has authority to certify records; (2) the copy is a true copy of all the records described in the subpoena; and (3) the records were prepared by the

personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

If the business has none of the records described in the subpoena, or only part thereof, the affiant shall so state in the affidavit and shall send only those records of which the affiant has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of the subpoena are clearly inscribed. If return of the copy is desired, the words "return requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court.

The reasonable costs of providing the copying of the records may be demanded of the party causing the subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

(c) The subpoena shall be accompanied by an affidavit to be used by the records custodian. The subpoena and affidavit shall be in substantially the following form:

Subpoena of Business Records

State of Kansas

County of _____

(1) You are commanded to produce the records listed below before (Officer at Deposition)(Judge of the District Court) at (Address) in the City of _____, County of _____, on the _____ day of _____, 20__, at ____ o'clock __ m., and to testify on behalf of the _____ in an action now pending between _____, plaintiff, and _____, defendant. Failure to comply with this subpoena may be deemed a contempt of the court.

(2) Records to be produced:

(3) You may make written objection to the production of any or all of the records listed above by serving such written objection upon _____ at _____ (Attorney) (Attorney's Address) (within 14 days after service of this subpoena) (on or before _____, 19__). If such objection is made, the records need not be produced except upon order of the court.

(4) Instead of appearing at the time and place listed above, it is sufficient compliance with this subpoena if a custodian of the business records delivers to the clerk of the court by mail or otherwise a true and correct copy of all the records described above and mails a copy of the affidavit below to _____ at _____ (Requesting Party or Attorney) (Address of Party or Attorney) within 14 days after receipt of this subpoena.

(5) The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which the title and number of the action, name and address of the witness and the date of this subpoena are clearly inscribed. If return of the copy is desired, the words "return requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be delivered to the clerk of the court.

(6) The records described in this subpoena shall be accompanied by the affidavit of a custodian of the records, a form for which is attached to this subpoena.

(7) If the business has none of the records described in this subpoena, or only part thereof, the affidavit shall so state, and the custodian shall send only those records of which the custodian has custody. When more than one person has knowledge of the facts required to be stated in the affidavit, more than one affidavit may be made.

(8) The reasonable costs of copying the records may be demanded of the party causing this subpoena to be issued. If the costs are demanded, the records need not be produced until the costs of copying are advanced.

(9) The copy of the records will not be returned unless requested by the witness.

_____
Clerk of the District Court

[Seal of the District Court]

Dated _____, 20__.

Affidavit of Custodian of Business Records

State of _____
County of _____

I, _____, being first duly sworn, on oath, depose and say that:

(1) I am a duly authorized custodian of the business records of _____ and have the authority to certify those records.

(2) The copy of the records attached to this affidavit is a true copy of the records described in the subpoena.

(3) The records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

_____
Signature of Custodian

Subscribed and sworn to before the undersigned on _____.

_____
Notary Public

My Appointment Expires: _____

Certificate of Mailing

I hereby certify that on _____, 19____, I mailed a copy of the above affidavit to _____ at _____ by depositing it with
(Requesting Party or Attorney) (Address of Party or Attorney)
the United States Postal Service for delivery with postage prepaid.

_____
Signature of Custodian

Subscribed and sworn to before the undersigned on _____.

_____
Notary Public

My Appointment Expires: _____

(d) Any party may require the personal attendance of a custodian of business records and the production of original business records by causing a subpoena duces tecum to be issued which contains the following statements in lieu of paragraphs (4), (5), (6), (7) and (8) of the subpoena form described in subsection (c):

The personal attendance of a custodian of business records and the production of original records is required by this subpoena. The procedure for delivering copies of the records to the clerk of the court shall not be deemed sufficient compliance with this subpoena and should be disregarded. A custodian of the records must personally appear with the original records.

(e) Notice of intent to request the issuance of a subpoena pursuant to this section where the attendance of the custodian of the business records is not required shall be given to all parties to the action at least 10 days prior to the issuance thereof by the party requesting issuance of the subpoena. A copy of the proposed subpoena shall also be served upon all parties along with such notice. In the event any party objects to the production of the documents sought by such subpoena prior to its issuance, the subpoena shall not be issued until further order of the court in which the action is pending. If receipt of the records makes the taking of a deposition unnecessary, the party who caused the subpoena for the business records to be issued shall cancel the deposition and shall notify the other parties to the action in writing of the receipt of the records and the cancellation of the deposition.

After the copy of the record is filed, a party desiring to inspect or copy it shall give reasonable notice to every other party to the action. The notice shall state the time and place of inspection. Records which are not introduced in evidence or required as part of the record shall be destroyed or returned to the custodian of the records who submitted them if return has been requested.

HISTORY: L. 1985, ch. 196, § 1; L. 1997, ch. 173, § 25; L. 2000, ch. 145, § 1; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 4. RULES OF EVIDENCE PRIVILEGES

60-426. Lawyer-client privilege.

(a) General rule. Subject to K.S.A. 60-437, and except as otherwise provided by subsection (b) of this section communications found by the judge to have been between lawyer and his or her client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege

(1) if he or she is the witness to refuse to disclose any such communication, and

(2) to prevent his or her lawyer from disclosing it, and

(3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness

(i) in the course of its transmittal between the client and the lawyer, or

(ii) in a manner not reasonably to be anticipated by the client, or

(iii) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his or her lawyer, or if an incapacitated person, by either his or her guardian or conservator, or if deceased, by his or her personal representative.

(b) Exceptions. Such privileges shall not extend

(1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the commission or planning of a crime or a tort, or

(2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or

(3) to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer, or

(4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or

(5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.

(c) Definitions. As used in this section

(1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from the lawyer in his or her professional capacity; and includes an incapacitated person who, or whose guardian on behalf of the incapacitated person so consults the lawyer or the lawyer's representative in behalf of the incapacitated person;

(2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship;

(3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

HISTORY: L. 1963, ch. 303, 60-426; L. 1965, ch. 354, § 7; Jan. 1, 1966.

60-427. Physician-patient privilege.

(a) As used in this section:

(1) "Patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of such person's physical or mental condition, consults a physician, or submits to an examination by a physician.

(2) "Physician" means a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts as defined in K.S.A. 65-2802 and amendments thereto in the state or jurisdiction in which the consultation or examination takes place.

(3) "Holder of the privilege" means the patient while alive and not under guardianship or conservatorship or the guardian or conservator of the patient, or the personal representative of a deceased patient.

(4) "Confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

(b) Except as provided by subsections (c), (d), (e) and (f), a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-1567 and amendments thereto or an ordinance which prohibits the acts prohibited by that statute, to refuse to disclose, and to prevent a witness from disclosing, a communication, if the person claims the privilege and the judge finds that:

(1) The communication was a confidential communication between patient and physician;

(2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor;

(3) the witness

(i) is the holder of the privilege,

(ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or

(iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or the physician's agent or servant; and

(4) the claimant is the holder of the privilege or a person authorized to claim the privilege for the holder of the privilege.

(c) There is no privilege under this section as to any relevant communication between the patient and the patient's physician:

(1) Upon an issue of the patient's condition in an action to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity or mental illness, in an action in which the patient seeks to establish the patient's competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor;

(2) upon an issue as to the validity of a document as a will of the patient; or

(3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

(d) There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

(e) There is no privilege under this section:

(1) As to blood drawn at the request of a law enforcement officer pursuant to K.S.A. 8-1001 and amendments thereto; and

(2) as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.

(f) No person has a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.

(g) A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or the physician's agent or servant gained knowledge through the communication.

(h) Providing false information to a physician for the purpose of obtaining a prescription-only drug shall not be a confidential communication between physician and patient and no person shall have a privilege in any prosecution for obtaining a prescription-only drug by fraudulent means under K.S.A. 21-4214 and amendments thereto.

HISTORY: L. 1963, ch. 303, 60-427; L. 1965, ch. 354, § 8; L. 1988, ch. 210, § 1; L. 1992, ch. 99, § 2; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 5. LIMITATIONS OF ACTIONS
SCOPE OF ARTICLE

60-501. Scope. The provisions of this article govern the limitation of time for commencing civil actions, except where a different limitation is specifically provided by statute.

HISTORY: L. 1963, ch. 303, 60-501; Jan. 1, 1964.

60-510. Effect of limitations prescribed. Civil actions, other than for the recovery of real property, can only be commenced within the period prescribed in the following sections of this article, after the cause of action shall have accrued.

HISTORY: L. 1963, ch. 303, 60-510; Jan. 1, 1964.

60-513. Actions limited to two years.

(a) The following actions shall be brought within two years:

(1) An action for trespass upon real property.

(2) An action for taking, detaining or injuring personal property, including actions for the specific recovery thereof.

(3) An action for relief on the ground of fraud, but the cause of action shall not be deemed to have accrued until the fraud is discovered.

(4) An action for injury to the rights of another, not arising on contract, and not herein enumerated.

(5) An action for wrongful death.

(6) An action to recover for an ionizing radiation injury as provided in K.S.A. 60-513a, 60-513b and 60-513c, and amendments thereto.

(7) An action arising out of the rendering of or failure to render professional services by a health care provider, not arising on contract.

(b) Except as provided in subsections (c) and (d), the causes of action listed in subsection (a) shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action.

(c) A cause of action arising out of the rendering of or the failure to render professional services by a health care provider shall be deemed to have accrued at the time of the occurrence of the act giving rise to the cause of action, unless the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall such an action be commenced more than four years beyond the time of the act giving rise to the cause of action.

(d) A negligence cause of action by a corporation or association against an officer or director of the corporation or association shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall such an action be commenced more than five years beyond the time of the act giving rise to the cause of action. All other causes of action by a corporation or association against an officer or director of the corporation or association shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury and there exists a disinterested majority of nonculpable directors of the corporation or association, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable and there exists a disinterested majority of nonculpable directors of the corporation or association, but in no event shall such an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action. For purposes of this subsection, the term "negligence cause of action" shall not include a cause of action seeking monetary damages for any breach of the officer's or director's duty of loyalty to the corporation or association, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for liability under K.S.A. 17-5812, 17-6410, 17-6423, 17-6424 or 17-6603 and amendments thereto, or for any transaction from which the officer or director derived an improper personal benefit.

(e) The provisions of this section as it was constituted prior to July 1, 1996, shall continue in force and effect for a period of two years from that date with respect to any act giving rise to a cause of action occurring prior to that date.

HISTORY: L. 1963, ch. 303, 60-513; L. 1968, ch. 6, § 1; L. 1976, ch. 254, § 1; L. 1987, ch. 222, § 1; L. 1996, ch. 127, § 1; July 1.

60-513d. "Health care provider" defined. As used in K.S.A. 60-513 and 60-513b, and amendments to such statutes, the term "health care provider" means a person licensed to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed medical care facility, a health maintenance organization, a licensed dentist, a licensed professional nurse, a licensed practical nurse, a licensed optometrist, a licensed podiatrist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this section, a licensed pharmacist or a licensed physical therapist.

HISTORY: L. 1976, ch. 254, § 4; L. 1986, ch. 231, § 6; L. 1988, ch. 246, § 13; L. 2003, ch. 128, § 20; Apr. 1, 2004.

60-515. Persons under legal disability.

(a) Effect. Except as provided in K.S.A. 60-523, if any person entitled to bring an action, other than for the recovery of real property or a penalty or a forfeiture, at the time the cause of action accrued or at any time during the period the statute of limitations is running, is less than 18 years of age, an incapacitated person or imprisoned for a term less than

such person's natural life, such person shall be entitled to bring such action within one year after the person's disability is removed, except that no such action shall be commenced by or on behalf of any person under the disability more than eight years after the time of the act giving rise to the cause of action.

Notwithstanding the foregoing provision, if a person imprisoned for any term has access to the court for purposes of bringing an action, such person shall not be deemed to be under legal disability.

(b) Death of person under disability. If any person entitled to bring an action dies during the continuance of any disability specified in subsection (a) and no determination is made of the cause of action accrued to the deceased, any person entitled to claim from, by or under the deceased, may commence such action within one year after the deceased's death, but in no event shall any such action be commenced more than eight years beyond the time of the act giving rise to the cause of action.

HISTORY: L. 1963, ch. 303, 60-515; L. 1965, ch. 354, § 13; L. 1972, ch. 161, § 15; L. 1976, ch. 254, § 3; L. 1981, ch. 234, § 1; L. 1992, ch. 307, § 2; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 7. ATTACHMENT AND GARNISHMENT
ATTACHMENT PROCEEDINGS

60-701. Grounds for attachment. Subject to the provisions of K.S.A. 60-703, and amendments thereto, the plaintiffs at or after the commencement of any civil action may have, as an incident to the relief sought, one or more attachments against the property of the defendant, or that of any one or more of several defendants, when the defendant whose property is to be attached:

(1) is a nonresident of the state or a foreign corporation, or

(2) has absconded or is concealed so that the summons cannot be served or is about to move out of this state with the intent of changing domicile, or

(3) is about to remove his or her property or effects out of this state, or

(4) is about to convert his or her property or a part thereof into money for the purpose of placing it beyond the reach of creditors, or

(5) has concealed, removed, assigned, conveyed or otherwise disposed of his or her property or effects so as to hinder or delay creditors or is about to do so, or

(6) fraudulently contracted the debt or fraudulently incurred the liability, or

(7) is liable for damages for injuries arising out of the commission of some felony or misdemeanor, or the seduction of a person, or

(8) has failed to pay the price or value of any article or thing delivered which by contract the defendant was bound to pay upon delivery.

HISTORY: L. 1963, ch. 303, 60-701; L. 1970, ch. 238, § 3; L. 1975, ch. 52, § 20; July 1.

60-702. Attachments on demands not due. Subject to the provisions of K.S.A. 60-703 an action may be commenced on a demand not yet due and an attachment may issue upon a bond being given in any of the cases mentioned in K.S.A. 60-701, but no judgment shall be rendered against the defendant until maturity of the demand.

HISTORY: L. 1963, ch. 303, 60-702; L. 1970, ch. 238, § 4; L. 1977, ch. 202, § 1; April 18.

60-703. Attachments, how obtained. The order of attachment shall be issued by a judge of the district court upon the filing of a petition stating the claim and the filing of an affidavit, or an affidavit and bond as required in this article, except that no order of attachment shall be issued before judgment on plaintiff's claim where the property of the defendant to be attached is in the possession of a third party and is in the form of earnings due and owing to the defendant. The filing of an affidavit stating one or more grounds of attachment is required in every case. A bond is required in every case except in actions instituted on behalf of the state of Kansas or a county of the state. The order of attachment may be issued and executed on Sunday or on a legal holiday if the affidavit states that the party seeking the attachment will lose the benefit thereof unless the writ be issued or served on such day. The provisions of this section shall not be applicable to garnishments authorized pursuant to K.S.A. 60-1607.

HISTORY: L. 1963, ch. 303, 60-703; L. 1970, ch. 238, § 5; L. 1977, ch. 202, § 2; L. 1979, ch. 183, § 1; July 1.

60-704. Form of affidavit, by whom made. The affidavit shall be made by the plaintiff, or some perform for the plaintiff, and shall state:

(1) The grounds upon which the attachment is sought, specifying with particularity the facts in support of such grounds,

(2) that the plaintiff has a just claim against the defendant, and

(3) the amount which the affiant believes the plaintiff ought to recover, after allowing all just credits and setoffs.

HISTORY: L. 1963, ch. 303, 60-704; L. 1977, ch. 202, § 3; April 18.

60-705. Plaintiff's bond.

(a) Form and contents. When a bond is required, the bond shall be executed by the plaintiff and one or more sufficient sureties in a sum double the amount of the plaintiff's claim, or such lesser amount as shall be approved by an order of the judge, to the effect that the plaintiff shall pay to the defendant all damages which the defendant may sustain by reason of the attachment if wrongfully obtained, or from a wrongful levy thereof if such levy was directed by the plaintiff or plaintiff's attorney. The bond shall be examined by the judge as to its sufficiency and, if approved by the judge, such approval shall be noted thereon.

(b) Insufficiency. If at any time it shall be made to appear to the judge that the bond given by the plaintiff is insufficient in amount, or that any surety therein has died, or has removed from the state, or has become or is likely to become insolvent, the judge on reasonable notice to the plaintiff may order another bond and such further security to be given as shall seem necessary. If the plaintiff shall fail to comply with such order, within the time prescribed by the judge, the attachment shall be dissolved at the plaintiff's cost.

HISTORY: L. 1963, ch. 303, 60-705; L. 1993, ch. 108, § 1; July 1.

60-706. Attachment order.

(a) Issuance and contents. The order of attachment shall be delivered to the sheriff of any county or other officer authorized by law to serve the same, and shall command such sheriff or officer to attach the property of the defendant or so much thereof as will be sufficient to satisfy the plaintiff's claim, as sworn to, with interest and costs, or such specific property as shall be directed in writing by the plaintiff or the plaintiff's attorney, and to summon as garnishees all persons in whose possession any personal property or money of the defendant may be, or who may be named by the plaintiff or the plaintiff's attorney as garnishees. An order of attachment shall be deemed sufficient if in substantial compliance with the form set forth by the Judicial Council.

(b) Manner of serving order. The attachment order shall be served as follows:

(1) Service of attachment. In addition to the process required under article 3 of this chapter, the order of attachment shall be served upon the defendant, if the defendant can be found, in the same manner as an ordinary summons, and a return made thereof.

(2) Manner of executing order, inventory. The order of attachment shall be executed by the officer without delay. The officer shall go to the place where the defendant's property may be found and declare that by virtue of said order such officer attaches said property. In attaching personal property, the officer and two disinterested appraisers who are residents of the county shall make a true inventory and appraisal of the same under oath and said inventory and appraisal shall be signed by the officer and the appraisers and returned with the order. Compensation for the two persons assisting with the appraisal and inventory shall be fixed by the court and assessed as additional court costs.

(3) Possession of attached property. If the property is tangible personal property, the officer shall take the same into possession if the officer can reasonably do so. If the officer does not take into possession any tangible personal property which is in the possession of some person other than the defendant, the officer shall declare to the person in possession thereof that such officer attaches the same and shall summon such person as garnishee by serving upon the person a copy of the order of attachment.

(4) Execution of order against realty. When the property attached is real property, the officer shall leave with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the order. The officer shall include in his or her return the name of such occupant, if any.

(5) Attaching credits. When the credits of the defendant are to be attached, the officer shall declare to the debtor of the defendant that the officer attaches all debts due from such debtor to the defendant, or so much thereof as shall be sufficient to satisfy the debt and interest, or damages and costs, and summon such debtor as garnishee by serving upon the debtor a copy of the order of attachment.

HISTORY: L. 1963, ch. 303, 60-706; L. 1977, ch. 202, § 4; April 18.

60-707. Attached property retained or repossessed by defendant; bond. Bond, conditions, discharge of attachment. When property of the defendant found in the defendant's possession or in the possession of any other person shall be attached, the defendant, or such other person, may retain or regain the possession thereof at any time before final judgment or sale of such property under the order of the court, by giving a bond with one or more sufficient sureties in an amount which is:

(1) Equal to the amount of the plaintiff's claim and probable court costs as shown in the order of attachment or

(2) equal to the amount of the appraisal of the property as determined pursuant to subsection (b) of K.S.A. 60-706, or

(3) in such lesser amount as may be ordered by the court.

The person giving the bond shall have the option of giving bond in an amount prescribed by clause (1) or (2) of this section. The conditions of the bond shall be that the property, or the value thereof, as the case may be, shall be available to apply on any judgment rendered in the action at such time as the court shall order. The sufficiency of the said bond shall be determined by the officer levying the attachment.

Upon the filing of the bond the attachment in such action shall be discharged and restitution made of any property taken under it.

HISTORY: L. 1963, ch. 303, 60-707; L. 1977, ch. 202, § 5; April 18.

60-709. Compensation of officer. When property is seized on attachment, the court may allow to the officer having charge thereof such amount as will reimburse the officer for his or her expense in taking the property into his or her possession and keeping the same, and such amount will be charged as costs in the action.

HISTORY: L. 1963, ch. 303, 60-709; Jan. 1, 1964.

60-710. Sale of perishable property. When property shall be actually seized which is likely to perish or to materially depreciate in value before the probable termination of the suit, or the keeping of which would be attended with unreasonable loss or expense, a judge of the district court of the county where the suit is pending or where the property is located may order the same to be sold on such terms and conditions as the judge may direct, by the officer having charge of the property, and a return of the proceedings thereon shall be made by the officer at a time to be fixed by the judge. The return of the officer shall be filed with the clerk of the court in the county in which the suit is pending. The title of any purchaser at such sale shall not be affected by any proceedings brought under K.S.A. 60-309.

HISTORY: L. 1963, ch. 303, 60-710; L. 1976, ch. 251, § 18; Jan. 10, 1977.

60-711. Appointment of receiver. The judge may appoint a receiver in aid of attachment subject to the provisions of article 13 of this chapter.

HISTORY: L. 1963, ch. 303, 60-711; Jan. 1, 1964.

60-712. Dissolution of attachment; hearing.

(a) Motion to dissolve, how made. In all cases where property, effects or credits shall be attached, any interested person may file a motion to dissolve the attachment, verified by affidavit, putting in issue the sufficiency of the proceedings, the defendant's or other person's claim of exemption as to any property which has been attached, or the truth of the facts alleged in the affidavit on which the attachment was issued. The court shall hold a hearing on the motion within five days after the receipt thereof. The burden of proof shall be on the party seeking the attachment except as to any claim of exemption.

(b) Amendments. The judge may in the interest of justice, permit amendments to the petition or the affidavit, including the specification of additional grounds for attachment.

HISTORY: L. 1963, ch. 303, 60-712; L. 1977, ch. 202, § 6; April 18.

60-713. Settlement of conflicting claims. Any person claiming an interest in any property attached shall be permitted to intervene in accordance with K.S.A. 60-224 (a), and in the discretion of the judge any creditor of a party if the creditor's claim is liquidated in amount may be permitted, to intervene in the attachment proceedings, or may be joined as a party thereto in accordance with K.S.A. 60-219 (b), and the court shall adjudicate their respective rights in accordance with the following rules:

(a) Process. Process shall be served on parties joined under this section in the same manner and with the same effect as is provided in article 3 of this chapter.

(b) Multiple attachments. An officer having several orders of attachment subject to being levied on the same property shall levy the same in the order in which they were received by said officer. If there are several attachments issued out of different courts, all questions arising under this section shall be determined by the court out of which there was issued the first attachment served. The clerk of the court which determines such questions shall promptly certify the proceedings to any other court in which proceedings are affected thereby.

(c) Representation of passive parties. If any party to the proceedings, whether an original party or one who has been subsequently joined, fails to assert a right or a defense available, and such failure is prejudicial to the rights of some other party, the latter may assert the same for the protection of such party's own interest.

(d) Fraudulent conveyances. The grantee of any interest in attached property, which interest was received fraudulently, may be joined for the purpose of barring such interest, setting aside such conveyance, or obtaining such other relief as justice may require.

HISTORY: L. 1963, ch. 303, 60-713; L. 1976, ch. 251, § 19, Jan. 10, 1977.

60-719. Effect of offsets claimed by garnishee. When the garnishee claims that he or she is not indebted to the defendant for the reason that the defendant is indebted to the garnishee, or that the indebtedness due to the defendant is reduced thereby, the garnishee is not discharged unless and until he or she applies the amount of his or her indebtedness to the defendant to the liquidation of his or her claim against the defendant.

HISTORY: L. 1963, ch. 303, 60-719; Jan. 1, 1964.

60-721. Judgment in garnishment proceedings.

(a) Upon determination of the issues, either by admissions in the answer or reply, or by default, or by findings of the court on controverted issues, judgment shall be entered fixing the rights and liabilities of all the parties in the garnishment proceedings

(1) by determining the liability of garnishee upon default, or

(2) discharging the garnishee, or

(3) making available to the satisfaction of the claim of the plaintiff any indebtedness due from the garnishee to the defendant or any property in the hands of the garnishee belonging to the defendant, including ordering the payment of money by the garnishee into court, or the impoundment, preservation and sale of property as provided for the disposition of attached property, or

(4) rendering judgment against the garnishee for the amount of his or her indebtedness to the defendant or for the value of any property of the defendant held by the garnishee, and

(5) if the answer of a garnishee is controverted without good cause, the court may award the garnishee judgment against the party controverting such answer damages for his or her expenses, including reasonable attorneys' fees, necessarily incurred in substantiating the same.

(b) When judgment is entered in garnishment proceedings for the purpose of enforcing an order of any court for the support of any person and the court finds that a continuing order of garnishment is necessary to insure payment of a court order of support, the court may issue a continuing order of garnishment to allow any indebtedness that will become due from the garnishee to the defendant because of an employer-employee relationship to be made available to the plaintiff on a periodic and continuing basis for so long as the court issuing the order may determine or until otherwise ordered by such court in a further proceeding. No order may be made pursuant to this subsection (b) unless the court finds that the defendant is in arrearage of a court order for support in an amount equal to or greater than one year of support as ordered and the defendant receives compensation from his or her employer on a regular basis in substantially equal periodic payments. On motion of a defendant who is subject to a garnishment order pursuant to this subsection (b), the court for good cause shown may modify or revoke any such order.

(c) All orders and judgments in any garnishment proceeding shall be subject to the provisions of K.S.A. 2003 Supp. 60-727 and amendments thereto.

HISTORY: L. 1963, ch. 303, 60-721; L. 1978, ch. 227, § 4; L. 1996, ch. 71, § 2; Apr. 4.

60-722. Bond of defendant for payment of judgment. The defendant may at any time after the proceeding is commenced file with the clerk of the court a bond, to be approved by the judge of the district court, in double the amount of the claim or such lesser amount as shall be approved by order of the judge to the effect that the defendant will pay to the plaintiff on demand the amount of the judgment and costs that may be assessed against such defendant, and thereupon, the garnishee shall be discharged and any money or property paid or delivered to any officer shall be delivered to the person entitled thereto.

HISTORY: L. 1963, ch. 303, 60-722; L. 1992, ch. 314, § 9; July 1.

60-723. Garnishment of earnings of public officers and employees; state property exempt from enforcement of judgments.

(a) All provisions, requirements, conditions and exemptions of the garnishment laws of the state of Kansas shall apply to all state, county, city, township and school district officers and employees, as well as to all officers and employees of all municipal or quasi-municipal corporations, to the same extent and effect as such laws apply under the existing statutes of the state of Kansas to officers and employees of private corporations, subject to the limitations contained in K.S.A. 60-717 and 60-718, and amendments thereto.

(b) Consent is hereby given for garnishment proceedings to be brought against the state and such counties, townships, cities, school districts and other municipal or quasi-municipal corporations in the same manner and under the same procedure as is now provided by law for bringing such proceedings against private corporations.

(c) All income withholding orders for support or orders of garnishment attaching earnings of a state officer or employee shall be served upon the director of accounts and reports.

(d) All property, funds, credits and indebtedness of the state or of any agency of the state shall be exempt from garnishment, attachment, levy and execution and sale, and no judgment against the state or any agency of the state shall be a charge or lien on any such property, funds, credits or indebtedness.

HISTORY: L. 1963, ch. 303, 60-723; L. 1969, ch. 284, § 3; L. 1981, ch. 232, § 1; L. 1994, ch. 273, § 4; July 1.

60-724. Exceptions. No judgment shall be rendered in garnishment by reason of the garnishee:

(1) having drawn, accepted, made, endorsed, or guaranteed any negotiable bill, draft, note, or other security, or

(2) holding moneys on a claim not arising out of contract and not liquidated as to amount, or

(3) holding moneys or property exempt by law, or the proceeds therefrom.

HISTORY: L. 1963, ch. 303, 60-724; Jan. 1, 1964.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 19A. LIMITATION ON DAMAGES FOR PAIN AND SUFFERING

60-19a01. Personal injury action defined; limitation established; itemization of verdict; no jury instruction on limitation to be given; wrongful death limitation not affected; application limited.

(a) As used in this section, "personal injury action" means any action for damages for personal injury or death, except for medical malpractice liability actions.

(b) In any personal injury action, the total amount recoverable by each party from all defendants for all claims for pain and suffering shall not exceed a sum total of $ 250,000.

(c) In every personal injury action, the verdict shall be itemized by the trier of fact to reflect the amount awarded for pain and suffering.

(d) If a personal injury action is tried to a jury, the court shall not instruct the jury on the limitations of this section. If the verdict results in an award for pain and suffering which exceeds the limit of this section, the court shall enter judgment for $ 250,000 for all the party's claims for pain and suffering. Such entry of judgment by the court shall occur after consideration of comparative negligence principles in K.S.A. 60-258a and amendments thereto.

(e) The provisions of this section shall not be construed to repeal or modify the limitation provided by K.S.A. 60-1903 and amendments thereto in wrongful death actions.

(f) The provisions of this section shall apply only to personal injury actions which are based on causes of action accruing on or after July 1, 1987, and before July 1, 1988.

HISTORY: L. 1987, ch. 217, § 1; L. 1988, ch. 216, § 2; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 23. EXEMPTIONS

60-2310. Wage garnishment; definitions; restrictions, exceptions; sickness preventing work; assignment of account; prohibition on courts.

(a) Definitions. As used in this act and the acts of which this act is amendatory, unless the context otherwise requires, the following words and phrases shall have the meanings respectively ascribed to them:

(1) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise;

(2) "disposable earnings" means that part of the earnings of any individual remaining after the deduction from such earnings of any amounts required by law to be withheld;

(3) "wage garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt; and

(4) "federal minimum hourly wage" means that wage prescribed by subsection (a)(1) of section 6 of the federal fair labor standards act of 1938, and any amendments thereto.

(b) Restriction on wage garnishment. Subject to the provisions of subsection (e), only the aggregate disposable earnings of an individual may be subjected to wage garnishment. The maximum part of such earnings of any wage earning individual which may be subjected to wage garnishment for any workweek or multiple thereof may not exceed the lesser of:

(1) Twenty-five percent of the individual's aggregate disposable earnings for that workweek or multiple thereof;

(2) the amount by which the individual's aggregate disposable earnings for that workweek or multiple thereof exceed an amount equal to 30 times the federal minimum hourly wage, or equivalent multiple thereof for such longer period; or

(3) the amount of the plaintiff's claim as found in the order for garnishment. No one creditor may issue more than one garnishment against the earnings of the same judgment debtor during any one 30-day period, but the court shall allow the creditor to file amendments or corrections of names or addresses of any party to the order of garnishment at any time. In answering such order the garnishee-employer shall withhold from all earnings of the judgment-debtor for any pay period or periods ending during such 30-day period an amount or amounts as are allowed and required by law. Nothing in this act shall be construed as charging the plaintiff in any

garnishment action with the knowledge of the amount of any defendant's earnings prior to the commencement of such garnishment action.

(c) Sickness preventing work. If any debtor is prevented from working at the debtor's regular trade, profession or calling for any period greater than two weeks because of illness of the debtor or any member of the family of the debtor, and this fact is shown by the affidavit of the debtor, the provisions of this section shall not be invoked against any such debtor until after the expiration of two months after recovery from such illness.

(d) Assignment of account. If any person, firm or corporation sells or assigns an account to any person or collecting agency, that person, firm or corporation or their assignees shall not have or be entitled to the benefits of wage garnishment. The provision of this subsection shall not apply to the following:

(1) Assignments of support rights to the secretary of social and rehabilitation services pursuant to K.S.A. 39-709 and 39-756, and amendments thereto, and support enforcement actions conducted by court trustees pursuant to K.S.A. 23-492, et seq., and amendments thereto;

(2) support rights which have been assigned to any other state pursuant to title IV-D of the federal social security act (42 U.S.C. 651 et seq.);

(3) assignments of accounts receivable or taxes receivable to the director of accounts and reports made under K.S.A. 75-3728b and amendments thereto; or

(4) collections pursuant to contracts entered into in accordance with K.S.A. 75-719 and amendments thereto involving the collection of restitution or debts to district courts.

(e) Exceptions to restrictions on wage garnishment. The restrictions on the amount of disposable earnings subject to wage garnishment as provided in subsection (b) shall not apply in the following instances:

(1) Any order of any court for the support of any person, including any order for support in the form of alimony, but the foregoing shall be subject to the restriction provided for in subsection (g);

(2) any order of any court of bankruptcy under chapter XIII of the federal bankruptcy act; and

(3) any debt due for any state or federal tax.

(f) Prohibition on courts. No court of this state may make, execute or enforce any order or process in violation of this section.

(g) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(1) If the individual is supporting a spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50% of the individual's disposable earnings for that week;

(2) if the individual is not supporting a spouse or dependent child described in clause (1), 60% of such individual's disposable earnings for that week; and

(3) with respect to the disposable earnings of any individual for any workweek, the 50% specified in clause (1) shall be 55% and the 60% specified in clause (2) shall be 65%, if such earnings are subject to garnishment to enforce a support order for a period which is prior to the twelve-week period which ends with the beginning of such workweek.

HISTORY: L. 1963, ch. 303, 60-2310; L. 1967, ch. 324, § 2; L. 1968, ch. 404, § 1; L. 1970, ch. 238, § 1; L. 1972, ch. 222, § 4; L. 1976, ch. 210, § 7; L. 1977, ch. 206, § 1; L. 1978, ch. 227, § 5; L. 1979, ch. 183, § 5; L. 1982, ch. 250, § 1; L. 1983, ch. 289, § 1; L. 1985, ch. 115, § 51; L. 1988, ch. 212, § 3; L. 1988, ch. 213, § 3; L. 1994, ch. 273, § 5; L. 1996, ch. 195, § 3; L. 1997, ch. 182, § 103; July 3.

60-2311. Discharge of employee due to wage garnishment prohibited. No employer may discharge any employee by reason of the fact that the employee's earnings have been subjected to wage garnishment.

HISTORY: L. 1970, ch. 238, § 2; L. 1973, ch. 237, § 1; L. 1979, ch. 183, § 6; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 26. GENERAL PROVISIONS

60-2609. Judgments in damage actions for acts or omissions of health care providers; installment or periodic payment of damages; contents and modification of judgment; "health care provider" defined.

(a) Whenever judgment is entered on a claim in any action for recovery of damages for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider, the court may include in such judgment a requirement that the damages awarded be paid in whole or in part by installment or periodic payments, and any installment or periodic payment upon becoming due and payable under the terms of any such judgment shall constitute a separate judgment upon which execution may issue. Any judgment ordering any such payments shall specify the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event.

(b) As used in this section, "health care provider" means a person licensed to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts or a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed medical care facility, a health maintenance organization, a licensed dentist, a licensed professional nurse, a licensed practical nurse, a licensed optometrist, a licensed podiatrist, a licensed pharmacist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a licensed physical therapist or an officer, employee or agent thereof acting in the course and scope of employment or agency.

HISTORY: L. 1976, ch. 250, § 1; L. 1986, ch. 231, § 7; L. 1988, ch. 246, § 14; L. 2003, ch. 128, § 21; Apr. 1, 2004.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 28. SETTLEMENTS, RELEASES OR STATEMENTS

60-2801. Settlement or release of liability; limitations; disavowal of agreement.

(a) Within fifteen (15) days of the date of the occurrence causing injury to any person, who either is under the care of a person licensed to practice the healing arts, or is confined to a hospital or sanitarium as a patient, no person whose interest is or may become adverse to the injured person shall:

(1) Negotiate or attempt to negotiate a settlement with the injured patient; or

(2) obtain or attempt to obtain a general release of liability from the injured patient.

(b) Any settlement agreement entered into, any general release of liability or any written statement made by any person who is under the care of a person licensed to practice the healing arts or is confined in a hospital or sanitarium after he or she incurs a personal injury, which is not obtained in accordance with the provisions of K.S.A. 60-2802, may be disavowed by the injured person within fifteen (15) days after discharge from the care of any person licensed to practice the healing arts or after release from the hospital or sanitarium, whichever occurs first, and such statement, release or settlement shall not be received in evidence in any court action relating to the injury.

HISTORY: L. 1972, ch. 236, § 1; July 1.

60-2802. Same; applicability of act. The provisions of this act relating to settlements, releases and statements obtained from a patient confined in a hospital or sanitarium or being treated by a person licensed to practice the healing arts, shall not apply, if such patient is released from a hospital or sanitarium or released by a person licensed to practice the healing arts, within fifteen (15) days of the date of the occurrence causing injury, or if at least five (5) days prior to obtaining the settlement, release or statement, the injured party has signified in writing his or her willingness that a settlement, release or statement be given.

HISTORY: L. 1972, ch. 236, § 2; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 34. PROFESSIONAL LIABILITY ACTIONS
HEALTH CARE PROVIDERS

60-3405. Findings and purpose. Substantial increases in costs of professional liability insurance for health care providers have created a crisis of availability and affordability. This situation poses a serious threat to the continued availability and quality of health care in Kansas. In the interest of the public health and welfare, new measures are required to assure that affordable professional liability insurance will be available to Kansas health care providers, to assure that injured parties receive adequate compensation for their injuries, and to maintain the quality of health care in Kansas.

HISTORY: L. 1986, ch. 229, § 1; July 1.

60-3406. Definitions. As used in K.S.A. 60-3406 through 60-3410 and amendments thereto:

(a) The words and phrases defined by K.S.A. 60-3401 and amendments thereto shall have the meanings provided by that section.

(b) "Current economic loss" means costs of medical care and related benefits, lost wages and other economic losses incurred prior to the verdict.

(c) "Future economic loss" means costs of medical care and related benefits, lost wages, loss of earning capacity or other economic losses to be incurred after the verdict.

(d) "Medical care and related benefits" means reasonable expenses of necessary medical care, hospitalization and treatment required due to the negligent rendering of or failure to render professional services by the liable health care provider.

HISTORY: L. 1986, ch. 229, § 12; L. 1987, ch. 224, § 3; July 1.

60-3408. Verdict; period for payment for future losses. In every medical malpractice liability action in which the verdict awards damages for future economic losses, the verdict shall specify the period of time over which payment for such losses will be needed.

HISTORY: L. 1986, ch. 229, § 14; L. 1987, ch. 224, § 4; July 1.

60-3410. Application of 60-3406 through 60-3408. The provisions of K.S.A. 60-3406 through 60-3408 and amendments thereto shall apply only to medical malpractice liability actions which are based on causes of action accruing on or after July 1, 1986.

HISTORY: L. 1986, ch. 229, § 16; L. 1989, ch. 143, § 8; July 1.

60-3412. Expert witnesses, qualifications. In any medical malpractice liability action, as defined in K.S.A. 60-3401 and amendments thereto, in which the standard of care given by a practitioner of the healing arts is at issue, no person shall qualify as an expert witness on such issue unless at least 50% of such person's professional time within the two-year period preceding the incident giving rise to the action is devoted to actual clinical practice in the same profession in which the defendant is licensed.

HISTORY: L. 1986, ch. 229, § 17; July 1.

60-3413. Settlement conference.

(a) In any medical malpractice liability action, as defined by K.S.A. 60-3401 and amendments thereto, the court shall require a settlement conference to be held not less than 30 days before trial.

(b) The settlement conference shall be conducted by the trial judge or the trial judge's designee. The attorneys who will conduct the trial, all parties and all persons with authority to settle the claim shall attend the settlement conference unless excused by the court for good cause.

(c) Offers, admissions and statements made in conjunction with or during the settlement conference shall not be admissible at trial or in any subsequent action.

HISTORY: L. 1986, ch. 229, § 18; July 1.

60-3414. Severability. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

HISTORY: L. 1986, ch. 229, § 51; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 35. PROFESSIONAL MALPRACTICE LIABILITY SCREENING PANELS

60-3501. Definitions. As used in K.S.A. 60-3501 through 60-3509:

(a) "Professional licensee" means any person licensed to practice a profession which a professional corporation is authorized to practice but does not include any health care provider as defined by K.S.A. 40-3401 and amendments thereto.

(b) "Professional malpractice liability action" means any action for damages arising out of the rendering of or failure to render services by a professional licensee.

HISTORY: L. 1987, ch. 214, § 1; July 1.

60-3502. Convening of screening panel; selection of members; list of professional licensees to be maintained by state agencies. If a professional malpractice liability action is filed in a district court of this state and one of the parties to the action requests, by filing a memorandum with the court, that a professional malpractice screening panel be convened, the judge of the district court or, if the district court has more than one division, the chief judge of such court shall convene a professional malpractice screening panel, hereafter referred to as the screening panel. If a claim for damages arising out of the rendering of or failure to render services by a professional licensee has not been formalized by the filing of a petition, any party affected by such claim may request, by filing a memorandum with the court, that a screening panel be convened and, if such request is made, the judge of the district court or the chief judge of such court shall convene a screening panel.

The membership of the screening panel shall be selected as follows:

(a) A person licensed in the same profession as the defendant or person against whom the claim is filed, designated by the defendant or by the person against whom the claim is made if no petition has been filed;

(b) a person licensed in the same profession as the defendant or person against whom the claim is filed, designated by the plaintiff or by the claimant if no petition has been filed;

(c) a person licensed in the same profession as the defendant or person against whom the claim is filed, selected jointly by the plaintiff and the defendant or by the claimant and the person against whom the claim is made, if no petition has been filed; and

(d) an attorney selected by the judge of the district court or the chief judge of such court from a list of attorneys maintained by the judge of the district court for such purpose. Such attorney shall be a nonvoting member of the screening panel but shall act as chairperson of the screening panel.

The state agency which licenses, registers, certifies or otherwise is responsible for the practice of any group of professional licensees shall maintain and make available to the parties to the proceeding a current list of professional licensees who are willing and available to serve on the screening panel. The persons appointed shall constitute the screening panel for the particular professional malpractice claim to be heard.

HISTORY: L. 1987, ch. 214, § 2; L. 1999, ch. 57, § 55; July 1.

60-3503. Same; notice. The district judge or the chief judge of such court shall notify the parties to the action that a screening panel has been convened and that the members of such screening panel are to be appointed within 10 days of the receipt of such notice. If the plaintiff and the defendant or, if no petition has been filed, the claimant and the party against whom the claim is made are unable to jointly select a professional licensee within 10 days after receipt of notice that a screening panel has been convened, the judge of the district court or the chief judge of such court shall select such professional licensee.

HISTORY: L. 1987, ch. 214, § 3; L. 1999, ch. 57, § 56; July 1.

60-3504. Organization and conduct of meetings; rules by supreme court. The screening panel shall convene with notice in writing to all parties and their counsel and shall decide, after consideration of any records or evidence available and the contentions of the parties, whether there was a departure from the standard practice of the profession involved and whether a causal relationship existed between the damages suffered by the claimant and any such departure. The screening panel shall give notice, organize and conduct its meetings in accordance with rules of procedure adopted by the supreme court of Kansas to govern notice, organization and conduct of such meetings, except strict adherence of the rules of procedure and evidence applicable in civil cases shall not be required. All meetings of the screening panel shall be held in camera.

HISTORY: L. 1987, ch. 214, § 4; July 1.

60-3505. Recommendations on issue; concurring and dissenting opinions; notice to parties; copy of opinion to judge; admissibility in subsequent legal proceedings.

(a) Within 90 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the professional licensee departed from the standard of conduct in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide a copy of its opinion and any concurring or dissenting opinion to each party and each attorney of record and to the judge of the district court or the chief judge of such court.

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial.

HISTORY: L. 1987, ch. 214, § 5; L. 1999, ch. 57, § 57; L. 2001, ch. 6, § 1; July 1.

60-3506. Party may file action upon rejecting panel's determination. If one or more of the parties rejects the final determination of the screening panel, the plaintiff may proceed with the action in the district court.

HISTORY: L. 1987, ch. 214, § 6; July 1.

60-3507. Immunity of members from damages. No member of the screening panel shall be subject to a civil action for damages as a result of any action taken or recommendation made by such member acting without malice and in good faith within the scope of such member's official capacity as a member of the screening panel.

HISTORY: L. 1987, ch. 214, § 7; July 1.

60-3508. Compensation and expenses of professional licensee members; payment by parties.

(a) Each professional licensee member of the screening panel shall be paid a total of $ 250 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court and, in addition thereto, reasonable travel expense. The chairperson of the panel shall be paid a total of $ 500 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court and, in addition thereto, reasonable travel expenses. The chairperson shall keep an accurate record of the time and expenses of all the members of the panel, and the record shall be submitted to the parties for payment with the panel's report.

(b) Costs of the panel including travel expenses and other expenses of the review shall be paid by the side in whose favor the majority opinion is written. If the panel is unable to make a recommendation, each side shall pay 1/2 the costs. Items which may be included in the taxation of costs shall be those items enumerated by K.S.A. 60-2003 and amendments thereto.

HISTORY: L. 1987, ch. 214, § 8; L. 1991, ch. 175, § 1; July 1.

60-3509. Tolling of statute of limitations. In those cases before a screening panel which have not been formalized by filing a petition in a court of law, the filing of a memorandum requesting the convening of a screening panel shall toll any applicable statute of limitations and such statute of limitations shall remain tolled until 30 days after the screening panel has issued its written recommendations.

HISTORY: L. 1987, ch. 214, § 9; July 1.

CHAPTER 60. PROCEDURE, CIVIL
ARTICLE 36. IMMUNITY FROM LIABILITY FOR VOLUNTEERS

60-3601. Immunity from liability for volunteers of certain nonprofit organizations, limitations.

(a) As used in this section:

(1) "Nonprofit organization" means those nonprofit organizations exempt from federal income tax pursuant to section 501(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this act.

(2) "Compensation" does not include actual and necessary expenses that are incurred by a volunteer in connection with the services that the volunteer performs for a nonprofit organization and that are reimbursed to the volunteer or otherwise paid.

(3) "Volunteer" means an officer, director, trustee or other person who performs services for a nonprofit organization but does not receive compensation, either directly or indirectly, for those services. Volunteer does not include a person who delivers health care services to patients in a medical care facility as defined in K.S.A. 65-425 and amendments thereto.

(b) If a nonprofit organization carries general liability insurance coverage, a volunteer of such organization shall not be liable for damages in a civil action for acts or omissions as such volunteer unless: (1) Such conduct constitutes willful or wanton misconduct or intentionally tortious conduct; or (2) such volunteer is required to be insured by law or is otherwise insured against such acts or omissions but, in such case, liability shall be only to the extent of the insurance coverage.

(c) If a nonprofit organization carries general liability insurance coverage, a volunteer of such organization shall not be liable for damages in a civil action for the actions or omissions of any of the officers, directors, trustees, employees or other volunteers of the nonprofit organization unless: (1) The volunteer authorizes, approves, ratifies or otherwise actively participates in the action or omission and the action or omission constitutes willful or wanton misconduct or intentionally tortious conduct; or (2) such volunteer is required to be insured by law or is otherwise insured against such acts or omissions but, in such case, liability shall be only to the extent of the insurance coverage.

(d) Nothing in this section shall be construed to affect the liability of a nonprofit organization for damages caused by the negligent or wrongful act or omission of its volunteer and a volunteer's negligence or wrongful act or omission, when acting as a volunteer, shall be imputed to the nonprofit organization for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.

(e) The provisions of this act shall apply only to causes of action accruing on or after July 1, 1987.

HISTORY: L. 1987, ch. 215, § 1; L. 1988, ch. 223, § 1; April 28.

CHAPTER 61. PROCEDURE, CIVIL, FOR LIMITED ACTIONS
ARTICLE 27. SMALL CLAIMS PROCEDURE

61-2701. Citation of act. This act shall be known and may be cited as the "small claims procedure act."

HISTORY: L. 1973, ch. 239, § 1; July 1.

61-2702. Application of act; correlation with code of civil procedure for limited actions. This act shall apply to and be an alternative procedure for the processing of small claims pursuant to the code of civil procedure for limited actions, and the provisions of this act shall be part of and supplemental to the code of civil procedure for limited actions, and any acts amendatory thereof or supplemental thereto. Except as otherwise specifically provided or where a different or contrary provision is included in this act, the code of civil procedure for limited actions shall be applicable to the processing of small claims and judgments under this act.

HISTORY: L. 1973, ch. 239, § 2; L. 1976, ch. 258, § 57; Jan. 10, 1977.

61-2703. Definitions. As used in this act:

(a) "Small claim" means a claim for the recovery of money or personal property, where the amount claimed or the value of the property sought does not exceed $ 1,800, exclusive of interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto. In actions of replevin, the verified petition fixing the value of the property shall be determinative of the value of the property for jurisdictional purposes. A small claim shall not include:

(1) An assigned claim;

(2) a claim based on an obligation or indebtedness allegedly owed to a person other than the person filing the claim, where the person filing the claim is not a full-time employee or officer of the person to whom the obligation or indebtedness is allegedly owed; or

(3) a claim obtained through subrogation.

(b) "Person" means an individual, partnership, limited liability company, corporation, fiduciary, joint venture, society, organization or other association of persons.

HISTORY: L. 1973, ch. 239, § 3; L. 1979, ch. 187, § 1; L. 1986, ch. 223, § 2; L. 1986, ch. 222, § 1; L. 1986, ch. 224, § 1; L. 1994, ch. 273, § 19; L. 1999, ch. 145, § 1; July 1.

61-2704. Commencement of action; fees and costs; limit on number of claims.

(a) An action seeking the recovery of a small claim shall be considered to have been commenced at the time a person files a written statement of the person's small claim with the clerk of the court if, within 90 days after the small claim is filed, service of process is obtained or the first publication is made for service by publication. Otherwise, the action is deemed commenced at the time of service of process or first publication. An entry of appearance shall have the same effect as service.

(b) Upon the filing of a plaintiff's small claim, the clerk of the court shall require from the plaintiff a docket fee of $ 26, if the claim does not exceed $ 500; or $ 46, if the claim exceeds $ 500; unless for good cause shown the judge waives the fee. The docket fee shall be the only costs required in an action seeking recovery of a small claim. No person may file more than 10 small claims under this act in the same court during any calendar year.

HISTORY: L. 1973, ch. 239, § 4; L. 1974, ch. 242, § 1; L. 1982, ch. 116, § 11; L. 1986, ch. 222, § 2; L. 1990, ch. 202, § 35; L. 1992, ch. 128, § 16; L. 1996, ch. 234, § 17; L. 2000, ch. 177, § 8; July 1.

61-2705. Pleadings. It is the purpose of this act to provide and maintain simplicity of pleading, and the court shall supply the forms prescribed by this act to assist the parties in preparing their pleadings. The pleading required in an action commenced under this act shall be the statement of plaintiff's claim, which shall be on the form set forth by the Judicial Council and be denominated a petition. A defendant who has a claim against the plaintiff, which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim, shall file a statement of the defendant's claim on the form set forth by the Judicial Council if the claim does not exceed the amount specified in subsection (a) of K.S.A. 61-2703, and amendments thereto. If the defendant's claim exceeds the amount specified in subsection (a) of K.S.A. 61-2703, and amendments thereto, the defendant may file a statement of the defendant's claim on the form set forth by the Judicial Council. The court shall not have any jurisdiction under this act to hear or determine any claim by a defendant which does not arise out of the transaction or occurrence which is the subject matter of plaintiff's claim.

No pleadings other than those provided for herein shall be allowed. It shall be sufficient that each pleading set forth a short and plain statement of the claim, showing that the pleader is entitled to relief, and contain a demand for judgment for the relief to which the pleader deems entitled.

HISTORY: L. 1973, ch. 239, § 5; L. 1990, ch. 212, § 10; July 1.

61-2706. Claims exceeding small claims in jurisdiction.

(a) Whenever a plaintiff demands judgment beyond the scope of the small claims jurisdiction of the court, the court shall either:

(1) Dismiss the action without prejudice at the cost of the plaintiff;

(2) allow the plaintiff to amend the plaintiff's pleadings and service of process to bring the demand for judgment within the scope of the court's small claims jurisdiction and thereby waive the right to recover any excess, assessing the costs accrued to the plaintiff; or

(3) if the plaintiff's demand for judgment is within the scope of the court's general jurisdiction, allow the plaintiff to amend the plaintiff's pleadings and service of process so as to commence an action in such court in compliance with K.S.A. 61-1703 and amendments thereto, assessing the costs accrued to the plaintiff.

(b) Whenever a defendant asserts a claim beyond the scope of the court's small claims jurisdiction, but within the scope of the court's general jurisdiction, the court may determine the validity of defendant's entire claim. If the court refuses to determine the entirety of any such claim, the court must allow the defendant to:

(1) Make no demand for judgment and reserve the right to pursue the defendant's entire claim in a court of competent jurisdiction;

(2) make demand for judgment of that portion of the claim not exceeding $ 1,800, plus interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and reserve the right to bring an action in a court of competent jurisdiction for any amount in excess thereof; or

(3) make demand for judgment of that portion of the claim not exceeding $ 1,800, plus interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and waive the right to recover any excess.

HISTORY: L. 1973, ch. 239, § 6; L. 1979, ch. 187, § 2; L. 1986, ch. 223, § 3; L. 1986, ch. 222, § 3; L. 1986, ch. 224, § 2; L. 1994, ch. 273, § 20; July 1.

61-2707. Trial of action; exclusion of attorneys; appearance by others in a representative capacity; enforcement of judgment; certain judgments null and void.

(a) The trial of all actions shall be to the court, and except as provided in K.S.A. 61-2714, and amendments thereto, no party in any such action shall be represented by an attorney prior to judgment. A party may appear by a full-time employee or officer or any person in a representative capacity so long as such person is not an attorney. Discovery methods or proceedings shall not be allowed nor shall the taking of depositions for any purpose be permitted. No order of attachment or garnishment shall be issued in any action commenced under this act prior to judgment in such action.

(b) When entering judgment in the action, the judge shall include as a part of the judgment form or order a requirement that, unless the judgment has been paid, the judgment debtor shall submit to the clerk of the district court, within 30 days after receipt of the form therefor, a verified statement describing the location and nature of property and assets which the person owns, including the person's place of employment, account numbers and names of financial institutions holding assets of such person and a description of real property owned by such person. The office of judicial administration shall develop the form to be used in submitting information to the clerk under this subsection. The court shall also include as a part of the judgment form or order a requirement that, within 15 days of the date judgment is entered, unless judgment has been paid, the judgment creditor shall mail a copy of the judgment form or order to the judgment debtor, together with the form for providing the information required to be submitted under this subsection, and that the judgment creditor shall file with the court proof of the mailing thereof. When the form containing the required information is submitted to the clerk as required by this subsection, the clerk shall note in the record of the proceeding that it was received and then shall mail the form to the judgment creditor. No copy of such form shall be retained in the court records nor shall it be made available to other persons. Upon motion of the judgment creditor, the court may punish for contempt any person failing to submit information as required by this subsection.

(c) Any judgment entered under this act on a claim which is not a small claim, as defined in K.S.A. 61-2703 and amendments thereto, or which has been filed with the court in contravention of the limitation prescribed by K.S.A. 61-2704 and amendments thereto on the number of claims which may be filed by any person, shall be void and unenforceable.

HISTORY: L. 1973, ch. 239, § 7; L. 1985, ch. 199, § 1; L. 1999, ch. 145, § 2; July 1.

61-2708. Venue. The venue of actions commenced under this act shall be as prescribed in article 19 of chapter 61 of the Kansas Statutes Annotated, except that the county in which the cause of action arose shall be proper venue only where it is affirmatively shown that the defendant was a resident of the county where the cause of action arose at the time the cause of action arose.

HISTORY: L. 1973, ch. 239, § 8; L. 1994, ch. 168, § 1; July 1.

61-2709. Appeals.

(a) An appeal may be taken from any judgment under the small claims procedure act. All appeals shall be by notice of appeal specifying the party or parties taking the appeal and the order, ruling, decision or judgment complained of and shall be filed with the clerk of the district court within 10 days after entry of judgment. All appeals shall be tried and determined de novo before a district judge, other than the judge from which the appeal is taken. The provisions of K.S.A. 60-2001 and 61-1716, and amendments thereto, shall be applicable to actions appealed pursuant to this subsection. The appealing party shall cause notice of the appeal to be served upon all other parties to the action in accordance with the provisions of K.S.A. 60-205 and amendments thereto. An appeal shall be perfected upon the filing of the notice of appeal. When the appeal is perfected, the clerk of the court or the judge from which the appeal is taken shall refer the case to the chief judge for assignment in accordance with this section. All proceedings for the enforcement of any judgment under the small claims procedure act shall be stayed during the time within which an appeal may be taken and during the pendency of an appeal, without the necessity of the appellant filing a supersedeas bond. If the appellee is successful on an appeal pursuant to this subsection, the court shall award to the appellee, as part of the costs, reasonable attorney fees incurred by the appellee on appeal.

(b) Any order, ruling, decision or judgment rendered by a district judge on an appeal taken pursuant to subsection (a) may be appealed in the manner provided in article 21 of chapter 60 of the Kansas Statutes Annotated.

HISTORY: L. 1973, ch. 239, § 9; L. 1974, ch. 242, § 2; L. 1976, ch. 258, § 58; L. 1977, ch. 208, § 1; L. 1979, ch. 187, § 3; L. 1982, ch. 116, § 12; L. 1986, ch. 115, § 101; L. 1999, ch. 57, § 61; July 1.

61-2710. Costs, taxation. The costs of any action commenced [under] this act shall be taxed against the parties as in other actions pursuant to the code of civil procedure for limited actions.

HISTORY: L. 1973, ch. 239, § 10; L. 1974, ch. 242, § 3; L. 1976, ch. 258, § 59; Jan. 10, 1977.

61-2712. Purpose of act; powers of court. It is the purpose of this act to provide a forum for the speedy trial of small claims, and to this end, the court may make such orders or rulings, consistent with the provisions of this act, as are necessary to promote justice and fairly protect the parties.

HISTORY: L. 1973, ch. 239, § 12; July 1.

61-2713. Forms. The forms to be utilized under the Small Claims Procedure Act shall be set forth by the Judicial Council.

HISTORY: L. 1973, ch. 239, § 13; L. 1979, ch. 187, § 4; L. 1986, ch. 223, § 4; L. 1986, ch. 222, § 4; L. 1986, ch. 224, § 3; L. 1990, ch. 212, § 11; L. 1994, ch. 273, § 21; L. 1999, ch. 145, § 3; July 1.

61-2714. Use of attorneys; certification by plaintiff of compliance with act; defense related to limit on number of claims.

(a) Notwithstanding any other provision of the small claims procedure act, if any party in small claims litigation:

(1) Uses any person in a representative capacity if such person representing the party is an attorney or was formerly an attorney; or

(2) is an attorney representing the attorney's self in a small claims action, all other parties to such litigation shall be entitled to have an attorney appear on their behalf in such action.

(b) When appropriate, the court shall advise all parties of this right to hire counsel pursuant to this section and shall, if requested by any party, grant one reasonable continuance in such matter to afford a party an opportunity to secure representation of an attorney.

(c) The filing of a small claims action is a certification by the plaintiff that such plaintiff is complying with the provisions of the small claims procedures act, specifically with the provisions of K.S.A. 61-2704, and amendments thereto, relating to the limited number of claims a person may file in the same court during any calendar year.

(d) Any defendant may raise as a defense to a small claims action that the plaintiff has filed or caused to be filed more claims than allowed by the small claims act. When such defense is raised, if the court finds the plaintiff to have filed more claims than allowed by law, the court shall dismiss the action with prejudice and such a finding shall be considered a violation of the unconscionable acts and practices section of the Kansas consumer protection act. The defendant may file a collateral action under the Kansas consumer protection act.

(e) As used in this section, "attorney" means persons licensed to practice law in Kansas or in any other state whether on active or inactive status, or persons otherwise qualified to take the Kansas bar examination and acting under the supervisory authority of a licensed attorney.

HISTORY: L. 1994, ch. 273, § 22; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 6B. AMYGDALIN (LAETRILE)

65-6b05. Same; written informed request. The "written informed request" referred to in this act shall be on a form prepared by, and obtained from the state board of healing arts and shall be in substance as follows:

WRITTEN INFORMED REQUEST FOR PRESCRIPTION OF AMYGDALIN (LAETRILE)
FOR MEDICAL TREATMENT

Patient's name: _____
Address _____
Age _____ Sex _____

Name and address of prescribing physician: _____

Malignancy, disease, illness or physical condition diagnosed for medical treatment by amygdalin (laetrile) or its use as a dietary supplement: _____
_____

My physician has explained to me:

(a) That the federal food and drug administration has determined amygdalin (laetrile) to be an "unapproved new drug" and that federal law prohibits the interstate distribution of an "unapproved new drug."

(b) That neither the American cancer society, the American medical association, the Kansas medical society nor the Kansas association of osteopathic medicine recommends use of amygdalin (laetrile) in the treatment of any malignancy, disease, illness or physical condition.

(c) That there are alternative recognized treatments for the malignancy, disease, illness or physical condition from which I suffer which my physician has offered to provide for me including: (Here describe)_____
_____

That notwithstanding the foregoing, I hereby request prescription and use of amygdalin (laetrile) (a) in the medical treatment of the malignancy, disease, illness or physical condition from which I suffer [ ], (b) as a dietary supplement [ ] or (c) both in the medical treatment of the malignancy, disease, illness or physical condition from which I suffer and as a dietary supplement [ ] (check (a), (b) or (c)).

_____
Patient or person signing for patient

ATTEST:

_____
Prescribing Physician

A copy of such written informed request shall be forwarded forthwith after execution thereof to the medical care facility or other health care facility and the state board of healing arts.

HISTORY: L. 1978, ch. 239, § 5; July 1.

65-6b11. Same; records required. A physician shall maintain records of his or her purchases and disposals of amygdalin (laetrile) to include, but not be limited to, the date of purchase, sale or disposal of such substance by the physician.

HISTORY: L. 1978, ch. 239, § 12; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 1. SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES
INFECTIOUS AND CONTAGIOUS DISEASES

65-116a. Definitions. As used in this act:

(a) The word "tuberculosis" shall be construed to mean that the disease is in a communicable or infectious stage as established by chest x-ray, microscopial examination of sputum, or other diagnostic procedures approved by the secretary of health and environment; and

(b) the words "health officer" shall include the secretary of health and environment or the secretary's designee and all local health officers.

HISTORY: L. 1957, ch. 467, § 1; L. 1974, ch. 352, § 5; L. 1975, ch. 311, § 1; L. 1980, ch. 182, § 18; July 1.

65-116b. Tuberculosis suspects; order by health officer; scope of examination; care and treatment. When any health officer shall have reasonable grounds to believe that any person has tuberculosis in a communicable form and will not voluntarily seek a medical examination, it shall be the duty of such health officer to order such person, either orally or in writing, to undergo an examination by a physician qualified in chest diseases, or at some clinic or medical care facility qualified to make such examinations. It shall be the duty of such suspected person to present himself or herself

for examination at such time and place as ordered by the health officer. The examination shall include an x-ray of the chest, examination of sputum, and such other forms and types of examinations as shall be approved by the secretary of health and environment.

If, upon examination, it shall be determined that such person has tuberculosis in an active stage or in a communicable form, then it shall be the duty of such tuberculous person to arrange for admission of himself or herself as a patient in some medical care facility qualified to treat persons with tuberculosis or when there is no danger to the public or to other individuals as determined by the health officer, such person may receive treatment on an outpatient basis.

HISTORY: L. 1957, ch. 467, § 2; L. 1974, ch. 352, § 6; L. 1975, ch. 311, § 2; Oct. 1.

65-116c. Precautions to prevent spread of infection, when; investigations. Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in any medical care facility qualified to treat persons with tuberculosis, it shall be the duty of the health officer to instruct such person as to the precautions necessary to be taken to protect the members of such person's household or the community from becoming infected with tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself or herself in such a manner as not to expose members of his or her family or household, or any other person with whom he or she may be associated to danger of infection, and said health officer shall investigate from time to time for the purpose of seeing if said instructions are being carried out in a reasonable and acceptable manner.

HISTORY: L. 1957, ch. 467, § 3; L. 1975, ch. 311, § 3; Oct. 1.

65-116d. Failure to do required acts; proceedings by county attorney. Whenever any person shall fail to do any of the following enumerated acts, the health officer shall file a written notice of such failure with the county or district attorney of the county where such person resides, and said county or district attorney shall institute proceedings to enforce the intent and provisions of this act:

(a) Fail or refuse to present himself or herself to any private physician qualified in chest diseases, or at some clinic, or medical care facility qualified to make such examinations, at such time and place as ordered by the health officer.

(b) Fail or refuse to follow the instructions of the health officer or private physicians qualified in chest diseases or qualified clinic or medical care facility as to the precautions necessary to be taken to protect the members of his or her household, or any member of the community, or any other person with whom he or she might be associated from danger of infection by tuberculosis communicated by such person.

HISTORY: L. 1957, ch. 467, § 4; L. 1974, ch. 352, § 184; L. 1975, ch. 311, § 4; Oct. 1.

65-116e. Commitment to medical care facility; restraint; discharge, when; recommitment. If any person shall be convicted of any of the violations set forth in paragraphs (a) and (b) of K.S.A. 65-116d, or shall enter a plea of guilty thereto when charged with such violations, then such person shall be committed to a medical care facility qualified to treat tuberculosis. Any patient so committed may, by direction of the health officer or tuberculosis consultant of the medical care facility concerned, be placed apart from the others and restrained from leaving the institution. The tuberculosis consultant of the medical care facility concerned, upon signing and placing among the permanent records of the medical care facility a statement to the effect that such person may be discharged without danger to the health or life of others, may discharge the person so committed at any time during the period of commitment. A copy of such statement shall be sent to the state health officer. If necessary, recommitment may be effected in the same manner as original commitment.

HISTORY: L. 1957, ch. 467, § 5; L. 1974, ch. 352, § 185; L. 1975, ch. 311, § 5; Oct. 1.

65-116g. Penalty for violations of act or regulations. Any person who violates any provision of this act, or any rules or regulations of the secretary of health and environment for the enforcement of this act, or violates any of the rules or regulations of any institution while a patient therein, or conducts himself in a disorderly manner, shall be guilty of a misdemeanor.

HISTORY: L. 1957, ch. 467, § 7; L. 1974, ch. 352, § 7; July 1.

65-116h. Preservation of individual rights. Nothing in this act shall be construed or operate to empower or authorize the secretary of health and environment or the secretary's designee or a local health officer to restrict in any manner the individual's right to select the mode of treatment of his or her choice.

HISTORY: L. 1957, ch. 467, § 8; L. 1980, ch. 182, § 19; July 1.

65-116i. Expenses of care, maintenance and treatment; payment from state funds. Except as otherwise provided by K.S.A. 65-116l, the expenses incurred in the inpatient care, maintenance and treatment of patients committed under the provisions of K.S.A. 65-116e, or of other persons having communicable or infectious tuberculosis who voluntarily agree to accept care and treatment shall be paid from state funds appropriated to the department of social and rehabilitation services for the purpose of paying medical care facilities and physicians qualified to treat persons infected with tuberculosis.

HISTORY: L. 1975, ch. 311, § 6; Oct. 1.

65-116j. Care, maintenance and treatment; powers and duties of the secretary of health and environment. The secretary of health and environment is hereby granted and may exercise the following powers and duties in providing for the care, maintenance and treatment of persons having communicable or infectious tuberculosis:

(a) To select medical care facilities qualified to treat persons infected with tuberculosis for the purpose of caring for, maintaining and treating patients committed in accordance with the provisions of K.S.A. 65-116e and other persons having communicable or infectious tuberculosis who voluntarily agree to accept care and treatment by a medical care facility on either an inpatient or an outpatient basis;

(b) To inspect the facilities, operations and administration of those medical care facilities receiving financial assistance from the department of social and rehabilitation services for the purpose of providing care, maintenance or treatment for persons infected with communicable or infectious tuberculosis;

(c) To provide public health nursing services to persons having infectious or communicable tuberculosis who are being treated on an outpatient basis; and

(d) To adopt rules and regulations establishing standards for the hospital admission and discharge, care, treatment and maintenance of persons having communicable or infectious tuberculosis.

HISTORY: L. 1975, ch. 311, § 7; Oct. 1.

65-116k. Rules and regulations of secretary of social and rehabilitation services; payments for care and treatment. The secretary of social and rehabilitation services is hereby authorized and directed to adopt rules and regulations establishing reasonable rates and administrative procedures to be followed in making payments to the medical care facilities and physicians providing care and treatment under the provisions of this act. Payments shall only be made directly to medical care facilities and physicians except that this act shall not be deemed to create any rights or causes of action against the state or the secretary of social and rehabilitation services in such a medical care facility or physician, their heirs or assigns. No payments shall be made for expenses incurred prior to the time the secretary assumes payment responsibility and payments made by the secretary on behalf of an individual eligible for payments under the provisions of this act shall constitute a complete settlement of the claim upon which such payment is based.

HISTORY: L. 1975, ch. 311, § 8; Oct. 1.

65-118. Reporting to local health authority as to infectious or contagious diseases; persons reporting; immunity from liability; confidentiality of information; disclosure.

(a) Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse administrator of a hospital, licensed adult care home-administrator, licensed physician assistant, licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease. In the case of a licensed hospital or adult care home, the administrator may designate an individual to receive and make such reports. The secretary of health and environment shall, through rules and regulations, make provision for the consolidation of reports required to be made under this section when the person required to make the report is working in a licensed hospital or adult care home. Laboratories certified under the federal clinical laboratories improvement act pursuant to 42 code of federal regulations, 493 shall report the results of microbiologic cultures, examinations, immunologic essays for the presence of antigens and antibodies and any other laboratory tests which are indicative of the presence of a reportable infectious or contagious disease to the department of health and environment. The director of the division of health may use information from death certificates for disease investigation purposes.

(b) Any person who is an individual member of a class of persons designated under subsection (a) of this section and who reports the information required to be reported under such subsection in good faith and without malice to a county or joint board of health, a local health officer or the department of health and environment shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(c) Information required to be reported under subsection (a) of this section shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the requirements of subsection (a) of this section or subsection (a) of K.S.A. 65-119, except such information may be disclosed:

(1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;

(2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;

(3) if the disclosure is necessary, and only to the extent necessary, to protect the public health;

(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat infectious or contagious diseases. Any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or

(5) if the information to be disclosed is required in a court proceeding involving child abuse and the information is disclosed in camera.

HISTORY: L. 1901, ch. 285, § 2; R.S. 1923, 65-118; L. 1953, ch. 283, § 1; L. 1976, ch. 262, § 1; L. 1979, ch. 189, § 1; L. 1998, ch. 35, § 1; L. 2000, ch. 162, § 17; Feb. 1, 2001.

65-119. Duties and powers of local health officers; contagious diseases; confidentiality of information; disclosure, when.

(a) Any county or joint board of health or local health officer having knowledge of any infectious or contagious disease, or of a death from such disease, within their jurisdiction, shall immediately exercise and maintain a supervision over such case or cases during their continuance, seeing that all such cases are properly cared for and that the provisions of

this act as to isolation, restriction of communication, quarantine and disinfection are duly enforced. The county or joint board of health or local health officer shall communicate without delay all information as to existing conditions to the secretary of health and environment. The local health officer shall confer personally, if practicable, otherwise by letter, with the person in attendance upon the case, as to its future management and control. The county or joint board of health or local health officer is hereby empowered and authorized to prohibit public gatherings when necessary for the control of any and all infectious or contagious disease.

(b) Any disclosure or communication of information relating to infectious or contagious diseases required to be disclosed or communicated under subsection (a) of this section shall be confidential and shall not be disclosed or made public beyond the requirements of subsection (a) of this section or subsection (a) of K.S.A. 65-118, except as otherwise permitted by subsection (c) of K.S.A. 65-118.

HISTORY: L. 1901, ch. 285, § 3; R.S. 1923, 65-119; L. 1953, ch. 283, § 2; L. 1974, ch. 352, § 8; L. 1976, ch. 262, § 2; L. 1979, ch. 189, § 2; July 1.

65-153. Child hygiene; duties of division of health. The general duties of the division of health of the department of health and environment shall include the issuance of educational literature on the care of the baby and the hygiene of the child, the study of the causes of infant mortality and the application of preventive measures for the prevention and the suppression of the diseases of infancy and early childhood.

HISTORY: L. 1915, ch. 269, § 2; R.S. 1923, 65-153; L. 1974, ch. 352, § 13; July 1.

65-153b. Newly born infant; treatment of eyes. Any physician or any person authorized by law to act as an obstetrician shall immediately upon the birth of an infant instill into the eyes of such newly born infant a prophylactic solution approved by the secretary of health and environment: Provided, however, That any person or parent shall not be required to employ such prophylactic if objection is made by written statement to the attending obstetrician within three days from the birth of said child: And provided further, That said written statement shall be attached to the birth certificate.

HISTORY: L. 1929, ch. 218, § 2; L. 1974, ch. 352, § 14; July 1.

65-153c. Same; duty of physician and others. Any physician or any person authorized by law to act as an obstetrician in this state or any other person having the care of an infant, within six (6) months after its birth, who shall detect any inflammation, swelling or redness in the eyes of any such infant or any unnatural discharge therefrom, shall, if such person is licensed to practice medicine and surgery, treat such child with the necessary prophylactic, or, if such person is not licensed to practice medicine and surgery, shall immediately report the condition and the location of such infant to the county or joint board of health.

HISTORY: L. 1929, ch. 218, § 2; L. 1980, ch. 182, § 20; July 1.

65-153d. Same; rules and regulations. It shall be the duty of the secretary of health and environment to make the necessary regulations for the enforcement of this act.

HISTORY: L. 1929, ch. 218, § 3; L. 1974, ch. 352, § 15; July 1.

65-153e. Same; penalty for violating 65-153b to 65-153e. Any person who shall willfully violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred ($ 500) dollars or by confinement in the county jail for six (6) months.

HISTORY: L. 1929, ch. 218, § 4; May 28.

65-153f. Prenatal serological tests for syphilis and hepatitis b; approved laboratories; laboratory reports, confidentiality. Each physician or other person attending a pregnant woman in this state during gestation, with the consent of such woman, shall take or cause to be taken a sample of blood of such woman within 14 days after diagnosis of pregnancy is made. Such sample shall be submitted for serological tests which meet the standards recognized by the United States public health service for the detection of syphilis and hepatitis b to a laboratory approved by the secretary of health and environment for such serological tests. Any state, United States public health service, or United States army, navy or air force laboratory or any laboratory approved by the state health agency of the state in which the laboratory is operated shall be considered approved for the purposes of this act. Any laboratory in this state, performing the tests required by this section shall make a report to the secretary of health and environment of all positive or reactive tests on forms provided by the secretary of health and environment and also shall make a report of the test results to the submitting physician or person attending the woman. Laboratory statements, reports, files and records prepared pursuant to this section shall be confidential and shall not be divulged to or open to inspection by any person other than state or local health officers or their duly authorized representatives, except by written consent of the woman.

HISTORY: L. 1943, ch. 225, § 1; L. 1974, ch. 352, § 16; L. 1981, ch. 241, § 1; L. 1991, ch. 178, § 1; L. 1995, ch. 260, § 3; July 1.

65-153g. Same; how reported. In reporting every birth and stillbirth, physicians and others permitted to attend pregnancy cases and required to report births and stillbirths shall state on a separate sheet accompanying the birth certificate or stillbirth certificate, as the case may be, whether a blood test for syphilis has been made during such pregnancy upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed, and if made the date when such test was made, and if not made, the reason why such test was not made. Neither the fact that such a test was or was not made or was or was not required by law nor the result of any such test shall appear upon the birth certificate or be certified to any person for any purpose.

HISTORY: L. 1943, ch. 225, § 2; June 28.

65-153h. Same; misdemeanor. Any person willfully violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than ten dollars nor more than one hundred dollars.

HISTORY: L. 1943, ch. 225, § 3; June 28.

65-180. Educational, screening, testing and follow-up program concerning phenylketonuria, congenital hypothyroidism, galactosemia, maple syrup urine disease and certain other genetic diseases; registry of cases; treatment product; reimbursement of cost. The secretary of health and environment shall:

(a) Institute and carry on an intensive educational program among physicians, hospitals, public health nurses and the public concerning congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases detectable with the same specimen. This educational program shall include information about the nature of such conditions and examinations for the detection thereof in early infancy in order that measures may be taken to prevent the mental retardation or morbidity resulting from such conditions.

(b) Provide recognized screening tests for phenylketonuria, galactosemia, hypothyroidism and such other diseases as may be appropriately detected with the same specimen. The initial laboratory screening tests for these diseases shall be performed by the department of health and environment for all infants born in the state. Such services shall be performed without charge.

(c) Provide a follow-up program by providing test results and other information to identified physicians; locate infants with abnormal newborn screening test results; with parental consent, monitor infants to assure appropriate testing to either confirm or not confirm the disease suggested by the screening test results; with parental consent, monitor therapy and treatment for infants with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria or other genetic diseases being screened under this statute; and

establish ongoing education and support activities for individuals with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases being screened under this statute and for the families of such individuals.

(d) Maintain a registry of cases including information of importance for the purpose of follow-up services to prevent mental retardation or morbidity.

(e) Provide the necessary treatment product for diagnosed cases for as long as medically indicated, when the product is not available through other state agencies. In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection.

(f) (1) Except for treatment products provided under subsection (e), if the medically necessary food treatment product for diagnosed cases must be purchased, the purchaser shall be reimbursed by the department of health and environment for costs incurred up to $ 1,500 per year per diagnosed child age 18 or younger at 100% of the product cost upon submission of a receipt of purchase identifying the company from which the product was purchased. For a purchaser to be eligible for reimbursement under this subsection (f)(1), the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(2) As an option to reimbursement authorized under subsection (f)(1), the department of health and environment may purchase food treatment products for distribution to diagnosed children in an amount not to exceed $ 1,500 per year per diagnosed child age 18 or younger. For a diagnosed child to be eligible for the distribution of food treatment products under this subsection (f)(2), the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(3) In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection (f).

HISTORY: L. 1965, ch. 388, § 1; L. 1974, ch. 352, § 49; L. 1977, ch. 213, § 1; L. 1984, ch. 223, § 1; L. 1985, ch. 205, § 1; L. 1994, ch. 262, § 4; L. 1997, ch. 117, § 1; July 1.

65-181. Same; tests in accordance with rules and regulations of secretary. The administrative officer or other person in charge of each institution or the attending physician, caring for infants 28 days of age or younger shall have administered to every such infant or child in its or such physician's care, tests for congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases which may be detected with the same specimen in accordance with rules and regulations adopted by the secretary of health and environment.

HISTORY: L. 1965, ch. 388, § 2; L. 1974, ch. 352, § 50; L. 1977, ch. 213, § 2; L. 1984, ch. 223, § 2; L. 1994, ch. 262, § 5; July 1.

65-182. Same; provisions inapplicable where parents object on religious grounds. The provisions of this section shall not apply to any infant whose parents object thereto on the grounds that such tests and treatment conflict with their religious tenets and practices.

HISTORY: L. 1965, ch. 388, § 3; April 22.

65-183. Same; report by physicians to secretary. Every physician having knowledge of a case of congenital hypothyroidism, galactosemia or phenylketonuria and other genetic diseases as may be detected with tests given pursuant to this act in one of such physician's own patients shall report the case to the secretary of health and environment on forms provided by the secretary.

HISTORY: L. 1965, ch. 388, § 4; L. 1974, ch. 352, § 51; L. 1977, ch. 213, § 3; L. 1984, ch. 223, § 3; L. 1994, ch. 262, § 6; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 4. HOSPITALS AND OTHER FACILITIES
LIEN OF OPERATOR

65-406. Liens upon personal injury damages recovered by patients; exception; enforcement of claimed lien in excess of $ 5,000.

(a) Every hospital, which furnishes emergency, medical or other service to any patient injured by reason of an accident not covered by the workers compensation act, if such injured party asserts or maintains a claim against another for damages on account of such injuries, shall have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by such patient's heirs, personal representatives or next of kin in the case of such patient's death, whether by judgment or by settlement or compromise.

(b) Such lien shall be to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient in such hospital up to the date of payment of such damages. Such lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or such patient's heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient or such patient's heirs or personal representatives. Such lien shall not be applied or considered valid against anyone coming under the workers compensation act in this state.

(c) In the event the claimed lien is for the sum of $ 5000 or less it shall be fully enforceable as contemplated by subsection (a) of this section. In the event the claimed lien is for a sum in excess of $ 5,000 the first $ 5,000 of the claimed lien shall be fully enforceable as contemplated by subsection (a) of this section, and that part of the claimed lien in excess of $ 5,000 shall only be enforceable to the extent that its enforcement constitutes an equitable distribution of any settlement or judgment under the circumstances. In the event the patient or such patient's heirs or personal representatives and the hospital or hospitals cannot stipulate to an equitable distribution of a proposed or actual settlement or a judgment, the matter shall be submitted to the court in which the claim is pending, or if no action is pending then to any court having jurisdiction and venue of the injury or death claim, for determination of an equitable distribution of the proposed or actual settlement or judgment under the circumstances.

HISTORY: L. 1939, ch. 235, § 1; L. 1951, ch. 357, § 1; L. 1957, ch. 336, § 1; L. 1972, ch. 227, § 1; L. 1997, ch. 21, § 1; July 1.

65-407. Same; notices and itemized statement of claims; requirements. No such lien shall be effective unless a written notice containing an itemized statement of all claims, the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the district court of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys or legal representatives, as compensation for such injuries; nor unless the hospital shall also send, by registered or certified mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability, if the name and address shall be known. Such hospital shall also send, by registered or certified mail a copy of such notice to such patient upon whom emergency medical or other service has been performed, if the name and address of such patient shall be known to the hospital or can with reasonable diligence be ascertained.

HISTORY: L. 1939, ch. 235, § 2; L. 1957, ch. 336, § 2; June 29.

65-408. Same; persons liable to hospital; limitation of actions. Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement, after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or his heirs, attorneys or legal representatives, as aforesaid; be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; any such association, corporation or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

HISTORY: L. 1939, ch. 235, § 3; June 30.

65-409. Hospital lien; fee for filing. The clerk of the district court shall charge a fee of $ 5 for entering and filing a lien statement under this act.

HISTORY: L. 1939, ch. 235, § 4; L. 1976, ch. 196, § 4; L. 1982, ch. 116, § 13; July 1.

65-425. Definitions. As used in this act:

(a) "General hospital" means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than 24 hours of every day, to provide diagnosis and treatment for patients who have a variety of medical conditions.

(b) "Special hospital" means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than 24 hours of every day, to provide diagnosis and treatment for patients who have specified medical conditions.

(c) "Person" means any individual, firm, partnership, corporation, company, association, or joint-stock association, and the legal successor thereof.

(d) "Governmental unit" means the state, or any county, municipality, or other political subdivision thereof; or any department, division, board or other agency of any of the foregoing.

(e) "Licensing agency" means the department of health and environment.

(f) "Ambulatory surgical center" means an establishment with an organized medical staff of one or more physicians; with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures; with continuous physician services during surgical procedures and until the patient has recovered from the obvious effects of anesthetic and at all other times with physician services available whenever a patient is in the facility; with continuous registered professional nursing services whenever a patient is in the facility; and which does not provide services or other accommodations for patient to stay more than 24 hours. Before discharge from an ambulatory surgical center, each patient shall be evaluated by a physician for proper anesthesia recovery. Nothing in this section shall be construed to require the office of a physician or physicians to be licensed under this act as an ambulatory surgical center.

(g) "Recuperation center" means an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than 24 hours of every day, to provide treatment for patients who require inpatient care but are not in an acute phase of illness, who currently require primary convalescent or restorative services, and who have a variety of medical conditions.

(h) "Medical care facility" means a hospital, ambulatory surgical center or recuperation center, but shall not include a hospice which is certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 et seq. and amendments thereto and which provides services only to hospice patients.

(i) "Critical access hospital" shall have the meaning ascribed to such term under K.S.A. 65-468 and amendments thereto.

(j) "Hospital" means "general hospital," " critical access hospital," or "special hospital."

(k) "Physician" means a person licensed to practice medicine and surgery in this state.

HISTORY: L. 1947, ch. 329, § 1; L. 1949, ch. 328, § 1; L. 1971, ch. 204, § 1; L. 1973, ch. 248, § 1; L. 1974, ch. 352, § 83; L. 1992, ch. 158, § 8; L. 1993, ch. 255, § 1; L. 1994, ch. 6, § 3; L. 1998, ch. 53, § 1; July 1.

65-425a. Definition of "hospital" as used in article 14b of chapter 13 and article 6 of chapter 14 of the Kansas Statutes Annotated. On and after the effective date of this act, as used in the acts constituting article 14b of chapter 13 of Kansas Statutes Annotated and in the acts constituting article 6 of chapter 14 of Kansas Statutes Annotated and in any acts amendatory thereof or supplemental thereto, the term "hospital" means a medical care facility as defined in K.S.A. 65-425 and includes within its meaning any clinic, school of nursing, long-term care facility and child-care facility operated in connection with the operation of the medical care facility.

HISTORY: L. 1984, ch. 61, § 1; July 1.

65-426. Purpose of act. The purpose of this act is to provide for the development, establishment and enforcement of standards:

(1) For the care and treatment of individuals in medical care facilities; and

(2) for the construction, maintenance and operation of medical care facilities.

HISTORY: L. 1947, ch. 329, § 2; L. 1973, ch. 248, § 2; July 1.

65-427. Licensure. After July 1, 1973, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a medical care facility in this state without a license under this law.

HISTORY: L. 1947, ch. 329, § 3; L. 1973, ch. 248, § 3; July 1.

65-428. Application for license; contents. An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules and regulations as are lawfully adopted hereunder.

HISTORY: L. 1947, ch. 329, § 4; L. 1972, ch. 228, § 14; L. 1976, ch. 280, § 23; L. 1985, ch. 208, § 4; July 1.

65-429. Issuance and renewal of licenses; funding the cost of administration of the medical care facilities licensure and risk management program; display of license. Upon receipt of an application for license, the licensing agency shall issue with the approval of the state fire marshal a license provided the applicant and the physical facilities of the medical care facility meet the requirements established under this act. A license, unless suspended or revoked, shall be renewable annually without charge upon the filing by the licensee, and approval by the licensing agency, of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by rules

and regulations. A medical care facility which has been licensed by the licensing agency and which has received certification for participation in federal reimbursement programs and which has been accredited by the joint commission on accreditation of health care organizations or the American osteopathic association may be granted a license renewal based on such certification and accreditation. The cost of administration of the medical care facilities licensure and risk management program provisions of this act pursuant to K.S.A. 65-433 and 65-4921 et seq., and amendments thereto, shall be funded by an annual assessment from the health care stabilization fund, which assessment shall not exceed $ 200,000 in any one fiscal year. The licensing agency shall make an annual report to the health care stabilization fund regarding the use of these funds. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. A separate license is not required for two separate establishments which are located in the same or contiguous counties, which provide the services required by K.S.A. 65-431 and amendments thereto and which are organized under a single owner or governing board with a single designated administrator and medical staff. Licenses shall be posted in a conspicuous place on the licensed premises.

HISTORY: L. 1947, ch. 329, § 5; L. 1973, ch. 248, § 4; L. 1980, ch. 183, § 1; L. 1988, ch. 235, § 1; L. 1996, ch. 91, § 2; July 1.

65-430. Denial, suspension or revocation of license; notice and hearing. The licensing agency may deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law, a failure to report any information required to be reported by K.S.A. 65-28,121 or 65-4216 and amendments to such sections, or a failure to maintain a risk management program as required by K.S.A. 65-4922 and amendments thereto, after notice and an opportunity for hearing to the applicant or licensee in accordance with the provisions of the Kansas administrative procedure act.

HISTORY: L. 1947, ch. 329, § 6; L. 1976, ch. 266, § 1; L. 1982, ch. 258, § 2; L. 1984, ch. 513, § 90; L. 1986, ch. 229, § 33; L. 1988, ch. 236, § 5; July 1.

65-431. Rules and regulations; selection of professional staff; hospital compliance through combined operation.

(a) The licensing agency shall adopt, amend, promulgate and enforce such rules and regulations and standards with respect to the different types of medical care facilities to be licensed hereunder as may be designed to further the accomplishment of the purposes of this law in promoting safe and adequate treatment of individuals in medical care facilities in the interest of public health, safety and welfare.

(b) No rule or regulation shall be made by the licensing agency which would discriminate against any practitioner of the healing arts who is licensed to practice medicine and surgery in this state. Boards of trustees or directors of facilities licensed pursuant to the provisions of this act shall have the right, in accordance with law, to select the professional staff members of such facilities and to select and employ interns, nurses and other personnel, and no rules and regulations or standards of the licensing agency shall be valid which, if enforced, would interfere in such selection or employment. In the selection of professional staff members, no hospital licensed under K.S.A. 65-425 et seq. shall discriminate against any practitioner of the healing arts who is licensed to practice medicine and surgery in this state for reasons based solely upon the practitioner's branch of the healing arts or the school or health care facility in which the practitioner received medical schooling or postgraduate training.

(c) In formulating rules and regulations, the agency shall give due consideration to the size of the medical care facility, the type of service it is intended to render, the scope of such service and the financial resources in and the needs of the community which such facility serves.

(d) A hospital consisting of more than one establishment shall be considered in compliance with the rules and regulations of the licensing agency if all basic services required by the agency are available as a part of the combined operation and if the following basic services are available at each establishment: Continuous nursing service, continuous physician coverage on duty or on call, basic diagnostic radiological and laboratory facilities, drug room, emergency services, food service, and patient isolation.

HISTORY: L. 1947, ch. 329, § 7; L. 1973, ch. 248, § 5; L. 1976, ch. 266, § 2; L. 1988, ch. 235, § 2; L. 1988, ch. 237, § 1; L. 1988, ch. 238, § 1; July 1.

65-432. Time for compliance with rules, regulations and standards. Any medical care facility which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this act shall be given a reasonable time, under the particular circumstances not to exceed two years from the date of such promulgation, within which to comply with such rules and regulations and minimum standards.

HISTORY: L. 1947, ch. 329, § 8; L. 1973, ch. 248, § 6; July 1.

65-433. Inspections and investigations; rules and regulations; consultations. The licensing agency shall make or cause to be made such inspections and investigations as deemed necessary. The authorized agents and representatives of the licensing agency shall conduct inspections of each medical care facility not accredited by the joint commission on accreditation of health care organizations or the American osteopathic association at such intervals as the secretary determines necessary to protect the public health and safety and to carry out the risk management provisions of K.S.A. 65-4921 et seq., and amendments thereto. The licensing agency may prescribe by rules and regulations that any licensee or applicant desiring to make specified types of alteration or additions to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the licensing agency for preliminary inspection and approval or recommendations with respect to compliance with the rules and regulations and standards herein authorized. Necessary conferences and consultations may be provided.

HISTORY: L. 1947, ch. 329, § 9; L. 1996, ch. 91, § 3; July 1.

65-435a. Development of contents of annual report and inspection form; rules and regulations. The contents of the annual report under K.S.A. 65-429 and amendments thereto and the contents of an inspection form for purposes of inspections under K.S.A. 65-433 and amendments thereto shall be developed by the licensing agency in consultation with the health care data governing board and the Kansas hospital association. The licensing agency may specify the contents of the annual report and the contents of the inspection form by rules and regulations. Nothing in this section shall require the licensing agency to adopt the annual report or the inspection form by rules and regulations.

HISTORY: L. 1994, ch. 284, § 2; May 5.

65-436. Information confidential; exceptions.

(a) Except as provided in subsection (b), information received by the licensing agency through filed reports, inspections or as otherwise authorized under this act, shall not be disclosed publicly in such manner as to identify individuals.

(b) Notwithstanding the provisions of subsection (a) to the contrary, the following information may be disclosed publicly in such a manner as to identify individuals or medical care facilities: Information received by the licensing agency through filed reports, inspections or as otherwise authorized under this act, in a proceeding involving the question of licensure.

HISTORY: L. 1947, ch. 329, § 12; L. 1973, ch. 248, § 8; L. 1979, ch. 191, § 15; L. 1985, ch. 208, § 5; L. 1987, ch. 232, § 1; L. 1994, ch. 284, § 1; May 5.

65-437. Annual report of licensing agency. The licensing agency shall prepare and publish an annual report of its activities and operations under this law.

HISTORY: L. 1947, ch. 329, § 13; June 30.

65-438. Appeal from decision of licensing agency. Any applicant or licensee aggrieved by the decision of the licensing agency may appeal the decision in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

HISTORY: L. 1947, ch. 329, § 14; L. 1973, ch. 248, § 9; L. 1976, ch. 266, § 3; L. 1984, ch. 313, § 91; July 1, 1985.

65-439. Penalties. Any person establishing, conducting, managing, or operating any medical care facility without a license under this law shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars for the first offense and not more than fifty dollars for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

HISTORY: L. 1947, ch. 329, § 15; L. 1973, ch. 248, § 10; July 1.

65-440. Injunction. Notwithstanding the existence or pursuit of any other remedy, the licensing agency may, in the manner provided by law, upon the advice of the attorney general who shall represent the licensing agency in the proceedings maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a medical care facility without a license under this law. Such proceedings shall be governed by the provisions of the act for judicial review and civil enforcement of agency actions.

HISTORY: L. 1947, ch. 329, § 16; L. 1973, ch. 248, § 11; L. 1984, ch. 313, § 92; July 1, 1985.

65-441. Invalidity of part. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

HISTORY: L. 1947, ch. 329, § 17; June 30.

65-442. Limited liability for medical care facilities and certain duly appointed officials thereof; good faith requirement.

(a) There shall be no liability on the part of, and no action for damages shall arise against, any duly appointed member of the governing board or the duly appointed member of a committee of the medical staff of a licensed medical care facility for any act, statement or proceeding undertaken or performed within the scope of the functions and within the course of the performance of the duties of such committee of the medical staff if such member acted in good faith and without malice, and the medical staff operates pursuant to written bylaws that have been approved by the governing board of the medical care facility.

(b) There shall be no liability on the part of and no action for damages shall arise against any licensed medical care facility because of the rendering of or failure to render professional services within such medical care facility by a person licensed to practice medicine and surgery if such person is not an employee or agent of such medical care facility.

HISTORY: L. 1967, ch. 344, § 1; L. 1971, ch. 205, § 1; L. 1973, ch. 248, § 12; L. 1976, ch. 267, § 1; July 1.

65-442a. Same; act inapplicable to adult care home licensed under chapter 39. Nothing in this act [*] shall be construed to apply to any adult care home licensed under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, or acts amendatory thereof.

HISTORY: L. 1973, ch. 248, § 13; July 1.

65-443. Termination of human pregnancy; performance or participation in medical procedures not required. No person shall be required to perform or participate in medical procedures which result in the termination of a pregnancy, and the refusal of any person to perform or participate in those medical procedures shall not be a basis for civil liability to any person. No hospital, hospital administrator or governing board of any hospital shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of such person's refusal to perform or participate in the termination of any human pregnancy.

HISTORY: L. 1969, ch. 182, § 1; L. 1975, ch. 313, § 1; July 1.

65-444. Same; performance in hospital; refusal to permit; adoption of criteria and procedures; conditions; emergency. No hospital, hospital administrator or governing board shall be required to permit the termination of human pregnancies within its institution and the refusal to permit such procedures shall not be grounds for civil liability to any person. A hospital may establish criteria and procedures under which pregnancies may be terminated within its institution, in addition to those which may be prescribed by licensing, regulating or accrediting agencies: Provided, No pregnancy shall be purposely terminated until the opinions of three (3) duly licensed physicians attesting to the necessity of such termination have been recorded in writing in the permanent records of the hospital, except in an emergency as defined in section 21-3407 (2) (b) of the Kansas criminal code.

HISTORY: L. 1969, ch. 182, § 2; July 1, 1970.

65-445. Same; records; annual report to secretary of health and environment; confidentiality of information, exceptions; penalties for violations.

(a) Every medical care facility shall keep written records of all pregnancies which are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under K.S.A. 65-6703 and amendments thereto if applicable to the pregnancy terminated, and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated.

(c) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section, except that such information, including information identifying such persons and facilities may be disclosed to the state board of healing arts upon request of the board for disciplinary action conducted by the board and may be disclosed to the attorney general upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the state board of healing arts or the attorney general pursuant to this subsection shall be used solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner which would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

(d) In addition to such criminal penalty under subsection (c), any person licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

(e) For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports of terminations of pregnancies required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

HISTORY: L. 1969, ch. 182, § 3; L. 1975, ch. 462, § 72; L. 1995, ch. 260, § 2; L. 1998, ch. 142, § 17; July 1.

65-446. Medical procedures for sterilization of persons; performance or participation in procedures not required. No person shall be required to perform or participate in medical procedures which result in sterilization of a person, and the refusal of any person to perform or participate in those medical procedures shall not be a basis for civil liability to any person. No hospital, hospital administrator or governing board of any hospital shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any person because of his refusal to perform or participate in such medical procedures.

HISTORY: L. 1971, ch. 206, § 1; July 1.

65-447. Same; hospitals, officers and employees not required to permit procedures; criteria and procedures authorized. No hospital, hospital administrator, or governing board shall be required to permit medical procedures resulting in sterilization within its institution and the refusal to permit such procedures shall not be grounds for civil liability to any person. A hospital may establish criteria and procedures under which sterilizations may be performed within its institution, in addition to those which may be prescribed by licensing, regulating or accrediting agencies.

HISTORY: L. 1971, ch. 206, § 2; July 1.

65-448. Qualified persons at medical care facilities to examine victims of sexual offenses, when; remedy for refusal; costs.

(a) Upon the request of any law enforcement officer and with the written consent of the reported victim, any physician, a licensed physician assistant, who has been specially trained in performing sexual assault evidence collection, or a registered professional nurse, who has been specially trained in performing sexual assault evidence collection, on call or on duty at a medical care facility of this state, as defined by subsection (h) of K.S.A. 65-425, and amendments thereto, shall examine persons who may be victims of sexual offenses cognizable as violations of K.S.A. 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3602 or 21-3603, and amendments thereto, using Kansas bureau of investigation sexual assault evidence collection kits or similar kits approved by the Kansas bureau of investigation, for the purposes of gathering evidence of any such crime. If the physician, licensed physician assistant or registered professional nurse refuses to perform such physical examination the prosecuting attorney is hereby empowered to seek a mandatory injunction against such physician, licensed physician assistant or registered professional nurse to enforce the provisions of this act. Any refusal by a physician, licensed physician assistant or registered professional nurse to perform an examination which has been requested pursuant to this section shall be reported by the county or district attorney to the state board of healing arts or the board of nursing, whichever is applicable, for appropriate disciplinary action. The department of health and environment, in cooperation with the Kansas bureau of investigation, shall establish procedures for gathering evidence pursuant to this section. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or medical facility shall give written notice to the parent or guardian of a minor that such an examination has taken place.

(b) Costs of conducting an examination of a victim as herein provided including the costs of the sexual assault evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may charge the defendant for the costs paid herein as court costs assessed pursuant to K.S.A. 28-172a or 28-172c, and amendments thereto.

HISTORY: L. 1977, ch. 210, § 1; L. 1994, ch. 348, § 9; L. 1996, ch. 156, § 1; L. 2002, ch. 128, § 2; May 23.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 11. REGULATION OF NURSING
NURSES

65-1113. Definitions. When used in this act and the act of which this section is amendatory:

(a) "Board" means the board of nursing.

(b) "Diagnosis" in the context of nursing practice means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen and shall be construed as distinct from a medical diagnosis.

(c) "Treatment" means the selection and performance of those therapeutic measures essential to effective execution and management of the nursing regimen, and any prescribed medical regimen.

(d) Practice of nursing. (1) The practice of professional nursing as performed by a registered professional nurse for compensation or gratuitously, except as permitted by K.S.A. 65-1124 and amendments thereto, means the process in which substantial specialized knowledge derived from the biological, physical, and behavioral sciences is applied to: the care, diagnosis, treatment, counsel and health teaching of persons who are experiencing changes in the normal health processes or who require assistance in the maintenance of health or the prevention or management of illness, injury or infirmity; administration, supervision or teaching of the process as defined in this section; and the execution of the medical regimen as prescribed by a person licensed to practice medicine and surgery or a person licensed to practice dentistry. (2) The practice of nursing as a licensed practical nurse means the performance for compensation or gratuitously, except as permitted by K.S.A. 65-1124 and any amendments thereto, of tasks and responsibilities defined in part (1) of this subsection (d) which tasks and responsibilities are based on acceptable educational preparation within the framework of supportive and restorative care under the direction of a registered professional nurse, a person licensed to practice medicine and surgery or a person licensed to practice dentistry.

(e) A "professional nurse" means a person who is licensed to practice professional nursing as defined in part (1) of subsection (d) of this section.

(f) A "practical nurse" means a person who is licensed to practice practical nursing as defined in part (2) of subsection (d) of this section.

(g) "Advanced registered nurse practitioner" or "ARNP" means a professional nurse who holds a certificate of qualification from the board to function as a professional nurse in an expanded role, and this expanded role shall be defined by rules and regulations adopted by the board in accordance with K.S.A. 65-1130.

HISTORY: L. 1949, ch. 331, § 1; L. 1963, ch. 314, § 1; L. 1975, ch. 316, § 1; L. 1978, ch. 240, § 1; L. 1980, ch. 186, § 1; L. 1983, ch. 206, § 6; April 28.

65-1114. Unlawful acts.

(a) It shall be unlawful for any person:

(1) To practice or to offer to practice professional nursing in this state; or

(2) to use any title, abbreviation, letters, figures, sign, card or device to indicate that any person is a registered professional nurse; or

(3) to practice or offer to practice practical nursing in this state; or

(4) to use any title, abbreviation, letters, figures, sign, card or device to indicate that any person is a licensed practical nurse, unless such person has been duly licensed under the provisions of this act.

(b) It shall be unlawful for any person:

(1) To practice or offer to practice as an advanced registered nurse practitioner in this state; or

(2) to use any title, abbreviation, letters, figures, sign, card or device to indicate that any person is an advanced registered nurse practitioner, unless such person has been duly issued a certificate of qualification as an advanced registered nurse practitioner under the Kansas nurse practice act.

HISTORY: L. 1949, ch. 331, § 3; L. 1975, ch. 316, § 2; L. 1978, ch. 240, § 3; L. 1983, ch. 206, § 7; April 28.

65-1115. Licensure of professional nurses; qualifications of applicants; examination; refresher course; renewal license; title and abbreviation; temporary permit; exempt license.

(a) Qualifications of applicants. An applicant for a license to practice as a registered professional nurse shall:

(1) Have graduated from a high school accredited by the appropriate legal accrediting agency or has obtained the equivalent of a high school education, as determined by the state department of education;

(2) have graduated from an approved school of professional nursing in the United States or its territories or from a school of professional nursing in a foreign country which is approved by the board as defined in rules and regulations;

(3) have obtained other qualifications not in conflict with this act as the board may prescribe by rule and regulation; and

(4) file with the board written application for a license.

(b) Applicant deficient in qualifications. If the board finds in evaluating any applicant that such applicant is deficient in qualification or in the quality of such applicant's educational experience, the board may require such applicant to fulfill such remedial or other requirements as the board may prescribe.

(c) License.

(1) The board shall issue a license to an applicant to practice as a registered professional nurse who has:

(A) Met the qualifications set forth in subsections (a) and (b);

(B) passed a written examination as prescribed by the board; and

(C) no disqualifying factors under K.S.A. 65-1120 and amendments thereto.

(2) The board may issue a license to practice nursing as a registered professional nurse to an applicant who has been duly licensed as a registered professional nurse by examination under the laws of another state or territory if, in the opinion of the board, the applicant meets the qualifications required of a registered professional in this state. Verification of the applicant's licensure status shall be required from the original state of licensure.

(3) Refresher course. Notwithstanding the provisions of subsections (a) and (b), an applicant for a license to practice as a registered professional nurse who has not been licensed to practice professional nursing for five years preceding application shall be required to successfully complete a refresher course as defined by the board.

(4) Renewal license. A licensed professional nurse licensed under this act shall be eligible for renewal licenses upon compliance with K.S.A. 65-1117 and amendments thereto.

(5) Licensure examination within 24 months of graduation.

(A) Persons who do not take the licensure examination within 24 months after graduation shall petition the board for permission prior to taking the licensure examination. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination.

(B) Persons who are unsuccessful in passing the licensure examination within 24 months after graduation shall petition the board for permission prior to subsequent attempts. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination a subsequent time. The study plan shall contain subjects related to deficiencies identified on the failed examination profiles.

(6) An application for initial licensure or endorsement will be held awaiting completion of meeting qualifications for a time period specified in rules and regulations.

(d) Title and abbreviation. Any person who holds a license to practice as a registered professional nurse in this state shall have the right to use the title, "registered nurse," and the abbreviation, "R.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs or figures to indicate that the person is a registered professional nurse.

(e) Temporary permit. The board may issue a temporary permit to practice nursing as a registered professional nurse for a period not to exceed 120 days. A temporary permit for 120 days may be issued to an applicant for licensure as a registered professional nurse who is a graduate of a professional school of nursing in a foreign country after verification of licensure in that foreign country and approval of educational credentials.

(f) Exempt license. The board may issue an exempt license to any licensee as defined in rules and regulations who makes written application for such license on a form provided by the board, who remits a fee as established pursuant to K.S.A. 65-1118 and amendments thereto and who is not regularly engaged in the practice of professional nursing in Kansas but volunteers professional nursing service or is a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto. Each exempt licensee shall be subject to all provisions of the nurse practice act, except as otherwise provided in this subsection (f). Each exempt license may be renewed biennially subject to the provisions of this section. The holder of the exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing nursing education for renewal. To convert an exempt license to an active license, the exempt licensee shall meet all the requirements of subsection (c) or K.S.A. 65-1117 and amendments thereto. The board shall have authority to write rules and regulations to carry out the provisions of this section.

HISTORY: L. 1949, ch. 331, § 4; L. 1963, ch. 314, § 2; L. 1968, ch. 231, § 1; L. 1972, ch. 231, § 9; L. 1975, ch. 316, § 3; L. 1982, ch. 261, § 1; L. 1983, ch. 207, § 1; L. 1986, ch. 233, § 1; L. 1990, ch. 221, § 1; L. 1992, ch. 151, § 1; L. 1993, ch. 194, § 9; L. 1994, ch. 149, § 1; L. 1997, ch. 158, § 1; L. 1999, ch. 84, § 1; L. 2001, ch. 161, § 1; July 1.

65-1116. Licensure of practical nurses; qualifications of applicants; examination; refresher course; renewal license; title and abbreviation; temporary permit; exempt license.

(a) Qualification. An applicant for a license to practice as a licensed practical nurse shall:

(1) Have graduated from a high school accredited by the appropriate legal accrediting agency or has obtained the equivalent of a high school education, as determined by the state department of education;

(2) have graduated from an approved school of practical nursing or professional nursing in the United States or its territories or from a school of practical nursing or professional nursing in a foreign country which is approved by the board as defined in rules and regulations;

(3) have obtained other qualifications not in conflict with this act as the board may prescribe by rule and regulation; and

(4) file with the board a written application for a license.

(b) If the board finds in evaluating any applicant that such applicant is deficient in qualification or in the quality of such applicant's educational experience, the board may require such applicant to fulfill such remedial or other requirements as the board may prescribe.

(c) License.

(1) The board shall issue a license to an applicant to practice as a practical nurse who has:

(A) Met the qualifications set forth in subsections (a) and (b);

(B) passed a written examination as prescribed by the board; and

(C) no disqualifying factors under K.S.A. 65-1120 and amendments thereto.

(2) The board may issue a license to practice nursing as a practical nurse to an applicant who has been duly licensed as a practical nurse by examination under the laws of another state or territory if, in the opinion of the board, the applicant meets the qualifications required of a practical nurse in this state. Verification of the applicant's licensure status shall be required from the original state of licensure.

(3) Refresher course. Notwithstanding the provisions of subsections (a) and (b), an applicant for a license to practice as a licensed practical nurse who has not been licensed to practice practical nursing for five years preceding application shall be required to successfully complete a refresher course as defined by the board.

(4) Renewal license. A licensed practical nurse licensed under this act shall be eligible for renewal licenses upon compliance with K.S.A. 65-1117 and amendments thereto.

(5) Licensure examination within 24 months of graduation.

(A) Persons who do not take the licensure examination within 24 months after graduation shall petition the board for permission prior to taking the licensure examination. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination.

(B) Persons who are unsuccessful in passing the licensure examination within 24 months after graduation shall petition the board for permission prior to subsequent attempts. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination a subsequent time. The study plan shall contain subjects related to deficiencies identified on the failed examination profiles.

(6) An application for initial licensure or endorsement will be held awaiting completion of meeting qualifications for a time period specified in rules and regulations.

(d) Title and abbreviation. Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title, "licensed practical nurse," and the abbreviation, "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs or figures to indicate that the person is a licensed practical nurse.

(e) Temporary permit. The board may issue a temporary permit to practice nursing as a licensed practical nurse for a period not to exceed 120 days. A temporary permit for 120 days may be issued to an applicant for licensure as a licensed practical nurse who is a graduate of a practical school of nursing in a foreign country after verification of licensure in that foreign country and approval of educational credentials.

(f) Exempt license. The board may issue an exempt license to any licensee as defined in rules and regulations who makes written application for such license on a form provided by the board, who remits a fee as established pursuant to K.S.A. 65-1118 and amendments thereto and who is not regularly engaged in the practice of practical nursing in Kansas but volunteers practical nursing service or is a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto. Each exempt licensee shall be subject to all provisions of the nurse practice act, except as otherwise

provided in this subsection (f). Each exempt license may be renewed biennially subject to the provisions of this section. The holder of the exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing nursing education for renewal. To convert an exempt license to an active license, the exempt licensee shall meet all the requirements of subsection (c) or K.S.A. 65-1117 and amendments thereto. The board shall have authority to write rules and regulations to carry out the provisions of this section.

HISTORY: L. 1949, ch. 331, § 5; L. 1963, ch. 314, § 3; L. 1968, ch. 231, § 2; L. 1975, ch. 316, § 4; L. 1982, ch. 261, § 2; L. 1983, ch. 207, § 2; L. 1986, ch. 233, § 2; L. 1990, ch. 221, § 2; L. 1992, ch. 151, § 2; L. 1993, ch. 194, § 10; L. 1994, ch. 149, § 2; L. 1997, ch. 158, § 2; L. 1999, ch. 84, § 2; L. 2001, ch. 161, § 2; July 1.

65-1117. Renewal of licenses; inactive license, fee; continuing education requirements; rules and regulations; reinstatement of lapsed license; notification of change in name or address.

(a) All licenses issued under the provisions of this act, whether initial or renewal, shall expire every two years. The expiration date shall be established by the rules and regulations of the board. The board shall mail an application for renewal of license to every registered professional nurse and licensed practical nurse at least 60 days prior to the expiration date of such person's license. Every person so licensed who desires to renew such license shall file with the board, on or before the date of expiration of such license, a renewal application together with the prescribed biennial renewal fee. Every licensee who is no longer engaged in the active practice of nursing may so state by affidavit and submit such affidavit with the renewal application. An inactive license may be requested along with payment of a fee which shall be fixed by rules and regulations of the board. Except for the first renewal period following licensure by examination or for the first nine months following licensure by reinstatement or endorsement, the board shall require every licensee with an active nursing license to submit with the renewal application evidence of satisfactory completion of a program of continuing nursing education required by the board. The board by duly adopted rules and regulations shall establish the requirements for such program of continuing nursing education. Continuing nursing education means learning experiences intended to build upon the educational and experiential bases of the registered professional and licensed practical nurse for the enhancement of practice, education, administration, research or theory development to the end of improving the health of the public. Upon receipt of such application, payment of fee, upon receipt of the evidence of satisfactory completion of the required program of continuing nursing education and upon being satisfied that the applicant meets the requirements set forth in K.S.A. 65-1115 or 65-1116 and amendments thereto in effect at the time of initial licensure of the applicant, the board shall verify the accuracy of the application and grant a renewal license.

(b) Any person who fails to secure a renewal license within the time specified herein may secure a reinstatement of such lapsed license by making verified application therefor on a form provided by the board, by rules and regulations, and upon furnishing proof that the applicant is competent and qualified to act as a registered professional nurse or licensed practical nurse and by satisfying all of the requirements for reinstatement including payment to the board of a reinstatement fee as established by the board. A reinstatement application for licensure will be held awaiting completion of such documentation as may be required, but such application shall not be held for a period of time in excess of that specified in rules and regulations.

(c) Each licensee shall notify the board in writing of a change in name or address within 30 days of the change. Failure to so notify the board shall not constitute a defense in an action relating to failure to renew a license, nor shall it constitute a defense in any other proceeding.

HISTORY: L. 1949, ch. 331, § 6; L. 1975, ch. 316, § 5; L. 1976, ch. 274, § 1; L. 1978, ch. 240, § 4; L. 1980, ch. 187, § 1; L. 1983, ch. 206, § 8; L. 1988, ch. 242, § 1; L. 1993, ch. 194, § 11; L. 1995, ch. 97, § 1; L. 1997, ch. 146, § 1; May 8.

65-1118. Fees.

(a) The board shall collect in advance fees provided for in this act as fixed by the board, but not exceeding:

Application for license--professional nurse	$ 75
Application for license--practical nurse	50

Application for biennial renewal of license--professional nurse and practical nurse	60
Application for reinstatement of license	70
Application for reinstatement of licenses with temporary permit	100
Certified copy of license	25
Duplicate of license	25
Inactive license	20
Application for certificate of qualification--advanced registered nurse practitioner	50
Application for certificate of qualification with temporary permit--advanced registered nurse practitioner	100
Application for renewal of certificate of qualification--advanced registered nurse practitioner	60
Application for reinstatement of certificate of qualification--advanced registered nurse practitioner	75
Application for authorization--registered nurse anesthetist	75
Application for authorization with temporary authorization--registered nurse anesthetist	110
Application for biennial renewal of authorization--registered nurse anesthetist	60
Application for reinstatement of authorization--registered nurse anesthetist	75
Application for reinstatement of authorization with temporary authorization--registered nurse anesthetist	100
Verification of license to another state	30
Application for exempt license--professional and practical nurse	50
Application for biennial renewal of exempt license--professional and practical nurse	50
Application for exempt certification--advanced registered nurse practitioner	50
Application for biennial renewal of exempt certificate--advanced registered nurse practitioner	50

(b) The board may require that fees paid for any examination under the Kansas nurse practice act be paid directly to the examination service by the person taking the examination.

(c) The board shall accept for payment of fees under this section personal checks, certified checks, cashier's checks, money orders or credit cards. The board may designate other methods of payment, but shall not refuse payment in the form of a personal check. The board may impose additional fees and recover any costs incurred by reason of payments made by personal checks with insufficient funds and payments made by credit cards.

HISTORY: L. 1949, ch. 331, § 7; L. 1963, ch. 314, § 4; L. 1973, ch. 249, § 1; L. 1975, ch. 316, § 6; L. 1978, ch. 347, § 11; L. 1980, ch. 188, § 1; L. 1986, ch. 233, § 3; L. 1988, ch. 242, § 2; L. 1992, ch. 135, § 1; L. 1993, ch. 194, § 12; L. 1997, ch. 158, § 3; L. 1999, ch. 84, § 5; Apr. 22.

65-1118a. Fees; consultants' travel expenses.

(a) The board shall collect fees provided for in this act as fixed by the board, but not exceeding:

Application for approval--schools and programs of nursing	$ 1,000
Annual fee of approval--schools and programs of nursing	400
Application for approval of continuing education providers	200
Annual fee for continuing nursing education providers	75
Approval of single continuing nursing education offerings	100
Consultation by request, not to exceed per day on site	400

(b) In addition to the above prescribed fees, consultants' travel expenses shall be charged to the person, firm, corporation or institution requesting consultation services to be provided by the board.

HISTORY: L. 1981, ch. 244, § 1; L. 1990, ch. 221, § 3; L. 1992, ch. 135, § 2; L. 1993, ch. 194, § 13; L. 2001, ch. 161, § 3; July 1.

65-1119. Schools of nursing; approval; approval of providers of continuing education offerings; application fee; criteria for evaluating out-of-state schools; nationally accredited schools of nursing.

(a) Application for approval. An approved school of nursing is one which has been approved as such by the board as meeting the standards of this act, and the rules and regulations of the board. An institution desiring to conduct an approved school of professional or practical nursing shall apply to the board for approval and submit satisfactory proof that it is prepared to and will maintain the standards and basic professional nursing curriculum or the required curriculum for practical nursing, as the case may be, as prescribed by this act and by the rules and regulations of the board. Applications shall be made in writing on forms supplied by the board and shall be submitted to the board together with the application fee fixed by the board. The approval of a school of nursing shall not exceed 10 years after the granting of such approval by the board. An institution desiring to continue to conduct an approved school of professional or practical nursing shall apply to the board for the renewal of approval and submit satisfactory proof that it will maintain the standards and basic professional nursing curriculum or the required curriculum for practical nursing, as the case may be, as prescribed by this act and by the rules and regulations of the board. Applications for renewal of approval shall be made in writing on forms supplied by the board. Each school of nursing shall submit annually to the board an annual fee fixed by the board by rules and regulations to maintain the approval status.

(b) Schools for professional nurses. To qualify as an approved school for professional nurses, the school must be conducted in the state of Kansas, and shall apply to the board and submit evidence that: (1) It is prepared to carry out the professional curriculum as prescribed in the rules and regulations of the board; and (2) it is prepared to meet such other standards as shall be established by this law and the rules and regulations of the board.

(c) Schools for practical nurses. To qualify as an approved school for practical nurses, the school must be conducted in the state of Kansas, and shall apply to the board and submit evidence that: (1) It is prepared to carry out the curriculum as prescribed in the rules and regulations of the board; and (2) it is prepared to meet such other standards as shall be established by this law and the rules and regulations of the board.

(d) Survey. The board shall prepare and maintain a list of approved schools for both professional and practical nurses whose graduates, if they have the other necessary qualifications provided in this act, shall be eligible to apply for a license as a registered professional nurse or as a licensed practical nurse. A survey of the institution or institutions and of the schools applying for approval shall be made by an authorized employee of the board or members of the board, who shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements as prescribed by the board in its rules and regulations for an approved school for professional nurses or for practical nurses are met, it shall so approve the school as either a school for professional nurses or practical nurses, as the case may be. The board shall resurvey approved schools on a periodic basis as determined by rules and regulations. If the board determines that any approved school of nursing is not maintaining the standards required by this act and by rules and regulations prescribed by the board, notice thereof in writing, specifying the failures of such school, shall be given immediately to the school. A school which fails to correct such conditions to the satisfaction of the board within a reasonable time shall

be removed from the list of approved schools of nursing until such time as the school shall comply with the standards. All approved schools shall maintain accurate and current records showing in full the theoretical and practical courses given to each student.

(e) Providers of continuing nursing education.

(1) To qualify as an approved provider of continuing nursing education offerings, persons, organizations or institutions proposing to provide such continuing nursing education offerings shall apply to the board for approval and submit evidence that the applicant is prepared to meet the standards and requirements established by the rules and regulations of the board for such continuing nursing education offerings. Initial applications shall be made in writing on forms supplied by the board and shall be submitted to the board together with the application fee fixed by the board.

(2) A long-term provider means a person, organization or institution that is responsible for the development, administration and evaluation of continuing nursing education programs and offerings. Qualification as a long-term approved provider of continuing nursing education offerings shall expire five years after the granting of such approval by the board. An approved long-term provider of continuing nursing education offerings shall submit annually to the board the annual fee established by rules and regulations, along with an annual report for the previous fiscal year. Applications for renewal as an approved long-term provider of continuing nursing education offerings shall be made in writing on forms supplied by the board.

(3) Qualification as an approved provider of a single continuing nursing education offering, which may be offered once or multiple times, shall expire two years after the granting of such approval by the board. Approved single continuing nursing education providers shall not be subject to an annual fee or annual report.

(4) In accordance with rules and regulations adopted by the board, the board may approve individual educational offerings for continuing nursing education which shall not be subject to approval under other subsections of this section.

(5) The board shall accept offerings as approved continuing nursing education presented by: Colleges that are approved by a state or the national department of education and providers approved by other state boards of nursing, the national league for nursing, the national federation of licensed practical nurses, the American nurses credentialing center or other such national organizations as listed in rules and regulations adopted by the board.

(6) An individual designated by a provider of continuing nursing education offerings as an individual responsible for CNE who has held this position for the provider at least five years immediately prior to January 1, 1997, shall not be required to have a baccalaureate or higher academic degree in order to be designated by such provider as the individual responsible for CNE.

(f) Criteria for evaluating out-of-state schools. For the purpose of determining whether an applicant for licensure who is a graduate of a school of professional or practical nursing located outside this state meets the requirements of item (2) of subsection (a) of K.S.A. 65-1115 and amendments thereto or the requirements of item (2) of subsection (a) of K.S.A. 65-1116 and amendments thereto, as appropriate, the board by rules and regulations shall establish criteria for determining whether a particular school of professional nursing located outside this state maintains standards which are at least equal to schools of professional nursing which are approved by the board and whether a particular school of practical nursing located outside this state maintains standards which are at least equal to schools of practical nursing which are approved by the board. The board may send a questionnaire developed by the board to any school of professional or practical nursing located outside this state for which the board does not have sufficient information to determine whether the school meets the standards established under this subsection (f). The questionnaire providing the necessary information shall be completed and returned to the board in order for the school to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools. In entering such contracts the authority to approve schools shall remain solely with the board.

(g) The board may accept nationally accredited schools of nursing as defined in rule and regulation.

(1) Schools of nursing which have received accreditation from a board recognized national nursing accreditation agency shall file evidence of initial accreditation with the board and shall file all reports from the accrediting agency and any notice of any change in school accreditation status. The board may grant approval based upon evidence of such accreditation.

(2) Schools of nursing holding approval based upon national accreditation are also responsible for complying with all other requirements as determined by rules and regulations of the board.

(3) The board may grant approval to a school of nursing with national accreditation for a continuing period not to exceed 10 years.

HISTORY: L. 1949, ch. 331, § 8; L. 1963, ch. 314, § 5; L. 1973, ch. 249, § 2; L. 1978, ch. 240, § 5; L. 1980, ch. 188, § 2; L. 1980, ch. 186, § 2; L. 1981, ch. 244, § 2; L. 1982, ch. 261, § 3; L. 1983, ch. 207, § 3; L. 1983, ch. 206, § 9; L. 1983, ch. 206, § 14; L. 1988, ch. 243, § 2; L. 1990, ch. 221, § 4; L. 1997, ch. 146, § 2; L. 2001, ch. 161, § 4; July 1.

65-1120. Grounds for disciplinary actions; proceedings; witnesses; costs; professional incompetency defined; criminal justice record information.

(a) Grounds for disciplinary actions. The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:

(1) To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;

(3) to have committed an act of professional incompetency as defined in subsection (e);

(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122 and amendments thereto;

(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8); or

(9) to have assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2002 Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405 and amendments thereto.

(b) Proceedings. Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct an investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Witnesses. No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(d) Costs. If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) Professional incompetency defined. As used in this section, "professional incompetency" means:

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

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

(f) Criminal justice information. The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

HISTORY: L. 1949, ch. 331, § 9; L. 1963, ch. 314, § 6; L. 1972, ch. 231, § 10; L. 1975, ch. 316, § 7; L. 1978, ch. 240, § 6; L. 1981, ch. 245, § 1; L. 1983, ch. 206, § 10; L. 1985, ch. 88, § 6; L. 1986, ch. 233, § 4; L. 1990, ch. 221, § 5; L. 1993, ch. 194, § 1; L. 1995, ch. 97, § 2; L. 1997, ch. 158, § 4; L. 1998, ch. 142, § 8; July 1.

65-1121a. Judicial review of board's actions.

(a) Any agency action of the board of nursing pursuant to the Kansas nurse practice act is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(b) This section shall be part of and supplemental to the Kansas nurse practice act.

HISTORY: L. 1986, ch. 318, § 145; July 1.

65-1122. Misdemeanors; penalties. It is a violation of law for any person, firm, corporation or association to:

(a) Sell or fraudulently obtain or furnish any nursing diploma, license, record or certificate of qualification or aid or abet therein;

(b) practice professional nursing, practical nursing or practice as an advanced registered nurse practitioner, unless duly licensed or certified to do so;

(c) use in connection with such person's name any designation implying that such person is a licensed professional nurse, a licensed practical nurse or an advanced registered nurse practitioner unless duly licensed or certified so to practice under the provisions of the Kansas nurse practice act, and such license or certificate is then in full force;

(d) practice professional nursing, practical nursing or as an advanced registered nurse practitioner during the time a license or certificate issued under the provisions of the Kansas nurse practice act shall have expired or shall have been suspended or revoked;

(e) represent that a school for nursing is approved for educating either professional nurses or practical nurses, unless such school has been duly approved by the board and such approval is then in full force;

(f) violate any provisions of the Kansas nurse practice act or rules and regulations adopted pursuant to that act; or

(g) represent that a provider of continuing nursing education is approved by the board for educating either professional nurses or practical nurses, unless the provider of continuing nursing education has been approved by the board and the approval is in full force.

Any person who violates this section is guilty of a class B misdemeanor, except that, upon conviction of a second or subsequent violation of this section, such person is guilty of a class A misdemeanor.

HISTORY: L. 1949, ch. 331, § 11; L. 1963, ch. 314, § 7; L. 1975, ch. 316, § 9; L. 1978, ch. 240, § 8; L. 1983, ch. 206, § 12; L. 1993, ch. 194, § 2; L. 2001, ch. 161, § 5; July 1.

65-1123. Injunctions. When it appears to the board that any person is violating any of the provisions of this act or that any person, firm, corporation, institution or association is employing (except as permitted under K.S.A. 65-1124 and amendments thereto) a person to perform professional nursing or practical nursing in Kansas, who is not licensed under this act, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation or such employing, and the proper courts of this state may enjoin any person, firm or corporation, institution or association from violation of this act or such employing without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

HISTORY: L. 1949, ch. 331, § 12; L. 1963, ch. 314, § 8; L. 1975, ch. 316, § 10; July 1.

65-1124. Acts which are not prohibited. No provisions of this law shall be construed as prohibiting:

(a) Gratuitous nursing by friends or members of the family;

(b) the incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) caring for the sick in accordance with tenets and practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing;

(d) nursing assistance in the case of an emergency;

(e) the practice of nursing by students as part of a clinical course offered through a school of professional or practical nursing or program of advanced registered professional nursing approved in the United States or its territories;

(f) the practice of nursing in this state by legally qualified nurses of any of the other states as long as the engagement of any such nurse requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, and as long as such nurses do not represent or hold themselves out as nurses licensed to practice in this state;

(g) the practice by any nurse who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of official duties;

(h) auxiliary patient care services performed in medical care facilities, adult care homes or elsewhere by persons under the direction of a person licensed to practice medicine and surgery or a person licensed to practice dentistry or the supervision of a registered professional nurse or a licensed practical nurse;

(i) the administration of medications to residents of adult care homes or to patients in hospital-based long-term care units, including state operated institutions for the mentally retarded, by an unlicensed person who has been certified as having satisfactorily completed a training program in medication administration approved by the secretary of health and environment and has completed the program on continuing education adopted by the secretary, or by an unlicensed person while engaged in and as a part of such training program in medication administration;

(j) the practice of mental health technology by licensed mental health technicians as authorized under the mental health technicians' licensure act;

(k) performance in the school setting of nursing procedures when delegated by a licensed professional nurse in accordance with the rules and regulations of the board;

(l) performance of attendant care services directed by or on behalf of an individual in need of in-home care as the terms "attendant care services" and "individual in need of in-home care" are defined under K.S.A. 65-6201 and amendments thereto;

(m) performance of a nursing procedure by a person when that procedure is delegated by a licensed nurse, within the reasonable exercise of independent nursing judgment and is performed with reasonable skill and safety by that person under the supervision of a registered professional nurse or a licensed practical nurse;

(n) the practice of nursing by an applicant for Kansas nurse licensure in the supervised clinical portion of a refresher course;

(o) the practice of nursing by graduates of approved schools of professional or practical nursing pending the results of the first licensure examination scheduled following such graduation but in no case to exceed 120 days, whichever comes first; or

(p) the teaching of the nursing process in this state by legally qualified nurses of any of the other states while in consultation with a licensed Kansas nurse as long as such individuals do not represent or hold themselves out as nurses licensed to practice in this state.

HISTORY: L. 1949, ch. 331, § 13; L. 1963, ch. 314, § 9; L. 1975, ch. 316, § 11; L. 1978, ch. 241, § 1; L. 1983, ch. 207, § 4; L. 1983, ch. 208, § 3; L. 1987, ch. 234, § 1; L. 1989, ch. 191, § 3; L. 1990, ch. 222, § 1; L. 1992, ch. 134, § 1; L. 1994, ch. 149, § 3; L. 1995, ch. 97, § 3; L. 1997, ch. 158, § 5; L. 2000, ch. 113, § 1; July 1.

65-1126. Invalidity of part. If any provision of this act or the application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

HISTORY: L. 1949, ch. 331, § 15; June 30.

65-1127. Immunity from liability in civil actions for reporting, communicating and investigating certain information concerning alleged malpractice incidents and other information; conditions.

(a) No person reporting to the board of nursing under oath and in good faith any information such person may have relating to alleged incidents of malpractice or the qualifications, fitness or character of a person licensed to practice professional nursing or licensed to practice practical nursing shall be subject to a civil action for damages as a result of reporting such information.

(b) Any state, regional or local association of registered professional nurses or licensed practical nurses and the individual members of any committee thereof, which in good faith investigates or communicates information pertaining to the alleged incidents of malpractice or the qualifications, fitness or character of any licensee or registrant to the board of nursing or to any committee or agent thereof, shall be immune from liability in any civil action, that is based upon such information or transmittal of information if the investigation and communication was made in good faith and did not represent as true any matter not reasonably believed to be true.

HISTORY: L. 1976, ch. 261, § 4; July 1.

65-1129. Rules and regulations. The board shall adopt and promulgate rules and regulations as are necessary to carry out the provisions of this act [*].

HISTORY: L. 1978, ch. 240, § 9; July 1.

65-1135. Complaint or information relating to complaint confidential; exceptions.

(a) Any complaint or report, record or other information relating to the investigation of a complaint about a person licensed by the board which is received, obtained or maintained by the board is confidential and shall not be disclosed by the board or its employees in a manner which identified or enables identification of the person who is the subject or source of such information except:

(1) In a disciplinary proceeding conducted by the board pursuant to law or in an appeal of the order of the board entered in such proceeding, or to any party to such proceeding or appeal or such party's attorney;

(2) to the proper licensing or disciplinary authority of another jurisdiction, if any disciplinary action authorized by K.S.A. 65-1120 and amendments thereto has at any time been taken against the licensee or the board has at any time denied a license certificate or authorization to the person; or

(3) to the person who is the subject of the information, but the board may require disclosure in such a manner as to prevent identification of any other person who is the subject or source of the information.

(b) This section shall be part of and supplemental to the Kansas nurse practice act.

HISTORY: L. 1993, ch. 194, § 8; July 1.

65-1136. Intravenous fluid therapy; qualifications of licensed practical nurses to administer; definitions; rules and regulations; advisory committee established; prohibitions; exceptions.

(a) As used in this section:

(1) "Provider" means a person who is approved by the board to administer an examination and to offer an intravenous fluid therapy course which has been approved by the board.

(2) "Person" means an individual, organization, agency, institution or other legal entity.

(3) "Examination" means an intravenous fluid therapy competency examination approved by the board.

(4) "Supervision" means provision of guidance by a qualified nurse for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity.

(b) A licensed practical nurse may perform a limited scope of intravenous fluid therapy under the supervision of a registered professional nurse.

(c) A licensed practical nurse may perform an expanded scope of intravenous fluid therapy under the supervision of a registered professional nurse, if the licensed practical nurse:

(1) Successfully completes an intravenous fluid therapy course given by a provider and passes an intravenous fluid therapy examination administered by a provider; or

(2) has had one year clinical experience, has performed intravenous fluid therapy prior to July 1, 1995, and has successfully passed an examination; or

(3) has successfully completed an intravenous fluid therapy course and passed an intravenous fluid therapy examination not administered by a provider and, upon application to the board for review and approval of such course and examination, the board has determined that such course and examination meets or exceeds the standards required under this act for an approved course and approved examination; or

(4) prior to July 1, 2001, qualified under paragraph (3) of this subsection (c), as such subsection existed immediately prior to July 1, 2001, to perform an expanded scope of intravenous fluid therapy.

(d) The board may adopt rules and regulations:

(1) Which define the limited and expanded scope of practice of intravenous fluid therapy which may be performed by a licensed practical nurse under the supervision of a registered professional nurse;

(2) which restricts specific intravenous fluid therapy practices;

(3) which prescribe standards for an intravenous fluid therapy course and examination required of a provider;

(4) which govern provider record requirements;

(5) which prescribe the procedure to approve, condition, limit and withdraw approval as a provider; and

(6) which further implement the provisions of this section.

(e) An advisory committee of not less than two board members and five nonboard members shall be established by the board to advise and assist the board in implementing this section as determined by the board. The advisory committee shall meet at least annually. Members of the advisory committee shall receive amounts provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto for each day of actual attendance at any meeting of the advisory committee or any subcommittee meeting of the advisory committee authorized by the board.

(f) No licensed practical nurse shall perform intravenous fluid therapy unless qualified to perform intravenous fluid therapy under this section and rules and regulations adopted by the board.

(g) Nothing in this section shall be construed to prohibit the performance of intravenous fluid therapy by a registered professional nurse.

(h) Nothing in this section shall be construed to prohibit performance of intravenous fluid therapy by a licensed practical nurse when performed by delegation of a person licensed to practice medicine and surgery or dentistry.

(i) This section shall be part of and supplemental to the Kansas nurse practice act.

HISTORY: L. 1994, ch. 218, § 1; L. 2000, ch. 113, § 3; L. 2001, ch. 161, § 7; July 1.

65-1152. Qualifications for authorization to practice as a registered nurse anesthetist; approval of schools of nurse anesthesia, criteria.

(a) In order to obtain authorization from the board of nursing to practice as a registered nurse anesthetist an individual shall meet the following requirements:

(1) Be licensed to practice professional nursing under the Kansas nurse practice act;

(2) has successfully completed a course of study in nurse anesthesia in a school of nurse anesthesia approved by the board;

(3) has successfully completed an examination approved by the board or has been certified by a national organization whose certifying standards are approved by the board as equal to or greater than the corresponding standards established under this act for obtaining authorization to practice as a registered nurse anesthetist; and

(4) be required to successfully complete a refresher course as defined in rules and regulations of the board if the individual has not been in active anesthesia practice for five years preceding the application.

(b) Approval of schools of nurse anesthesia shall be based on approval standards specified in K.S.A. 65-1133 and amendments thereto.

(c) Schools of nurse anesthesia approved by the board under this section shall offer, a masters level degree program in nurse anesthesia.

(d) For the purposes of determining whether an individual meets the requirements of item (2) of subsection (a), the board by rules and regulations shall establish criteria for determining whether a particular school of nurse anesthesia maintains standards which are at least equal to schools of nurse anesthesia which are approved by the board.

HISTORY: L. 1986, ch. 183, § 2; L. 1988, ch. 243, § 3; L. 1988, ch. 244, § 1; L. 1988, ch. 245, § 3; L. 1993, ch. 194, § 15; L. 1996, ch. 179, § 2; L. 1997, ch. 158, § 7; L. 2001, ch. 161, § 8; July 1.

65-1153. Temporary authorization to practice. The board may grant a temporary authorization to practice nurse anesthesia as a registered nurse anesthetist:

(a) For a period of not more than one year to graduates of a school of nurse anesthesia approved by the board pending results of the initial examination; or

(b) for the needed amount of time to complete the clinical portion of a refresher course; or

(c) for a period not to exceed 120 days.

HISTORY: L. 1986, ch. 183, § 3; L. 1992, ch. 135, § 4; L. 1996, ch. 179, § 3; L. 2000, ch. 113, § 4; L. 2001, ch. 161, § 9; July 1.

65-1154. Application; fees; deposit of moneys. Upon application to the board by any licensed professional nurse in this state and upon satisfaction of the standards and requirements established under this act and K.S.A. 65-1130 and amendments thereto, the board shall grant an authorization to the applicant to perform the duties of a registered nurse anesthetist and be certified as an advanced registered nurse practitioner. An application to the board for an authorization, for an authorization with temporary authorization, for biennial renewal of authorization, for reinstatement of authorization and for reinstatement of authorization with temporary authorization shall be upon such form and contain such information as the board may require and shall be accompanied by a fee to assist in defraying the expenses in connection with the administration of the provisions of this act. The fee shall be fixed by rules and regulations adopted by the board in an amount fixed by the board under K.S.A. 65-1118 and amendments thereto. There shall be no fee assessed for the initial, renewal or reinstatement of the advanced registered nurse practitioner certificate as long as the registered nurse anesthetist maintains authorization. The executive administrator of the board shall remit all moneys received to the state treasurer as provided by K.S.A. 74-1108 and amendments thereto.

HISTORY: L. 1986, ch. 183, § 4; L. 1992, ch. 135, § 5; L. 1996, ch. 179, § 4; July 1.

65-1155. Expiration of authorizations to practice; system of biennial authorizations; renewal; lapsed authorization; reinstatement fee.

(a) All authorizations to practice under this act, whether initial or renewal, shall expire every two years. The biennial authorizations to practice as a registered nurse anesthetist shall expire at the same time as the license to practice as a registered nurse. The board shall mail an application for renewal of the authorization to practice to every registered nurse anesthetist at least 60 days prior to the expiration date of such person's authorization to practice. To renew such authorization to practice the registered nurse anesthetist shall file with the board, before the date of expiration of such authorization to practice, a renewal application together with the prescribed biennial renewal fee. Upon satisfaction of the requirements of subsection (a) of K.S.A. 65-1159 and amendments thereto the board shall grant the renewal of an authorization to practice as a registered nurse anesthetist to the applicant.

(b) Any person who fails to secure the renewal of an authorization to practice prior to the expiration of the authorization may secure a reinstatement of such lapsed authorization by making application on a form provided by the board. Such reinstatement shall be granted upon receipt of proof that the applicant is competent and qualified to act as a registered nurse anesthetist, has satisfied all of the requirements and has paid the board a reinstatement fee as established by the board by rules and regulations in accordance with K.S.A. 65-1118 and amendments thereto.

HISTORY: L. 1986, ch. 183, § 5; L. 1988, ch. 242, § 3; L. 1993, ch. 194, § 16; July 1.

65-1158. Duties of registered nurse anesthetists.

(a) Upon the order of a physician or dentist requesting anesthesia or analgesia care, each registered nurse anesthetist shall:

(1) Conduct a pre- and post-anesthesia visit and assessment with appropriate documentation;

(2) develop a general plan of anesthesia care with the physician or dentist;

(3) be authorized to select the method for administration of anesthesia or analgesia;

(4) be authorized to select appropriate medications and anesthetic agents;

(5) induce and maintain anesthesia or analgesia at the required levels;

(6) support life functions during the peri-operative period;

(7) recognize and take appropriate action with respect to patient responses during anesthesia;

(8) provide professional observation and management of the patient's emergence from anesthesia; and

(9) participate in the life support of the patient.

(b) Each registered nurse anesthetist may participate in periodic and joint evaluation of services rendered, including, but not limited to, chart reviews, case reviews, patient evaluation and outcome of case statistics.

(c) A registered nurse anesthetist shall perform duties and functions in an interdependent role as a member of a physician or dentist directed health care team.

HISTORY: L. 1986, ch. 183, § 8; L. 1988, ch. 242, § 4; L. 1996, ch. 179, § 5; July 1.

65-1159. Qualifications of applicant for renewal of an authorization to practice; continuing education.

(a) The applicant for renewal of an authorization to practice as a registered nurse anesthetist shall:

(1) Have met the continuing education requirements for a registered nurse anesthetist as developed by the board or by a national organization whose certifying standards are approved by the board as equal to or greater than the corresponding standards established under this act;

(2) be currently licensed as a professional nurse; and

(3) have paid all applicable fees provided for in this act as fixed by rules and regulations of the board.

(b) Continuing education credits approved by the board for purposes of this subsection may be applied to satisfy the continuing education requirements established by the board for licensed professional nurses under K.S.A. 65-1117 and amendments thereto if the board finds such continuing education credits are equivalent to those required by the board under K.S.A. 65-1117 and amendments thereto.

HISTORY: L. 1986, ch. 183, § 9; L. 1996, ch. 179, § 6; July 1.

65-1162. Unlawful acts.

(a) Except as otherwise provided in K.S.A. 65-1151 to 65-1163, inclusive, and amendments thereto any licensed professional nurse or licensed practical nurse who engages in the administration of general or regional anesthesia without being authorized by the board to practice as a registered nurse anesthetist is guilty of a class A misdemeanor.

(b) Any person, corporation, association or other entity, except as otherwise provided in K.S.A. 65-1151 to 65-1163, inclusive, and amendments thereto who engages in any of the following activities is guilty of a misdemeanor:

(1) Employing or offering to employ any person as a registered nurse anesthetist with knowledge that such person is not authorized by the board to practice as a registered nurse anesthetist;

(2) fraudulently seeking, obtaining or furnishing documents indicating that a person is authorized by the board to practice as a registered nurse anesthetist when such person is not so authorized, or aiding and abetting such activities;

(3) using in connection with one's name the title registered nurse anesthetist, the abbreviation R.N.A., or any other designation tending to imply that such person is authorized by the board to practice as a registered nurse anesthetist when such person is not authorized by the board to practice as a registered nurse anesthetist; or

(4) violation of the Kansas nurse practice act or rules and regulations adopted pursuant thereto.

(c) Any person who violates subsection (b) of this section is guilty of a class B misdemeanor except that upon conviction of a second or subsequent violation of this section, the person is guilty of a class A misdemeanor.

HISTORY: L. 1986, ch. 183, § 12; L. 1993, ch. 194, § 4; July 1.

65-1163. Application of act. Nothing in this act shall:

(a) Prohibit administration of a drug by a duly licensed professional nurse, licensed practical nurse or other duly authorized person for the alleviation of pain, including administration of local anesthetics;

(b) apply to the practice of anesthesia by a person licensed to practice medicine and surgery, a licensed dentist or a licensed podiatrist;

(c) prohibit the practice of nurse anesthesia by students enrolled in approved courses of study in the administration of anesthesia or analgesic as a part of such course of study;

(d) apply to the administration of a pudendal block by a person who holds a valid certificate of qualification as an advanced registered nurse practitioner in the category of nurse-midwife;

(e) apply to the administration by a licensed professional nurse of an anesthetic, other than general anesthesia, for a dental operation under the direct supervision of a licensed dentist or for a dental operation under the direct supervision of a person licensed to practice medicine and surgery;

(f) prohibit the practice by any registered nurse anesthetist who is employed by the United States government or in any bureau, division or agency thereof, while in the discharge of official duties; or

(g) prohibit a registered professional nurse from administering general anesthetic agents to a patient on ventilator maintenance in critical care units when under the direction of a person licensed to practice medicine and surgery or a person licensed to practice dentistry.

HISTORY: L. 1986, ch. 183, § 13; L. 1988, ch. 246, § 15; L. 1996, ch. 179, § 7; L. 2001, ch. 161, § 10; July 1.

65-1164. Rules and regulations. The board of nursing may adopt rules and regulations as necessary to administer the provisions of K.S.A. 65-1151 to 65-1163, inclusive, and amendments thereto.

HISTORY: L. 1987, ch. 234, § 3; July 1.

65-1165. Supervision of delegated nursing procedures.

(a) All nursing procedures, including but not limited to administration of medication, delegated by a licensed nurse to a designated unlicensed person shall be supervised. The degree of supervision required shall be determined by the licensed nurse after an assessment of appropriate factors which may include:

(1) The health status and mental and physical stability of the individual receiving the nursing care;

(2) the complexity of the procedure to be delegated;

(3) the training and competency of the unlicensed person to whom the procedure is to be delegated; and

(4) the proximity and availability of the licensed nurse to the designated unlicensed person when the selected nursing procedure will be performed.

(b) As used in this section, "supervision" has the meaning ascribed to such term under subsection (a) of K.S.A. 65-1136 and amendments thereto.

(c) This section shall be part of and supplemental to the Kansas nurse practice act.

HISTORY: L. 1995, ch. 97, § 7; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 1. SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES
CANCER REGISTRY

65-1,168. Cancer registry; definitions. As used in this act:

(a) "Confidential data" means any data which permits the identification of individuals.

(b) "Health care provider" means a person licensed to practice medicine and surgery, a hospital as defined in K.S.A. 65-425 and amendments thereto, any individual providing health care services or a pathology laboratory.

(c) "Secretary" means the secretary of the department of health and environment.

HISTORY: L. 1997, ch. 110, § 1; July 1.

65-1,169. Same; collection of data; rules and regulations; reporting by health care providers.

(a) The secretary is hereby authorized to collect data pertaining to all cancers occurring in Kansas into a registry which shall be the cancer registry for the state of Kansas. The secretary shall adopt rules and regulations which use the most efficient, least intrusive means for collecting cancer data consistent with ensuring the quality, timeliness, completeness and confidentiality of the cancer registry. The rules and regulations shall specify who shall report, the data elements to be reported, timeliness of reporting and format for collecting and transmitting data to the registry.

(b) Reporting by persons licensed to practice medicine or surgery and other individuals providing health care services shall be limited to responding to requests for information regarding persons with cancer previously identified by other means.

HISTORY: L. 1997, ch. 110, § 2; July 1.

65-1,170. Same; uses of nonconfidential data. Uses of registry data which are not confidential in nature include, but are not limited to:

(a) The production of statistical data which outline the frequency, distribution, severity at diagnosis, treatment and survival for each type of cancer;

(b) the design and implementation of cancer screening programs which have been demonstrated to decrease cancer mortality;

(c) assessing the cancer risk in the Kansas population;

(d) assessing the possible cancer risk of abortion;

(e) identifying previously unrecognized risk factors and causes of cancer;

(f) monitoring the potential health impact of environmental exposures;

(g) monitoring health care access and utilization and effectiveness of services for the prevention and treatment of cancer; and

(h) quantifying costs associated with cancer care.

HISTORY: L. 1997, ch. 110, § 3; July 1.

65-1,171. Same; confidential data; exceptions to prohibition on disclosure; data not subject to subpoena or open records act; storage of data. The information contained on the cancer registry shall be confidential, shall not be disclosed except as provided in K.S.A. 65-1,172 and amendments thereto, shall not be subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding and shall not be subject to the provisions of the Kansas open records act. The secretary shall ensure that the confidentiality of any data collected which might be used to identify an individual with cancer or a health care provider is maintained. Storage of cancer data shall be in a manner which will protect all information which uniquely identifies individuals.

HISTORY: L. 1997, ch. 110, § 4; July 1.

65-1,172. Same; uses of confidential data. Confidential data collected pursuant to this act shall be securely locked and used only for the following purposes:

(a) Ensuring the quality and completeness of the registry data.

(b) Investigating the nature and cause of abnormal clusterings of cancer and the possible cancer risk related to having an abortion.

(c) Offering through the personal physician, to persons with cancer, access to cancer diagnostics and treatments not available except through clinical trials. As long as such trials are conducted with the informed, written consent of the cancer patient, the confidential data is approved for release by the secretary for the purpose of such clinical trials and the clinical trials are approved by the clinical entity.

(d) Releasing data back to the institution or individual which reported cases as long as such release includes only those cases previously reported by the requesting institution or individual.

(e) As part of an exchange agreement with another state, confidential data collected on a resident of another state may be released to the cancer registry of that person's state of residence if that state has confidentiality requirements that provide assurance of protection of confidentiality equivalent to that provided by Kansas under this act.

(f) Releasing information upon consent, in writing, of the person who is the subject of the information, or if such person is under 18 years of age, by such person's parent or guardian.

HISTORY: L. 1997, ch. 110, § 5; July 1.

65-1,174. Same; immunity from civil or criminal liability for reporting; privilege under 60-427 not applicable to reports under this act; section not applicable to unauthorized disclosure due to gross negligence or willful misconduct. Any health care provider, whether a person or institution, who reports cancer information to the registry in good faith and without malice, in accordance with the requirements of this statute, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed in an action resulting from such report. Notwithstanding K.S.A. 60-427 and amendments thereto, there shall be no privilege preventing the furnishing of such information or reports as required by this act by any health care provider. Nothing in this section shall be construed to apply to the unauthorized disclosure of confidential or privileged information when such disclosure is due to gross negligence or willful misconduct.

HISTORY: L. 1997, ch. 110, § 7; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 16. REGULATION OF PHARMACISTS

65-1625. Title of act. This act shall be known and may be cited as the pharmacy act of the state of Kansas.

HISTORY: L. 1953, ch. 290, § 2; L. 1975, ch. 319, § 1; July 1.

65-1626. Definitions. 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) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

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

(f) "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.

(g) "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.

(h) "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.

(i) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(j) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(k) "Distributor" means a person who distributes a drug.

(l) "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.

(m) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(n) "Generic name" means the established chemical name or official name of a drug or drug product.

(o) (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 Kansas code for care of children and the 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.

(p) "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.

(q) "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.

(r) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(s) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(t) "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.

(u) "Pharmacy," "drug store" 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.

(v) "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

(w) "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.

(x) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, 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.

(y) "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.

(z) "Prescription" means, according to the context, either a prescription order or a prescription medication.

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

(bb) "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 United States Code section 353, as amended) to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(cc) "Prescription order" means:

(1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or

(2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

(dd) "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.

(ee) "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.

(ff) "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.

(gg) "Secretary" means the executive secretary of the board.

(hh) "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.

(ii) "Mid-level practitioner" means an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto who has authority to prescribe drugs pursuant to a written protocol 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.

(jj) "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 recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(kk) "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 non-human.

HISTORY: L. 1953, ch. 290, § 3; L. 1975, ch. 319, § 2; L. 1977, ch. 217, § 1; L. 1978, ch. 242, § 1; L. 1978, ch. 243, § 1; L. 1979, ch. 193, § 1; L. 1982, ch. 182, § 138; L. 1986, ch. 235, § 1; L. 1986, ch. 231, § 9; L. 1986, ch. 236, § 1; L. 1987, ch. 235, § 5; L. 1987, ch. 236, § 1; L. 1988, ch. 297, § 2; L. 1989, ch. 193, § 1; L. 1989, ch. 192, § 2; L. 1989, ch. 192, § 3; L. 1991, ch. 272, § 10; L. 1996, ch. 229, § 118; L. 1997, ch. 112, § 1; L. 1999, ch. 38, § 1; L. 1999, ch. 149, § 6; L. 2000, ch. 89, § 1; L. 2000, ch. 159, § 10; L. 2001, ch. 31, § 1; L. 2002, ch. 25, § 2; L. 2003, ch. 124, § 8; July 1.

65-1627. Grounds for revocation, suspension, placement in probationary status, denial, temporary suspension or temporary limitation of license for pharmacist, permit for retail dealer or registration for pharmacy or manufacturer or distributor; procedure.

(a) The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that:

(1) The license was obtained by fraudulent means;

(2) the licensee has been convicted of a felony and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;

(3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency;

(4) the licensee is addicted to the liquor or drug habit to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(5) the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act;

(6) the licensee is found by the board to have filled a prescription not in strict accordance with the directions of the practitioner or a mid-level practitioner;

(7) the licensee is found to be mentally or physically incapacitated to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(8) the licensee has violated any of the provisions of the pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act;

(9) the licensee has failed to comply with the requirements of the board relating to the continuing education of pharmacists;

(10) the licensee as a pharmacist in charge or consultant pharmacist under the provisions of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto has failed to comply with the requirements of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto;

(11) the licensee has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement;

(12) the licensee has had a license to practice pharmacy revoked, suspended or limited, has been censured or has had other disciplinary action taken, or voluntarily surrendered the license after formal proceedings have been commenced, or has had an application for license denied, by the proper licensing authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;

(13) the licensee has self-administered any controlled substance without a practitioner's prescription order or a mid-level practitioner's prescription order; or

(14) the licensee has assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2002 Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405 and amendments thereto; or

(15) the licensee has failed to furnish the board, its investigators or its representatives any information legally requested by the board.

(b) In determining whether or not the licensee has violated subsection (a)(3), (a)(4), (a)(7) or (a)(13), the board upon reasonable suspicion of such violation has authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate. To determine whether reasonable suspicion of such violation exists, the investigative information shall be presented to the board as a whole. Information submitted to the board as a whole and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of pharmacy with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice pharmacy and who shall accept the privilege to practice pharmacy in this state by so practicing or by the making and filing of a renewal application to practice pharmacy in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action under subsection (a) against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) The board may suspend, revoke, place in a probationary status or deny a renewal of any retail dealer's permit issued by the board when information in possession of the board discloses that such operations for which the permit was issued are not being conducted according to law or the rules and regulations of the board.

(e) The board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon a finding that:

(1) Such pharmacy has been operated in such manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith;

(2) the owner or any pharmacist employed at such pharmacy is convicted, subsequent to such owner's acquisition of or such employee's employment at such pharmacy, of a violation of the pharmacy act or uniform controlled substances act of the state of Kansas, or the federal or state food, drug and cosmetic act;

(3) the owner or any pharmacist employed by such pharmacy has fraudulently claimed money for pharmaceutical services; or

(4) the registrant has had a registration revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for registration denied, by the proper registering authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(f) A registration to manufacture or to distribute at wholesale a drug or a registration for the place of business where any such operation is conducted may be suspended, revoked, placed in a probationary status or the renewal of such registration may be denied by the board upon a finding that the registrant or the registrant's agent:

(1) Has materially falsified any application filed pursuant to or required by the pharmacy act of the state of Kansas;

(2) has been convicted of a felony under any federal or state law relating to the manufacture or distribution of drugs;

(3) has had any federal registration for the manufacture or distribution of drugs suspended or revoked;

(4) has refused to permit the board or its duly authorized agents to inspect the registrant's establishment in accordance with the provisions of K.S.A. 65-1629 and amendments thereto;

(5) has failed to keep, or has failed to file with the board or has falsified records required to be kept or filed by the provisions of the pharmacy act of the state of Kansas or by the board's rules and regulations; or

(6) has violated the pharmacy act of the state of Kansas or rules and regulations adopted by the state board of pharmacy under the pharmacy act of the state of Kansas or has violated the uniform controlled substances act or rules and regulations adopted by the state board of pharmacy under the uniform controlled substances act.

(g) Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

HISTORY: L. 1953, ch. 290, § 13; L. 1965, ch. 369, § 5; L. 1972, ch. 231, § 5; L. 1975, ch. 319, § 3; L. 1982, ch. 262, § 1; L. 1984, ch. 313, § 106; L. 1986, ch. 235, § 2; L. 1986, ch. 231, § 10; L. 1986, ch. 234, § 3; L. 1988, ch. 356, § 195; L. 1989, ch. 193, § 2; L. 1991, ch. 187, § 1; L. 1994, ch. 118, § 2; L. 1995, ch. 106, § 1; L. 1998, ch. 98, § 1; L. 1999, ch. 38, § 3; L. 1999, ch. 149, § 7; April 1, 2000.

65-1627a. Same; jurisdiction of board; petition, who may file; stipulation, order based thereon. The board shall have jurisdiction of the proceedings to revoke, suspend, place in a probationary status or deny a renewal of any license, registration or permit issued by the board under the provision of the pharmacy act of the state of Kansas. The petition for the revocation, suspension, placing in a probationary status or denial of a renewal of a license, registration or permit may be filed:

(a) By the attorney general in all cases;

(b) by the district or county attorney of the county in which the licensee, or permit holder resides or in which a place of business or place of professional practice of such person is located; or

(c) by a regularly employed attorney of the board. The petition shall be filed in the office of the executive secretary of the board.

The board and the person holding the license permit or registration may enter into a stipulation which shall be binding upon the board and such person entering into the stipulation, and the board may enter its enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the proceedings.

HISTORY: L. 1975, ch. 319, § 4; L. 1986, ch. 231, § 11; June 1.

65-1627b. Same; direction by board to file petition or to prosecute.

(a) The board may direct the attorney general, the district or county attorney or its regularly employed attorney to file such petition against the licensee, registrant or permit holder upon its own motion, or it may give such direction upon the sworn statement of some person who resides in the county in which a place of business or place of professional practice of such person is located.

(b) The attorney general shall comply with such directions of the board and prosecute the action on behalf of the state, but the district or county attorney of any county where the licensee, registrant or permit holder has operated a place of business or place of professional practice, at the request of the attorney general or the board, shall appear and prosecute such action.

HISTORY: L. 1975, ch. 319, § 5; L. 1986, ch. 231, § 12; June 1.

65-1627c. Same; form of petition, rules. The following rules shall govern the form of the petition in such cases:

(a) The board shall be named as plaintiff and the person who holds the license, registration or permit as defendant.

(b) The charges against the person who holds the license, registration or permit shall be stated with reasonable definiteness.

(c) Amendments may be made as in ordinary actions in the district court.

(d) All allegations shall be deemed denied, but the person who holds the license, registration or permit may plead to the petition if such person so desires.

HISTORY: L. 1975, ch. 319, § 6; L. 1986, ch. 231, § 13; June 1.

65-1627f. Same; powers of board; term of suspension, probation or revocation; hearing; orders.

(a) Depositions may be used by either party. Upon the completion of any hearing held hereunder, the board shall have the power to enter an order of revocation, suspension, probation or denial of the renewal of a license, registration or

permit. The license, registrant or permit holder shall not engage in the activity authorized by such license, registration or permit after a license, registration or permit is revoked or the renewal thereof denied or during the time for which it is suspended. If a license, registration or permit is suspended or placed on probation, the suspension or probation shall be for a definite period of time to be fixed by the board, and the license, registration or permit shall be reinstated and any limitations or conditions thereon removed upon the expiration of such period if all renewal fees have been paid. If such license, registration or permit is revoked, such revocation shall be for all time, except that at any time after the expiration of one year, application may be made for reinstatement of any license, registrant or permit holder whose license, registration or permit shall have been revoked, and such application shall be addressed to the executive secretary of the board. Such application shall be processed in accordance with the provisions of the Kansas administrative procedure act.

(b) All final orders entered in any proceeding shall be the action of the board with a quorum present at such meeting.

HISTORY: L. 1975, ch. 319, § 9; L. 1986, ch. 231, § 15; L. 1988, ch. 356, § 197; L. 1998, ch. 98, § 2; Apr. 16.

65-1627h. Costs of proceedings.

(a) If the order is adverse to the licensee, registrant or permit holder, the costs shall be charged to such person as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid out of any money in the state board of pharmacy fee fund. Witness fees and costs may be taxed according to the statutes applicable in the district courts.

(b) All costs accrued at the instance of the state, when it is the successful party, and which the attorney general certifies cannot be collected from the licensee, registrant or permit holder, shall be paid out of any available funds in the state treasury to the credit of the board.

(c) The board may consider nonpayment of costs which have been assessed against a person under this section when considering a motion for reinstatement of a license or registration by such person, or as a condition of probation.

HISTORY: L. 1975, ch. 319, § 11; L. 1986, ch. 231, § 17; L. 1995, ch. 106, § 2; Apr. 13.

65-1628. Order; judicial review.

(a) If any application for any license, registration or permit is refused or the renewal thereof denied or if any license, registration or permit is suspended, revoked or placed on probation, the board shall notify the person affected in writing of its decision and order and the reasons therefor.

(b) Any action of the board pursuant to K.S.A. 65-1627f and amendments thereto is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

HISTORY: L. 1953, ch. 290, § 14; L. 1975, ch. 319, § 12; L. 1986, ch. 231, § 18; L. 1986, ch. 318, § 90; July 1.

65-1628a. Review bond. If the licensee, registrant or permit holder petitions for review, the only bond required shall be one running to the state, in an amount to be fixed by the court for the payment of the costs both before the board and in the district court. Such bond shall be approved by the judge of the district court. The giving of such a bond by the licensee, registrant or permit holder shall not operate to stay the order of the board or restore the right of the licensee, registrant or permit holder to engage in the profession or business for which the license, registration or permit was issued or remove any condition upon engaging therein pending review, but a stay may be granted in accordance with K.S.A 77-616, and amendments thereto.

HISTORY: L. 1975, ch. 319, § 13; L. 1986, ch. 231, § 19; L. 1986, ch. 318, § 91; L. 1992, ch. 314, § 15; July 1

65-1629. Inspection of drugs by board; samples; analyses; publication of results. The board and its duly authorized agents and employees may inspect in a lawful manner the drugs kept for sale, offered for sale or for dispensing, or sold in the state of Kansas by any pharmacist, or kept in stock by any duly licensed practitioner or institutional drug room in the state, or when such inspection is required by the secretary of health and environment the drugs kept in stock by any medical care facility; and for this purpose shall have the right to enter and inspect during business hours any institutional drug room or any pharmacy or any other place in the state of Kansas where drugs are manufactured, packed, packaged, made, sold, offered for sale or kept for sale and may collect samples of such drugs upon payment therefor. The samples thus collected may be submitted for analysis to the office of laboratory services of the department of health and environment and the results of the analysis may be published by the state department of health and environment.

HISTORY: L. 1953, ch. 290, § 15; L. 1975, ch. 319, § 15; L. 1979, ch. 193, § 2; July 1.

65-1630. Rules and regulations. The board may adopt and promulgate such reasonable rules and regulations, not inconsistent with law, as may be necessary to carry out the purposes and enforce the provisions of this act, which rules and regulations shall be filed in the office of the secretary of state as required by article 4 of chapter 77 of the Kansas Statutes Annotated and amendments thereto.

HISTORY: L. 1953, ch. 290, § 16; L. 1975, ch. 319, § 16; L. 1988, ch. 366, § 16; June 1.

65-1631. Licensure required of pharmacists; qualification of applicants; application for licensure by examination; reciprocal licensure; fees; applicants from schools outside United States.

(a) It shall be unlawful for any person to practice as a pharmacist in this state unless such person is licensed by the board as a pharmacist. Except as otherwise provided in subsection (d), every applicant for licensure as a pharmacist shall be at least 18 years of age, shall be a graduate of a school or college of pharmacy or department of a university recognized and approved by the board, shall file proof satisfactory to the board, substantiated by proper affidavits, of a minimum of one year of pharmaceutical experience, acceptable to the board, under the supervision of a preceptor and shall pass an examination approved by the board. Pharmaceutical experience as required in this section shall be under the supervision of a preceptor and shall be predominantly related to the dispensing of prescription medication, compounding prescriptions, preparing pharmaceutical preparations and keeping records and making reports required under state and federal statutes. A school or college of pharmacy or department of a university recognized and approved by the board under this subsection (a) shall have a standard of education not below that of the university of Kansas school of pharmacy. The board shall adopt rules and regulations establishing the criteria which a school or college of pharmacy or department of a university shall satisfy in meeting the standard of education established under this subsection (a).

(b) All applications for licensure by examination shall be made on a form to be prescribed and furnished by the board. Each application for a new license by examination shall be accompanied by a license fee fixed by the board as provided in K.S.A. 65-1645 and amendments thereto.

(c) The board is authorized to adopt rules and regulations relating to the grades which an applicant must receive in order to pass the examination.

(d) Notwithstanding the preceding provisions of this section, the board may in its discretion license as a pharmacist, without examination, any person who is duly registered or licensed by examination in some other state, except that the board may require that such person take the law examination approved by the board. Such person shall file proof satisfactory to the board of having the education and training required of applicants for licensure under the provisions of the pharmacy act of this state. Persons who are registered or licensed as pharmacists by examination in other states shall be required to satisfy only the requirements which existed in this state at the time they become registered or licensed in such other states. The provisions of this subsection shall apply only if the state in which the person is registered or licensed grants, under like conditions, reciprocal registrations or licenses as pharmacists, without examination, to pharmacists duly licensed by examination in this state. Reciprocal licensure shall not be denied to any applicant otherwise qualified for reciprocal licensure under this section who has met the internship requirements of the state from which the applicant is reciprocating or who has at least one year of practice as a licensed pharmacist. A reciprocal

licensure may be denied for any of the reasons set forth in subsections (a)(1) through (a)(13) of K.S.A. 65-1627 and amendments thereto.

(e) In the event that an applicant for reciprocal licensure has not been subject to laws requiring continuing education as a condition for renewal of a registration or license, such applicant shall be required to satisfy the board through a competency examination that the applicant has the knowledge and ability to meet Kansas standards for licensure as a pharmacist.

(f) No applicant who has taken the examination for licensure approved by the board and has failed to complete it successfully shall be considered for licensure by reciprocity within one year from the date such applicant sat for the examination.

(g) All applicants for reciprocal licensure shall file their applications on a form to be prescribed and furnished by the board and such application shall be accompanied by a reciprocal licensure fee fixed by the board as provided in K.S.A. 65-1645 and amendments thereto. The reciprocal licensure fee established by this section immediately prior to the effective date of this act shall continue in effect until a different reciprocal licensure fee is fixed by the board by rules and regulations as provided in K.S.A. 65-1645 and amendments thereto.

(h) The board shall take into consideration any felony conviction of such person, but such conviction shall not automatically operate as a bar to licensure.

(i) All applicants for licensure who graduate from a school or college of pharmacy outside the United States or who graduate from a school or college of pharmacy not approved by the board shall submit information to the board, as specified by rules and regulations, and this information shall be accompanied by an evaluation fee fixed by the board as provided in K.S.A. 65-1645 and amendments thereto, which evaluation fee shall be in addition to any other fee paid by the applicant under the pharmacy act of the state of Kansas. The evaluation fee fixed by the board under this section immediately prior to the effective date of this act shall continue in effect until a different evaluation fee is fixed by the board by rules and regulations as provided in K.S.A. 65-1645 and amendments thereto. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about such schools or colleges of pharmacy. In entering such contracts the authority to approve schools or colleges of pharmacy shall remain solely with the board.

(j) All applicants for licensure who graduate from a school or college of pharmacy outside the United States or who are not citizens of the United States shall provide proof to the board that the applicant has a reasonable ability to communicate with the general public in English. The board may require such applicant to take the test of English as a foreign language and to attain the grade for passing such test as established by the board by rules and regulations.

(k) Every registered pharmacist holding a valid registration as a pharmacist in effect on the day preceding the effective date of this act shall be deemed to be a licensed pharmacist under this act, and such person shall not be required to file an original application hereunder for a license.

HISTORY: L. 1953, ch. 290, § 17; L. 1962, ch. 37, § 1; L. 1967, ch. 342, § 1; L. 1972, ch. 231, § 6; L. 1974, ch. 252, § 1; L. 1975, ch. 319, § 17; L. 1981, ch. 247, § 1; L. 1982, ch. 263, § 1; L. 1986, ch. 235, § 3; L. 1986, ch. 231, § 20; L. 1986, ch. 236, § 2; L. 1987, ch. 236, § 2; L. 1988, ch. 243, § 7; L. 1991, ch. 187, § 2; L. 1998, ch. 98, § 3; L. 2002, ch. 184, § 1; July 1.

65-1632. Renewal of license; fee; denial; conditions; continuing education; inactive status license; reinstatement after nonrenewal; penalty fee.

(a) Each license to practice as a pharmacist issued by the board, shall expire on June 30 of the year specified by the board for the expiration of the license and shall be renewed on a biennial basis in accordance with this section. Each application for renewal of a license as a pharmacist shall be made on a form prescribed and furnished by the board. Except as otherwise provided in this subsection, the application, when accompanied by the renewal fee and received by the executive secretary of the board on or before the date of expiration of the license, shall have the effect of temporarily renewing the applicant's license until actual issuance or denial of the renewal. If at the time of filing a proceeding is

pending before the board which may result in the suspension, probation, revocation or denial of the applicant's license, the board may by emergency order declare that the application for renewal shall not have the effect of temporarily renewing such applicant's license. Every licensed pharmacist shall pay to the secretary of the board a renewal fee fixed by the board as provided in K.S.A. 65-1645 and amendments thereto.

(b) Commencing with the renewal of licenses which expire on June 30, 1998, each license shall be renewed on a biennial basis. To provide for a system of biennial renewal of licenses, the board may provide by rules and regulations that licenses issued or renewed may expire less than two years from the date of issuance or renewal.

(c) The board may deny renewal of any license of a pharmacist on any ground which would authorize the board to deny an initial application for licensure or on any ground which would authorize the board to suspend, revoke or place on probation a license previously granted. Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

(d) The payment of the renewal fee by a person who is a holder of a license as a pharmacist shall entitle the person to renewal of license if no grounds exist for denying the renewal of the license and if the person has furnished satisfactory evidence to the board that the person has successfully complied with the rules and regulations of the board relating to continuing professional education. These educational requirements shall be fixed by the board at not less than 20 clock hours nor more than 40 clock hours biennially of a program of continuing education approved by the board. Continuing education hours may be prorated for licensure periods which are less than biennial in accordance with rules and regulations of the board. The maximum number of continuing education hours required by the board to meet the requirements for cancellation of inactive status licensure and renewal of license under subsection (e) or reinstatement of license because of nonpayment of fees under subsection (f) shall not exceed 60.

(e) The payment of the renewal fee by the person who is a holder of a license as a pharmacist but who has not complied with the continuing education requirements fixed by the board, if no grounds exist for denying the renewal of the license other than that the person has not complied with the continuing education requirements fixed by the board, shall entitle the person to inactive status licensure by the board. No person holding an inactive status license from the board shall engage in the practice of pharmacy in this state. Upon furnishing satisfactory evidence to the board of compliance with the continuing education requirements fixed by the board and upon the payment to the board of all applicable fees, a person holding an inactive status license from the board shall be entitled to cancellation of the inactive status license and to renewal of licensure as a pharmacist.

(f) If the renewal fee for any pharmacist's license has not been paid by August 1 of the renewal year, the license is hereby declared void, and no license shall be reinstated except upon payment of any unpaid renewal fee plus a penalty fee fixed by the board as provided in K.S.A. 65-1645 and amendments thereto and proof satisfactory to the board of compliance with the continuing education requirements fixed by the board. The penalty fee established by this section immediately prior to the effective date of the act shall continue in effect until a different penalty fee is fixed by the board by rules and regulations as provided in K.S.A. 65-1645 and amendments thereto. Payment of any unpaid renewal fee plus a penalty fee and the submission of proof satisfactory to the board of compliance with the continuing education requirements fixed by the board shall entitle the license to be reinstated. The nonpayment of renewal fees by a previously licensed pharmacist for a period exceeding three years shall not deprive the previously licensed pharmacist of the right to reinstate the license upon the payment of any unpaid fees and penalties and upon compliance with the continuing education requirements fixed by the board, except that the board may require such previously licensed pharmacist to take and pass an examination approved by the board for reinstatement as a pharmacist and to pay any applicable application fee.

HISTORY: L. 1953, ch. 290, § 18; L. 1962, ch. 37, § 2; L. 1967, ch. 342, § 2; L. 1974, ch. 252, § 2; L. 1975, ch. 319, § 18; L. 1982, ch. 263, § 2; L. 1984, ch. 313, § 107; L. 1986, ch. 231, § 21; L. 1987, ch. 236, § 3; L. 1988, ch. 356, § 198; L. 1990, ch. 224, § 1; L. 1991, ch. 187, § 3; L. 1998, ch. 98, § 4; L. 2002, ch. 184, § 2; July 1.

65-1633. Change of address of pharmacist. Every pharmacist who changes residential address shall within 30 days thereof by letter notify the executive secretary of the board of such change, and upon receipt of the notice the executive secretary shall make the proper alterations in the record kept for that purpose.

HISTORY: L. 1953, ch. 290, § 19; L. 1962, ch. 37, § 3; L. 1975, ch. 319, § 19; L. 1982, ch. 263, § 3; L. 1986, ch. 231, § 22; June 1.

65-1634. Responsibility for quality of drugs sold; adulteration or mislabeling unlawful. Every person holding a license, registration or permit under the pharmacy act of the state of Kansas who engages in the sale of drugs, medicines, chemicals and poisons shall be responsible for the quality of all such drugs, medicines, chemicals and poisons which such person may sell, compound or put up except when sold in the original and unbroken pack, package, box or other container of the manufacturer. If any person intentionally adulterates or mislabels any drugs, medicines, chemicals or poisons, or causes the same to be adulterated or mislabeled or exposed for sale knowing the same to be adulterated or mislabeled, such person shall be guilty of a class A misdemeanor.

HISTORY: L. 1953, ch. 290, § 20; L. 1975, ch. 319, § 20; L. 1986, ch. 231, § 23; June 1.

65-1635. Dispensing and administering of drugs by duly licensed practitioners, nurses and other persons.

(a) Nothing contained in the pharmacy act of the state of Kansas shall prohibit any duly licensed practitioner from purchasing and keeping drugs, from compounding prescriptions or from administering, supplying or dispensing to such practitioner's patients such drugs as may be fit, proper and necessary. Except as provided in subsection (b) or (c), such drugs shall be dispensed by such practitioner and shall comply with the Kansas food, drug and cosmetic act and be subject to inspection as provided by law.

(b) Nothing contained in the pharmacy act of the state of Kansas shall be construed to prohibit any nurse or other person, acting under the direction of a duly licensed practitioner, from administering drugs to a patient.

(c) Nothing contained in the pharmacy act of the state of Kansas shall be construed to prohibit any registered nurse, acting under the supervision of a person who is licensed to practice medicine and surgery as of July 1, 1982, from dispensing drugs to patients of such person so long as the principal office of such person is, and as of July 1, 1982, was, located in a city not having a registered pharmacy within its boundaries. For the purposes of this subsection (c), "supervision" means guidance and direction of the dispensing of drugs by the person licensed to practice medicine and surgery who shall be physically present in the general location at which the drugs are being dispensed.

(d) Nothing contained in the pharmacy act of the state of Kansas shall be construed to prohibit a duly registered wholesaler from distributing a prescription-only drug pursuant to a veterinarian practitioner's written prescription or order, where a valid veterinarian-client-patient relationship, VCPR, as defined in K.S.A. 47-816, and amendments thereto, exists, to the layman responsible for the control of the animal.

HISTORY: L. 1953, ch. 290, § 21; L. 1975, ch. 319, § 21; L. 1982, ch. 262, § 6; L. 1982, ch. 263, § 6; L. 1983, ch. 210, § 1; L. 1997, ch. 2, § 1; L. 1999, ch. 38, § 4; July 1.

65-1635a. Administration of vaccine; education and reporting requirements; delegation of authority prohibited.

(a) A pharmacist may administer vaccine to a person 18 years of age or older pursuant to a vaccination protocol if the pharmacist has successfully completed a course of study and training, approved by the American council on pharmaceutical education or the board, in vaccination storage, protocols, injection technique, emergency procedures and recordkeeping. A pharmacist who successfully completes such a course of study and training shall maintain proof of completion and, upon request, provide a copy of such proof to the board.

(b) All vaccinees will be given a written immunization record for their personal files. The administering pharmacist shall promptly report a record of the immunization to the vaccinee's primary-care provider by electronic facsimile or mail. If the vaccinee does not have a primary care provider, then the administering pharmacist shall promptly report a record of the immunization to the person licensed to practice medicine and surgery by the state board of healing arts who has

entered into the vaccination protocol with the pharmacist. The immunization will also be reported to appropriate county or state immunization registries.

(c) A pharmacist may not delegate to any person the authority granted under this act to administer a vaccine.

(d) This section shall be a part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 2000, ch. 118, § 3; July 1.

65-1636. Sale of drugs limited to pharmacies. Except as otherwise provided in this act, the sale and distribution of drugs shall be limited to pharmacies operating under registrations as required by this act, and the actual sale or distribution of drugs shall be made by a pharmacist or other persons acting under the immediate personal direction and supervision of the pharmacist.

HISTORY: L. 1953, ch. 290, § 22; L. 1975, ch. 319, § 22; L. 1986, ch. 231, § 24; June 1.

65-1637. Pharmacist required to be in charge of pharmacy; compounding and filling of prescriptions; brand exchange; refilling prescriptions. In every store, shop or other place defined in this act as a "pharmacy" there shall be a pharmacist in charge and, except as otherwise provided by law, the compounding and dispensing of prescriptions shall be limited to pharmacists only. Except as otherwise provided by the pharmacy act of this state, when a pharmacist is not in attendance at a pharmacy, the premises shall be enclosed and secured. Prescription orders may be written, oral, telephonic or by electronic transmission unless prohibited by law. Blank forms for written prescription orders may have two signature lines. If there are two lines, one signature line shall state: "Dispense as written" and the other signature line shall state: "Brand exchange permissible." Prescriptions shall only be filled or refilled in accordance with the following requirements:

(a) All prescriptions shall be filled in strict conformity with any directions of the prescriber, except that a pharmacist who receives a prescription order for a brand name drug product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser unless:

(1) The prescriber, in the case of a prescription signed by the prescriber and written on a blank form containing two signature lines, signs the signature line following the statement "dispense as written," or

(2) the prescriber, in the case of a prescription signed by the prescriber, writes in the prescriber's own handwriting "dispense as written" on the prescription, or

(3) the prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates the prescription is to be dispensed as communicated, or

(4) the federal food and drug administration has determined that a drug product of the same generic name is not bioequivalent to the prescribed brand name prescription medication.

(b) Prescription orders shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be dispensed by the pharmacist. This record, if telephoned by other than the physician shall bear the name of the person so telephoning. Nothing in this paragraph shall be construed as altering or affecting in any way laws of this state or any federal act requiring a written prescription order.

(c)

(1) Except as provided in paragraph (2), no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.

(2) A pharmacist may refill a prescription order issued on or after the effective date of this act for any prescription drug except a drug listed on Schedule II of the Uniform Controlled Substances Act or a narcotic drug listed on any schedule of the Uniform Controlled Substances Act without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and when, in the pharmacists' professional judgment, continuation of the medication is necessary for the patient's health, safety and welfare. Such prescription refill shall only be in an amount judged by the pharmacist to be sufficient to maintain the patient until the prescriber can be contacted, but in no event shall a refill under this paragraph be more than a seven day supply or one package of the drug. However, if the prescriber states on a prescription that there shall be no emergency refilling of that prescription, then the pharmacist shall not dispense any emergency medication pursuant to that prescription. A pharmacist who refills a prescription order under this subsection (c)(2) shall contact the prescriber of the prescription order on the next business day subsequent to the refill or as soon thereafter as possible. No pharmacist shall be required to refill any prescription order under this subsection (c)(2). A prescriber shall not be subject to liability for any damages resulting from the refilling of a prescription order by a pharmacist under this subsection (c)(2) unless such damages are occasioned by the gross negligence or willful or wanton acts or omissions by the prescriber.

(d) If any prescription order contains a provision that the prescription may be refilled a specific number of times within or during any particular period, such prescription shall not be refilled except in strict conformity with such requirements.

(e) If a prescription order contains a statement that during any particular time the prescription may be refilled at will, there shall be no limitation as to the number of times that such prescription may be refilled except that it may not be refilled after the expiration of the time specified or one year after the prescription was originally issued, whichever occurs first, except that a prescription may be refilled after such a one-year period if in the opinion of the prescriber continued renewal of the prescription does not present a medical risk to the patient.

(f) Any pharmacist who exercises brand exchange and dispenses a less expensive drug product shall not charge the purchaser more than the regular and customary retail price for the dispensed drug.

Nothing contained in this section shall be construed as preventing a pharmacist from refusing to fill or refill any prescription if in the pharmacist's professional judgment and discretion such pharmacist is of the opinion that it should not be filled or refilled.

HISTORY: L. 1953, ch. 290, § 23; L. 1975, ch. 319, § 23; L. 1978, ch. 242, § 2; L. 1979, ch. 194, § 1; L. 1986, ch. 231, § 25; L. 1991, ch. 188, § 1; L. 1994, ch. 247, § 3; L. 1998, ch. 87, § 1; July 1.

65-1637a. Institutional drug rooms; supervision and record-keeping; rules and regulations.

(a) An institutional drug room shall be under the supervision of a pharmacist or a practitioner, who may be retained on a part-time basis and who shall be responsible for recordkeeping and storage of drugs by such drug room. For the purposes of this section, "practitioner" means any person licensed to practice medicine and surgery.

(b) The board shall adopt such rules and regulations relating to record-keeping and storage of drugs by institutional drug rooms as necessary for proper control of drugs by such drug rooms.

(c) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1979, ch. 193, § 5; L. 1986, ch. 231, § 26; June 1.

65-1638. Sale of drugs and poisons by registered pharmacist. A pharmacist shall have the right to keep and sell, subject to such restrictions as may be provided by law, all drugs and poisons listed in the national formulary, the United States pharmacopoeia and other standard pharmaceutical and medical works of recognized utility, but nothing in the

pharmacy act of the state of Kansas shall be construed to protect any pharmacist who violates or in any way abuses this trust from the penalties for violations of the laws relating to the sale or distribution of drugs.

Nothing in the pharmacy act of the state of Kansas shall prohibit pharmacists from repackaging poisons according to applicable state and federal packaging and labeling laws. The sale of poisons shall conform to applicable state and federal laws.

HISTORY: L. 1953, ch. 290, § 24; L. 1965, ch. 506, § 29; L. 1975, ch. 319, § 24; L. 1979, ch. 194, § 2; L. 1986, ch. 231, § 27; June 1.

65-1640. Act not applicable to manufacture or to certain sales of poisons. Nothing contained in the pharmacy act of the state of Kansas shall prevent the manufacture by any person of any poisons, nor shall anything in such act prevent the sale by any person of any poisons when the poison is sold in unbroken packages and is labeled as required by law.

HISTORY: L. 1953, ch. 290, § 26; L. 1975, ch. 319, § 26; L. 1979, ch. 194, § 3; July 1.

65-1641. Display of pharmacist license; when unlawful. A person holding a license as a pharmacist shall display conspicuously such license in that part of the place of business in which such person is engaged in the profession of pharmacy, and which is usually occupied by the public or which is visible to the public. It shall be unlawful for any licensed pharmacist to permit such license to be displayed in any place of business unless such pharmacist is actively engaged in the profession of pharmacy in such place of business.

HISTORY: L. 1953, ch. 290, § 27; L. 1975, ch. 319, § 27; L. 1986, ch. 231, § 28; June 1.

65-1642. Equipment of pharmacy; records of prescription orders; medication profile record system; electronic transmission of prescription drug orders.

(a) Each pharmacy shall be equipped with proper pharmaceutical utensils, in order that prescriptions can be properly filled and United States pharmacopoeia and national formulary preparations properly compounded, and with proper sanitary appliances which shall be kept in a clean and orderly manner. The board shall prescribe the minimum of such professional and technical equipment which a pharmacy shall at all times possess.

(b) Each pharmacy shall keep a suitable book or file which records every prescription order filled at the pharmacy and a medication profile record system as provided under subsection (d). The book or file of prescription orders shall be kept for a period of not less than five years. The book or file of prescription orders shall at all times be open to inspection by members of the board, the secretary of health and environment, the duly authorized agents or employees of such board or secretary and other proper authorities.

(c) (1) A medication profile record system shall be maintained in all pharmacies for persons for whom prescriptions are dispensed. The following information shall be recorded:

(A) The name and address of the patient for whom the medication is intended;

(B) the prescriber's name, the original date the prescription is dispensed and the number or designation identifying the prescription;

(C) the name, strength and quantity of the drug dispensed and the name of the dispensing pharmacist; and

(D) drug allergies and sensitivities.

(2) Upon receipt of a prescription order, the pharmacist shall examine the patient's medication profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction to

medication. Upon recognizing a potential harmful drug interaction or reaction to the medication, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the prescriber with documentation of actions taken on the prescription record.

(3) A medication profile record shall be maintained for a period of not less than five years from the date of the last entry in the record.

(4) All prescription drug orders communicated by way of electronic transmission shall conform to federal and state laws and the provisions of the board's rules and regulations.

(d) No registration shall be issued or continued for the conduct of a pharmacy until or unless the provisions of this section have been complied with.

HISTORY: L. 1953, ch. 290, § 28; L. 1975, ch. 319, § 28; L. 1982, ch. 262, § 2; L. 1986, ch. 235, § 4; L. 1987, ch. 236, § 4; L. 1989, ch. 194, § 1; L. 1994, ch. 254, § 5; L. 1997, ch. 112, § 2; L. 2003, ch. 85, § 2; July 1.

65-1643. Registration or permit required; pharmacies, manufacturers, wholesalers, auctions, sales, distribution or dispensing of samples, retailers, institutional drug rooms, pharmacy students, veterinary medical teaching hospital pharmacies; certain acts declared unlawful. It shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board:

(1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board;

(2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety;

(3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

(e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to mid-level practitioners, to pharmacists or to medical care facilities.

(f) Except as otherwise provided in this subsection (f), for any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute 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 product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

(g) For any person to sell any drugs manufactured and sold only in the state of Kansas, unless the label and directions on such drugs shall first have been approved by the board.

(h) For any person to operate an institutional drug room without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1637a and amendments thereto and any rules and regulations adopted pursuant thereto.

(i) For any person to be a pharmacy student without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy student registration fee of $ 25 to the board.

(j) For any person to operate a veterinary medical teaching hospital pharmacy without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1662 and amendments thereto and any rules and regulations adopted pursuant thereto.

(k) For any person to sell or distribute in a pharmacy a controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, unless:

(1) (A) such controlled substance is sold or distributed by a licensed pharmacist, a registered pharmacy technician or a pharmacy intern or clerk supervised by a licensed pharmacist; and

(B) any person purchasing, receiving or otherwise acquiring any such controlled substance produces a photo identification showing the date of birth of the person and signs a log. The log or database required by the Board shall be available for inspection during regular business hours to the Board of Pharmacy and any law enforcement officer; or

(2) there is a lawful prescription.

(l) For any person to sell or distribute in a pharmacy four or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, to a specific customer within any seven-day period.

HISTORY: L. 1953, ch. 290, § 29; L. 1967, ch. 342, § 3; L. 1975, ch. 319, § 29; L. 1979, ch. 193, § 3; L. 1982, ch. 263, § 7; L. 1983, ch. 210, § 2; L. 1986, ch. 231, § 29; L. 1997, ch. 112, § 3; L. 1997, ch. 184, § 2; L. 1999, ch. 38, § 5; L. 1999, ch. 149, § 8; L. 2000, ch. 89, § 2; Apr. 27.

65-1644. Duplicate licenses, registrations and permits; fees. The board may issue duplicate licenses, registrations or permits upon return of the original, or upon a sworn statement that the original has been lost or destroyed, and has not been given away or disposed of to some other person. Applications for such duplicate licenses, registrations and permits and the affidavits required by this section shall be made on forms furnished by the board. The fee for the issuance of a duplicate registration or permit shall be $ 1.25 for permits, and $ 10 for certificates of registration.

HISTORY: L. 1953, ch. 290, § 30; L. 1962, ch. 37, § 4; L. 1974, ch. 252, § 3; L. 1975, ch. 319, § 30; L. 1986, ch. 231, § 30; June 1.

65-1645. Applications for registrations and permits; renewals; forms; establishment of fees; establishment of retail dealer classes; display of registrations and permits; expiration dates; penalty fee for renewal after lapse; proration of fees.

(a) Application for registrations or permits under K.S.A. 65-1643 and amendments thereto shall be made on a form prescribed and furnished by the board. Applications for registration to distribute at wholesale any drugs shall contain such information as may be required by the board in accordance with the provisions of K.S.A. 65-1655 and amendments thereto. The application shall be accompanied by the fee prescribed by the board under the provisions of this section. When such application and fees are received by the executive secretary of the board on or before the due date, such application shall have the effect of temporarily renewing the applicant's registration or permit until actual issuance or denial of the renewal. However, if at the time of filing a proceeding is pending before the board which may result in the suspension, probation, revocation or denial of the applicant's registration or permit, the board may declare, by emergency order, that such application for renewal shall not have the effect of temporarily renewing such applicant's registration or permit. Separate applications shall be made and separate registrations or permits issued for each separate place at which is carried on any of the operations for which a registration or permit is required by K.S.A. 65-1643 and amendments thereto except that the board may provide for a single registration for a business entity registered to manufacture any drugs or registered to distribute at wholesale any drugs and operating more than one facility within the state, or for a parent entity with divisions, subsidiaries or affiliate companies, or any combination thereof, within the state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(b) The nonrefundable fees required for the issuing of the licenses, registrations or permits under the pharmacy act of the state of Kansas shall be fixed by the board as herein provided, subject to the following:

(1) Pharmacy, new registration not more than $ 150, renewal not more than $ 125;

(2) pharmacist, new license by examination not more than $ 350;

(3) pharmacist, reinstatement application fee not more than $ 250;

(4) pharmacist, biennial renewal fee not more than $ 200;

(5) pharmacist, evaluation fee not more than $ 250;

(6) pharmacist, reciprocal licensure fee not more than $ 250;

(7) pharmacist, penalty fee, not more than $ 500;

(8) manufacturer, new registration not more than $ 500, renewal not more than $ 400;

(9) wholesaler, new registration not more than $ 500, renewal not more than $ 400, except that a wholesaler dealing exclusively in nonprescription drugs, the manufacturing, distributing or dispensing of which does not

require registration under the uniform controlled substances act, shall be assessed a fee for registration and reregistration not to exceed $ 50;

(10) special auction not more than $ 50;

(11) samples distribution not more than $ 50;

(12) institutional drug room, new registration not more than $ 40, renewal not more than $ 35;

(13) retail dealer selling more than 12 different nonprescription drug products, new permit not more than $12, renewal not more than $ 12;

(14) certification of grades for each applicant for examination and registration not more than $ 25; or

(15) veterinary medical teaching hospital pharmacy, new registration not more than $ 40, renewal not more than $ 35.

(c) For the purpose of fixing fees, the board may establish classes of retail dealers' permits for retail dealers selling more than 12 different nonprescription drug products, and the board may fix a different fee for each such class of permit.

(d) The board shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing fiscal year and shall fix by rules and regulations the fees authorized for such year at the sum deemed necessary for such purposes. The fees fixed by the board under this section immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(e) The board may deny renewal of any registration or permit required by K.S.A. 65-1643 and amendments thereto on any ground which would authorize the board to suspend, revoke or place on probation a registration or permit previously granted pursuant to the provisions of K.S.A. 65-1643 and amendments thereto. Registrations and permits issued under the provisions of K.S.A. 65-1643 and 65-1644 and amendments thereto shall be conspicuously displayed in the place for which the registration or permit was granted. Such registrations or permits shall not be transferable. All such registrations and permits except retail dealer permits shall expire on June 30 following date of issuance. Retail dealers' permits shall expire on the last day of February. All registrations and permits shall be renewed annually. Application blanks for renewal of registrations and permits shall be mailed by the board to each registrant or permittee at least 30 days prior to expiration of the registration or permit. If application for renewal is not made before 30 days after such expiration, the existing registration or permit shall lapse and become null and void on the date of its expiration, and no new registration or permit shall be granted except upon payment of the required renewal fee plus a penalty equal to the renewal fee. Failure of any registrant or permittee to receive such application blank shall not relieve the registrant or permittee from the penalty hereby imposed if the renewal is not made as prescribed.

(f) In each case in which a license of a pharmacist is issued or renewed for a period of time less than two years, the board shall prorate to the nearest whole month the license or renewal fee established pursuant to K.S.A. 65-1645 and amendments thereto.

(g) The board may require that fees paid for any examination under the pharmacy act of the state of Kansas be paid directly to the examination service by the person taking the examination.

HISTORY: L. 1953, ch. 290, § 31; L. 1962, ch. 37, § 5; L. 1967, ch. 342, § 4; L. 1974, ch. 252, § 4; L. 1975, ch. 319, § 31; L. 1979, ch. 195, § 1; L. 1979, ch. 196, § 1; L. 1982, ch. 263, § 4; L. 1986, ch. 235, § 5; L. 1987, ch. 236, § 5; L. 1988, ch. 356, § 199; L. 1991, ch. 187, § 4; L. 1991, ch. 189, § 2; L. 1998, ch. 98, § 5; L. 2000, ch. 89, § 3; L. 2002, ch. 184, § 3; July 1.

65-1646. Violations of act or rules and regulations; penalty; revocation or suspension of registration or permit; notice and hearing. Any person violating any of the provisions of this act or any valid rule and regulation made under the authority conferred by this act shall be guilty of a misdemeanor. Upon conviction, any person holding a

registration or permit under the provisions of K.S.A. 65-1643 and amendments thereto may have such registration or permit revoked or suspended. No registration or permit shall be suspended or revoked without first giving the registrant or permitee notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

HISTORY: L. 1953, ch. 290, § 32; L. 1975, ch. 319, § 32; L. 1982, ch. 262, § 4; L. 1984, ch. 313, § 108; July 1, 1985.

65-1647. Repeated violations of act or rules and regulations may be enjoined. The board may in its discretion, in addition to the remedies set forth in the preceding section, apply to the court having jurisdiction over the parties and subject matter for a writ of injunction to restrain repetitious violations of the provisions of the pharmacy act of the state of Kansas or violations of any valid rule and regulation made under the authority conferred by such act.

HISTORY: L. 1953, ch. 290, § 33; L. 1975, ch. 319, § 33; July 1.

65-1648. Distribution and control of prescription medications by a medical care facility pharmacy, health department, indigent health care clinic, federally qualified health center or family planning clinic; maintenance and use of emergency medication kit by adult care home; rules and regulations.

(a) Any medical care facility pharmacy registered by the board may keep drugs in such facility and may supply drugs to its inpatients and outpatients. Distribution and control of prescription medications in a medical care facility pharmacy shall be under the supervision of a pharmacist in charge. A designated registered nurse or nurses or a licensed physician assistant approved by the pharmacist in charge and under the supervision of the pharmacist in charge shall be in charge of the distribution and control of drugs of a medical care facility pharmacy when a pharmacist is not on the premises. Drugs supplied to outpatients when a pharmacist is not on the premises shall be limited to the quantity necessary until a prescription can be filled.

(b) Nothing contained in this act shall be construed as prohibiting an adult care home which utilizes the services of a pharmacist, from maintaining an emergency medication kit approved by the adult care home's medical staff composed of a duly licensed practitioner and a pharmacist. The emergency medication kit shall be used only in emergency cases under the supervision and direction of a duly licensed practitioner, and a pharmacist shall have supervisory responsibility of maintaining said emergency medication kit.

(c) Every adult care home which maintains an emergency medication kit under subsection (b) shall comply with the following requirements:

(1) Drugs in an emergency medication kit shall be maintained under the control of the pharmacist in charge of the pharmacy from which the kit came until administered to the patient upon the proper order of a practitioner.

(2) Drugs contained within the emergency medication kit may include controlled substances, but in such case a pharmaceutical services committee shall be responsible for specifically limiting the type and quantity of controlled substance to be placed in each emergency kit.

(3) Administration of controlled substances contained within the emergency medication kit shall be in compliance with the provisions of the uniform controlled substances act.

(4) The consultant pharmacist of the adult care home shall be responsible for developing procedures, proper control and accountability for the emergency medication kit and shall maintain complete and accurate records of the controlled substances, if any, placed in the emergency kit. Periodic physical inventory of the kit shall be required.

(d) (1) The state department of health and environment, any county, city-county or multicounty health department, indigent health care clinic, federally qualified health center and any private not-for-profit family planning clinic, when registered by the board, may keep drugs for the purpose of distributing drugs to patients being treated by that health department, indigent health care clinic, federally qualified health center or family

planning clinic. Distribution and control of prescription medications in a health department, indigent health care clinic, federally qualified health center or family planning clinic shall be under the supervision of a pharmacist in charge. A designated registered nurse or nurses or a licensed physician assistant approved by the pharmacist in charge shall be in charge of distribution and control of drugs in the health department, indigent health care clinic, federally qualified health center or family planning clinic under the supervision of the pharmacist in charge when a pharmacist is not on the premises. Drugs supplied to patients when a pharmacist is not on the premises shall be limited to the quantity necessary to complete a course of treatment as ordered by the practitioner supervising such treatment.

(2) The board shall adopt rules and regulations relating to specific drugs to be used, to recordkeeping and to storage of drugs by a health department, indigent health care clinic, federally qualified health center or family planning clinic as are necessary for proper control of drugs.

HISTORY: L. 1953, ch. 290, § 34; L. 1967, ch. 342, § 5; L. 1975, ch. 319, § 34; L. 1982, ch. 262, § 5; L. 1985, ch. 214, § 1; L. 2001, ch. 34, § 1; July 1.

65-1649. Invalidity of part. If any clause, sentence, paragraph, section or part of the pharmacy act of the state of Kansas or the application thereof to any person or circumstances shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence or paragraph, section or part thereof involved in the controversy, in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that such act would have been enacted had such unconstitutional or invalid provisions not been included.

HISTORY: L. 1953, ch. 290, § 35; L. 1967, ch. 342, § 6; L. 1975, ch. 319, § 45; July 1.

65-1650. Regulation of advertising of prescription-only drugs; exceptions and exclusions. The board of pharmacy is hereby authorized to regulate the advertising, but not the prices or discounts, of prescription-only drugs. The provisions of this section shall not be construed to:

(1) Authorize the state board of pharmacy to require, regulate or prohibit the posting within a pharmacy of the current charges by such pharmacy for prescription-only drugs and services, nor,

(2) restrict the offering of discounts on prescription-only drugs.

HISTORY: L. 1974, ch. 252, § 5; L. 1975, ch. 319, § 35; July 1.

65-1651. Sections part of and supplemental to pharmacy act. The provisions of K.S.A. 65-1627a to 65-1627h, inclusive, 65-1628a, 65-1628b and 65-1650, are hereby declared to be a part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1975, ch. 319, § 46; July 1.

65-1652. Immunity from liability in civil actions for reporting, communicating and investigating certain information concerning alleged malpractice incidents and other information; conditions.

(a) No person reporting to the board of pharmacy under oath and in good faith any information such person may have relating to alleged incidents of malpractice or the qualifications, fitness or character or a pharmacist shall be subject to a civil action for damages as a result of reporting such information.

(b) Any state, regional or local association of pharmacists and the individual members of any committee thereof, which in good faith investigates or communicates information pertaining to the alleged incidents of malpractice or the

qualifications, fitness or character of any pharmacist to the board of pharmacy or to any committee or agent thereof, shall be immune from liability in any civil action, that is based upon such information or transmittal of information if the investigation and communication was made in good faith and did not represent as true any matter not reasonably believed to be true.

(c) This section shall be a part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1976, ch. 261, § 5; L. 1986, ch. 231, § 31; June 1.

65-1653. References to registered pharmacists deemed to apply to licensed pharmacists.

(a) Whenever registered pharmacist, or words of like effect, is referred to or designated by a statute, rule and regulation, contract or other document in reference to a pharmacist registered under the pharmacy act of the state of Kansas, such reference or designation shall be deemed to apply to a licensed pharmacist under this act.

(b) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1986, ch. 231, § 38; June 1.

65-1654. Privileged communications.

(a) The confidential communications between a licensed pharmacist and the pharmacist's patient and records of prescription orders filled by the pharmacist are placed on the same basis of confidentiality as provided by law for communications between a physician and the physician's patient and records of prescriptions dispensed by a physician. Nothing in this subsection shall limit the authority of the board or other persons, as provided by law, from inspecting the book or file of prescription orders kept by a pharmacy or firm performing any duty or exercising any authority as otherwise provided by law.

(b) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1989, ch. 193, § 3; July 1.

65-1655. Information required of applicant for registration to distribute at wholesale any drugs; factors in reviewing qualifications of applicants; denial of application if not in public interest; qualifications of personnel; rules and regulations.

(a) The board shall require an applicant for registration to distribute at wholesale any drugs under K.S.A. 65-1643 and amendments thereto, or an applicant for renewal of such a registration, to provide the following information:

(1) The name, full business address and telephone number of the applicant;

(2) all trade or business names used by the applicant;

(3) addresses, telephone numbers, and the names of contact persons for all facilities used by the applicant for the storage, handling and distribution of prescription drugs;

(4) the type of ownership or operation of the applicant;

(5) the name of the owner or operator, or both, of the applicant, including:

(A) If a person, the name of the person;

(B) if a partnership, the name of each partner, and the name of the partnership;

(C) if a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation;

(D) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) such other information as the board deems appropriate. Changes in any information in this subsection (a) shall be submitted to the board as required by such board.

(b) In reviewing the qualifications for applicants for initial registration or renewal of registration to distribute at wholesale any drugs, the board shall consider the following factors:

(1) Any convictions of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(2) any felony convictions of the applicant under federal or state laws;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(5) suspension or revocation by federal, state or local government of any license or registration currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with registration requirements under previously granted registrations, if any;

(7) compliance with requirements to maintain or make available to the board or to federal state or local law enforcement officials those records required by federal food, drug and cosmetic act, and rules and regulations adopted pursuant thereto; and

(8) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

(c) After consideration of the qualifications for applicants for registration to distribute at wholesale any drugs, the board may deny an initial application for registration or application for renewal of a registration if the board determines that the granting of such registration would not be in the public interest. The authority of the board under this subsection to deny a registration to distribute at wholesale any drugs shall be in addition to the authority of the board under subsection (e) of K.S.A. 65-1627 and amendments thereto or subsection (e) of K.S.A. 65-1645 and amendments thereto.

(d) The board by rules and regulations shall require that personnel employed by persons registered to distribute at wholesale any drugs have appropriate education or experience, or both, to assume responsibility for positions related to compliance with state registration requirements.

(e) The board by rules and regulations may implement this section to conform to any requirements of the federal prescription drug marketing act of 1987 (21 U.S.C. 321 et seq.) in effect on the effective date of this act.

(f) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1991, ch. 189, § 1; L. 1995, ch. 106, § 4; Apr. 13.

65-1656. Filling transferred prescriptions; exceptions and conditions; common electronic prescription files authorized; rules and regulations.

(a) Nothing contained in the pharmacy act of the state of Kansas shall prohibit a pharmacist licensed in this state from filling or refilling a valid prescription for prescription drugs not listed in schedule II of the uniform controlled substances act, which is on file in a pharmacy licensed in any state and has been transferred from one pharmacy to another by any means, including by way of electronic data processing equipment, upon the following conditions and exceptions:

(1) Prior to dispensing pursuant to any such prescription, the dispensing pharmacist shall:

(A) Advise the patient that the prescription file at such other pharmacy must be canceled before the dispensing pharmacist will be able to fill the prescription;

(B) determine that the prescription is valid and on file at such other pharmacy and that such prescription may be filled or refilled, as requested, in accordance with the prescriber's intent expressed on such prescription;

(C) notify the pharmacy where the prescription is on file that the prescription must be canceled;

(D) record the prescription order, the name of the pharmacy at which the prescription was on file, the prescription number, the name of the drug and the original amount dispensed, the date of original dispensing and the number of remaining authorized refills; and

(E) obtain the consent of the prescriber to the refilling of the prescription when the prescription, in the professional judgment of the dispensing pharmacist, so requires. Any interference with the professional judgment of the dispensing pharmacist by any other licensed pharmacist, agents of the licensed pharmacist or employees shall be grounds for revocation or suspension of the registration issued to the pharmacy.

(2) Upon receipt of a request for prescription information set forth in subsection (a)(1)(D), if the requested pharmacist is satisfied in the professional judgment of the pharmacist that such request is valid and legal, the requested pharmacist shall:

(A) Provide such information accurately and completely;

(B) record on the prescription the name of the requesting pharmacy and pharmacist and the date of request; and

(C) cancel the prescription on file. No further prescription transfer shall be given or medication dispensed pursuant to such original prescription.

(3) In the event that, after the information set forth in subsection (a)(1)(D) has been provided, a prescription is not dispensed by the requesting pharmacist, then such pharmacist shall provide notice of this fact to the pharmacy from which such information was obtained, such notice shall then cancel the prescription in the same manner as set forth in subsection (a)(2)(C).

(4) When filling or refilling a valid prescription on file in another state, the dispensing pharmacist shall be required to follow all the requirements of Kansas law which apply to the dispensing of prescription drugs. If anything in Kansas law prevents the filling or refilling of the original prescription it shall be unlawful to dispense pursuant to this section.

(5) In addition to any other requirement of this section, the transfer of original prescription information for a controlled substance listed in schedules III, IV and V for the purposes of refill dispensing shall be made in accordance with the requirements of section 1306.25 of chapter 21 of the code of federal regulations.

(b) Two or more pharmacies may establish and use a common electronic file to maintain required dispensing information. Pharmacies using such a common electronic file are not required to physically transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file, except that any such common file must contain complete and adequate records of such prescription and refill dispensed as required by the pharmacy act of the state of Kansas.

(c) The board may formulate such rules and regulations, not inconsistent with law, as may be necessary to carry out the purposes of and to enforce the provisions of this section except that the board shall not impose greater requirements on either common electronic files or a hard copy record system.

(d) Drugs shall in no event be dispensed more frequently or in larger amounts than the prescriber ordered without direct prescriber authorization by way of a new prescription order.

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

HISTORY: L. 1992, ch. 304, § 1; L. 1994, ch. 247, § 1; L. 1998, ch. 86, § 1; Apr. 16.

65-1657. Nonresident pharmacy registration; information required; regulatory requirements; drug product selection rules; interstate delivery guidelines; disciplinary action; pharmacies prohibited from advertising unless registered; penalties for violations; injunctive relief; rules and regulations.

(a) No nonresident pharmacy shall ship, mail or deliver, in any manner, prescription drugs to a patient in this state unless registered under this section as a nonresident pharmacy. Applications for a nonresident pharmacy registration under this section shall be made on a form furnished by the board. A nonresident pharmacy registration shall be granted for a period of one year upon compliance by the nonresident pharmacy with the provisions of this section and rules and regulations adopted pursuant to this section and upon payment of the registration fee established under K.S.A. 65-1645, and amendments thereto, for a pharmacy registration. A nonresident pharmacy registration shall be renewed annually on forms provided by the board, upon compliance by the nonresident pharmacy with the provisions of this section and rules and regulations adopted pursuant to this section and upon payment of the renewal fee established under K.S.A. 65-1645, and amendments thereto, for the renewal of a pharmacy registration.

(b) As conditions for the granting of a registration and for the renewal of a registration for a nonresident pharmacy, the nonresident pharmacy shall comply with the following:

(1) Provide information to the board to indicate the person or persons applying for the registration, the location of the pharmacy from which the prescription drugs will be dispensed, the names and titles of all principal owners and corporate officers, if any, and the names of all pharmacists dispensing prescription drugs to residents of Kansas;

(2) be registered and in good standing in the state in which such pharmacy is located;

(3) maintain, in readily retrievable form, records of prescription drugs dispensed to Kansas patients;

(4) supply upon request, all information needed by the board to carry out the board's responsibilities under this section and rules and regulations adopted pursuant to this section;

(5) maintain pharmacy hours that permit the timely dispensing of drugs to Kansas patients and provide reasonable access for the patients to consult with a licensed pharmacist about such patients' medications;

(6) provide toll-free telephone communication consultation between a Kansas patient and a pharmacist at the pharmacy who has access to the patient's records, and ensure that the telephone number(s) will be placed upon the label affixed to each prescription drug container dispensed in Kansas; and

(7) provide to the board such other information as the board may reasonably request to administer the provisions of this section.

(c) Each nonresident pharmacy shall comply with the following unless compliance would be in conflict with specific laws or rules and regulations of the state in which the pharmacy is located:

(1) All statutory and regulatory requirements of Kansas for controlled substances, including those that are different from federal law;

(2) labeling of all prescriptions dispensed, to include but not be limited to identification of the product and quantity dispensed;

(3) all the statutory and regulatory requirements of Kansas for dispensing prescriptions in accordance with the quantities indicated by the prescriber; and

(4) the Kansas law regarding the maintenance and use of the patient medication profile record system.

(d) In addition to subsection (c) requirements, each nonresident pharmacy shall comply with all the statutory and regulatory requirements of Kansas regarding drug product selection laws whether or not such compliance would be in conflict with specific laws or rules and regulations of the state in which the pharmacy is located, except that compliance which constitutes only a minor conflict with specific laws or rules and regulations of the state in which the pharmacy is located would not be required under this subsection.

(e) Each nonresident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(1) Normal delivery protocols and times;

(2) the procedure to be followed if the patient's medication is not available at the nonresident pharmacy, or if delivery will be delayed beyond the normal delivery time;

(3) the procedure to be followed upon receipt of a prescription for an acute illness, which policy shall include a procedure for delivery of the medication to the patient from the nonresident pharmacy at the earliest possible time, or an alternative that assures the patient the opportunity to obtain the medication at the earliest possible time; and

(4) the procedure to be followed when the nonresident pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mailed prescription drugs become available.

(f) Except in emergencies that constitute an immediate threat to the public health and require prompt action by the board, the board may file a complaint against any nonresident pharmacy that violates any provision of this section. This complaint shall be filed with the regulatory or licensing agency of the state in which the nonresident pharmacy is located. If the regulatory or licensing agency of the state in which the nonresident pharmacy is located fails to resolve the violation complained of within a reasonable time, not less than 180 days from the date that the complaint is filed, disciplinary proceedings may be initiated by the board. The board also may initiate disciplinary actions against a nonresident pharmacy if the regulatory or licensing agency of the state in which the nonresident pharmacy is located lacks or fails to exercise jurisdiction.

(g) The board shall adopt rules and regulations that make exceptions to the requirement of registration by a nonresident pharmacy when the out-of-state pharmacy supplies lawful refills to a patient from a prescription that was originally filled and delivered to a patient within the state in which the nonresident pharmacy is located, or when the prescriptions being mailed into the state of Kansas by a nonresident pharmacy occurs only in isolated transactions. In determining whether the prescriptions being mailed into the state of Kansas by a nonresident pharmacy are isolated transactions, the board shall consider whether the pharmacy has promoted its services in this state and whether the pharmacy has a contract with any employer or organization to provide pharmacy services to employees or other beneficiaries in this state.

(h) It is unlawful for any nonresident pharmacy which is not registered under this act to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy

which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions. A violation of this section is a class C misdemeanor.

(i) Upon request of the board, the attorney general may bring an action in a court of competent jurisdiction for injunctive relief to restrain a violation of the provisions of this section or any rules and regulations adopted by the board under authority of this section. The remedy provided under this subsection shall be in addition to any other remedy provided under this section or under the pharmacy act of the state of Kansas.

(j) The board may adopt rules and regulations as necessary and as are consistent with this section to carry out the provisions of this section.

(k) The executive secretary of the board shall remit all moneys received from fees under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the manner specified under K.S.A. 74-1609, and amendments thereto.

(l) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1992, ch. 304, § 2; L. 1994, ch. 247, § 2; L. 2001, ch. 5, § 228; July 1.

65-1658. Civil fines for violations. The state board of pharmacy, in addition to any other penalty prescribed under the pharmacy act of the state of Kansas, may assess a civil fine, after notice and an opportunity to be heard in accordance with the Kansas administrative procedure act, against any licensee or registrant under subsections (a), (c), (d) and (e) of K.S.A. 65-1627, and amendments thereto, for violation of the pharmacy act of the state of Kansas or rules and regulations of the state board of pharmacy adopted under the pharmacy act of the state of Kansas or for violation of the uniform controlled substances act or rules and regulations of the state board of pharmacy adopted under the uniform controlled substances act, in an amount not to exceed $ 5,000 for each violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Of the amount so remitted, an amount equal to the board's actual costs related to the case in which the fine was assessed, as certified by the president of the board to the state treasurer, shall be credited to the state board of pharmacy fee fund, and the balance shall be credited to the state general fund.

HISTORY: L. 1994, ch. 118, § 1; L. 1995, ch. 106, § 5; L. 1998, ch. 98, § 6; L. 2001, ch. 5, § 229; L. 2002, ch. 184, § 4; July 1.

65-1659. Pharmacies authorized to place certain drugs with home health agencies and hospices; protocols for drug handling and storage; review and inspection; definitions.

(a) A pharmacy will be allowed to place certain drugs with a home health agency's authorized employees and with a hospice's authorized employees for the betterment of public health. The pharmacy shall remain the legal owner of the drugs. A written agreement between the pharmacy and home health agency or hospice shall document the protocol for handling and storage of these drugs by authorized employees and shall be approved by the pharmacist in charge. The pharmacist in charge shall review the protocol to assure that safe, secure and accountable handling of legend drugs is maintained under the protocol before giving approval. The pharmacist in charge or a pharmacist designee shall physically inspect and review the drug storage and handling at the home health agency and the hospice at least quarterly during the year.

(b) The home health agency protocol and the hospice protocol shall include, but not be limited to, the following:

(1) Safe and secure storage of drugs;

(2) access to drugs limited to authorized employees;

(3) records of drugs checked out to authorized employees and records of drugs, amounts, to whom and by whom administered;

(4) prompt notification of the pharmacy when a drug is used, including the prescriber, patient, drug, dosage form, directions for use and other pertinent information;

(5) billing information;

(6) procedures for handling drugs beyond their expiration date; and

(7) inventory control.

(c) The following legend drugs shall be allowed under these agreements:

(1) Sterile water for injection or irrigation;

(2) sterile saline solution for injection or irrigation;

(3) heparin flush solution;

(4) diphenhydramine injectable; and

(5) epinephrine injectable.

(d) As used in this section:

(1) "Authorized employee" means any employee of a home health agency or hospice who, in the course of the employee's duties, is licensed by the employee's appropriate licensing agency to administer legend drugs;

(2) "home health agency" means an entity required to be licensed under K.S.A. 65-5102 and amendments thereto; and

(3) hospice means an entity authorized to hold itself out to the public as a hospice or as a licensed hospice under K.S.A. 65-6202 and amendments thereto.

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

HISTORY: L. 1996, ch. 132, § 1; Apr. 11.

65-1660. Dialysates, devices or drugs designated by board for treatment of persons with chronic kidney failure; inapplicability of pharmacy act; rules and regulations.

(a) Except as otherwise provided in this section, the provisions of the pharmacy act of the state of Kansas shall not apply to dialysates, devices or drugs which are designated by the board for the purposes of this section relating to treatment of a person with chronic kidney failure receiving dialysis and which are prescribed or ordered by a physician or a mid-level practitioner for administration or delivery to a person with chronic kidney failure if:

(1) The wholesale distributor is registered with the board and lawfully holds the drug or device; and

(2) the wholesale distributor

(A) delivers the drug or device to:

(i) A person with chronic kidney failure for self-administration at the person's home or specified address;

(ii) a physician for administration or delivery to a person with chronic kidney failure; or

(iii) a medicare approved renal dialysis facility for administering or delivering to a person with chronic kidney failure; and

(B) has sufficient and qualified supervision to adequately protect the public health.

(b) The wholesale distributor pursuant to subsection (a) shall be supervised by a pharmacist consultant pursuant to rules and regulations adopted by the board.

(c) The board shall adopt such rules or regulations as are necessary to effectuate the provisions of this section.

(d) As used in this section, "physician" means a person licensed to practice medicine and surgery; "mid-level practitioner" means mid-level practitioner as such term is defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto.

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

HISTORY: L. 1998, ch. 91, § 1; L. 1999, ch. 115, § 11; Apr. 1, 2000.

65-1661. Renal dialysis facility pharmacy; registration; fees; pharmacist consultant; rules and regulations.

(a) A medicare approved renal dialysis facility which keeps prescription drugs as a part of the services provided by such facility shall obtain a registration from the board as a renal dialysis facility pharmacy. Application for such registration shall be made in accordance with procedures established by the board. All fees applicable to registration of a pharmacy, and the renewal of such registration, shall apply to the registration of a renal dialysis facility pharmacy.

(b) A registered renal dialysis facility pharmacy shall be supervised by a pharmacist consultant. The pharmacist consultant shall act as the pharmacist in charge. If a pharmacist consultant is not available to a registered renal dialysis facility pharmacy, the board shall provide or make arrangements for a pharmacist to act as a pharmacist consultant for such pharmacy and in the interim shall assist such pharmacy in locating a suitable pharmacist consultant.

(c) A renal dialysis facility pharmacy which is part of a medicare approved renal dialysis facility shall be deemed to be in compliance with rules and regulations of the state board of pharmacy, except that the board may adopt rules and regulations applicable to such pharmacy which establish labeling requirements for prescription medications delivered by such pharmacy.

(d) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

HISTORY: L. 1998, ch. 91, § 2; Apr. 16.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 24. UNIFORM VITAL STATISTICS ACT

65-2401. Definitions. As used in this act:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to birth, adoption, legitimation, death, stillbirth, marriage, divorce, annulment of marriage, induced termination of pregnancy, and data incidental thereto.

(2) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other

evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(3) "Stillbirth" means any complete expulsion or extraction from its mother of a product of human conception the weight of which is in excess of 350 grams, irrespective of the duration of pregnancy, resulting in other than a live birth, as defined in this act, and which is not an induced termination of pregnancy.

(4) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

(5) "Dead body" means a lifeless human body or such parts of a human body or the bones thereof from the state of which it reasonably may be concluded that death recently occurred.

(6) "Person in charge of interment" means any person who places or causes to be placed a stillborn child or dead body or the ashes, after cremation, in a grave, vault, urn or other receptacle, or otherwise disposes thereof.

(7) "Secretary" means the secretary of health and environment.

HISTORY: L. 1951, ch. 355, § 1; L. 1963, ch. 319, § 1; L. 1974, ch. 352, § 119; L. 1995, ch. 260, § 4; July 1.

65-2402. Duties of secretary of health and environment. The secretary shall:

(1) Establish within the division of health suitable offices properly equipped for the preservation of official records.

(2) Maintain a complete cross-index on all records filed under the provisions of this act.

(3) Install a statewide system of vital statistics.

(4) Make and may amend, after notice and hearing, necessary regulations, give instructions and prescribe forms for collection, transcribing, compiling and preserving vital statistics. (5) Enforce this act and the regulations made pursuant thereto.

HISTORY: L. 1951, ch. 355, § 2; L. 1974, ch. 352, § 120; July 1.

65-2405. Appointment of state registrar; qualifications; compensation. The secretary shall appoint a state registrar of vital statistics who shall be qualified under Kansas civil service law and the state registrar shall be certified to the secretary of state. His compensation will be fixed in accordance with the salary schedules established as authorized by the Kansas civil service act and acts amendatory thereof and supplemental thereto.

HISTORY: L. 1951, ch. 355, § 5; L. 1953, ch. 293, § 1; L. 1974, ch. 352, § 121; July 1.

65-2406. Duties of state registrar. The state registrar, under the supervision of the secretary, shall have charge of the collection of vital statistics and be the custodian of all files and records, and perform the duties prescribed by the secretary. The state registrar shall enforce this act and the rules and regulations of the secretary. The state registrar shall submit to the secretary an annual report of the administration of this act.

HISTORY: L. 1951, ch. 355, § 6; L. 1974, ch. 352, § 122; L. 1990, ch. 226, § 1; July 1.

65-2409a. Certificate of birth; requirements; filing; fee for certificate of live birth; parent's social security number.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the state registrar within five days after such birth and shall be registered by such registrar if such certificate has been completed and filed in accordance with this section. If a birth occurs on a moving conveyance, a birth certificate shall indicate as the place of birth the location where the child was first removed from the conveyance.

(b) When a birth occurs in an institution, the person in charge of the institution or the person's designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file such certificate with the state registrar. The physician in attendance or, in the absence of the physician, the person in charge of the institution or that person's designated representative shall certify to the facts of birth and provide the medical information required by the certificate within five days after the birth. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(2) any other person in attendance at or immediately after the birth, or in the absence of such a person; or

(3) the father, the mother or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(c) If the mother was married at the time of either conception or birth, or at any time between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered. If the mother was not married either at the time of conception or of birth, or at any time between conception and birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and of the person to be named as the father on a form provided by the state registrar pursuant to K.S.A. 38-1138 unless a determination of paternity has been made by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(d) One of the parents of any child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the five days prescribed above.

(e) Except as otherwise provided by this subsection, a fee of $ 4 shall be paid for each certificate of live birth filed with the state registrar. Such fee shall be paid by the parent or parents of the child. If a birth occurs in an institution, the person in charge of the institution or the person's designated representative shall be responsible for collecting the fee and shall remit such fee to the secretary of health and environment not later than the 15th day following the end of the calendar quarter during which the birth occurred. If a birth occurs other than in an institution, the person completing the birth certificate shall be responsible for collecting the fee and shall remit such fee to the secretary of health and environment not later than the 15th day of the month following the birth.

The fee provided for by this subsection shall not be required to be paid if the parent or parents of the child are at the time of the birth receiving assistance, as defined by K.S.A. 39-702 and amendments thereto, from the secretary of social and rehabilitation services.

(f) Except as provided in this subsection, when a certificate of birth is filed pursuant to this act, each parent shall furnish the social security number or numbers issued to the parent. Social security numbers furnished pursuant to this subsection shall not be recorded on the birth certificate. A parent shall not be required to furnish such person's social security number pursuant to this subsection if no social security number has been issued to the parent; the social security number is unknown; or the secretary determines that good cause, as defined in federal regulations promulgated pursuant to title IV-D of the federal social security act, exists for not requiring the social security number. Nothing in this subsection shall delay the filing or issuance of the birth certificate.

HISTORY: L. 1951, ch. 355, § 9; L. 1963, ch. 319, § 3; L. 1984, ch. 233, § 1; L. 1990, ch. 227, § 2; L. 1994, ch. 29, § 1; L. 1994, ch. 292, § 14; July 1.

65-2410. Same; state registrar to prepare and file, when. If neither parent of the newborn child whose birth is unattended is able to prepare a birth certificate, the state registrar or the state registrar's designee shall secure the necessary information from any person having knowledge of the birth and prepare and file the certificate. The secretary shall prescribe the time within which a supplementary report furnishing information omitted from the original certificate may be returned for the purpose of completing the certificate. Certificates of birth completed by a supplementary report shall not be considered delayed or altered.

HISTORY: L. 1951, ch. 355, § 10; L. 1974, ch. 352, § 123; L. 1990, ch. 226, § 3; July 1.

65-2411. Children of unknown parentage; report to state registrar.

(a) Whoever assumes the custody of a child of unknown parentage shall immediately report to the state registrar in writing:

(1) The date and place of finding or assumption of custody;

(2) sex, color or race and approximate age of child;

(3) name and address of the person or institution with whom the child has been placed for care; and

(4) name given to the child by the finder or custodian.

(b) The place where the child of unknown parentage was found or custody assumed shall be known as the place of birth and the date of birth shall be determined by approximation.

(c) The report shall constitute the certificate of birth.

(d) If the child is identified and a regular certificate of birth is found or obtained, the report shall be sealed and filed and may be opened only by court order.

HISTORY: L. 1951, ch. 355, § 11; L. 1990, ch. 226, § 4; July 1.

65-2412. Registration of deaths and stillbirths; official death records; use of verified forms; establishment and collection of fee; duties of coroners; filing of certificates.

(a) A death certificate or stillbirth certificate for each death or stillbirth which occurs in this state shall be filed with the state registrar within three days after such death and prior to removal of the body from the state and shall be registered by the state registrar if such death certificate or stillbirth certificate has been completed and filed in accordance with this section. If the place of death is unknown, a death certificate shall be filed indicating the location where the body was found as the place of death. A certificate shall be filed within three days after such occurrence; if death occurs in a moving conveyance, the death certificate shall record the location where the dead body was first removed from such conveyance as the place of death.

(b) The funeral director or person acting as such who first assumes custody of a dead body or fetus shall file the death certificate. Such person shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification of cause of death from the physician last in attendance prior to burial. The death certificate filed with the state registrar shall be the official death record, except that a funeral director licensed pursuant to K.S.A. 65-1714, and amendments thereto, may verify as true and accurate information pertaining to a death on a form provided by the state registrar, and any such form, verified within 21 days of date of death, shall be prima facie evidence of the facts therein stated for purposes of establishing death. The secretary of health and environment shall fix and collect a fee for each form provided a funeral director pursuant to this subsection. The fee shall be collected at the time the form is provided the funeral director and shall be in the same amount as the fee for a certified copy of a death certificate.

(c) When death occurred without medical attendance or when inquiry is required by the laws relating to postmortem examinations, the coroner shall investigate the cause of death and shall complete and sign the medical certification within 24 hours after receipt of the death certificate or as provided in K.S.A. 65-2414, and amendments thereto.

(d) In every instance a certificate shall be filed prior to interment or disposal of the body.

HISTORY: L. 1951, ch. 355, § 12; L. 1963, ch. 319, § 4; L. 1979, ch. 188, § 13; L. 1990, ch. 226, § 5; L. 1993, ch. 214, § 9; July 1.

65-2414. Delayed determination of cause of death. If the cause of death cannot be determined within three days, the certification of the cause of death may be filed as pending. In such cases, the cause of death is to be reported to the state registrar as soon as possible.

HISTORY: L. 1951, ch. 355, § 14; L. 1990, ch. 226, § 6; L. 1993, ch. 214, § 10; July 1.

65-2415. Form of certificates. The forms of certificates shall include as a minimum the items required by the respective standard certificates as recommended by the national office of vital statistics subject to approval of and modification by the secretary. The form and use of such certificate shall be subject to the provisions of K.S.A. 65-2422.

HISTORY: L. 1951, ch. 355, § 15; L. 1974, ch. 352, § 124; July 1.

65-2423. Adoption cases.

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

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

HISTORY: L. 1951, ch. 355, § 23; L. 1978, ch. 247, § 1; L. 1994, ch. 301, § 2; L. 1996, ch. 116, § 2; L. 2002, ch. 160, § 5; May 23.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 28. HEALING ARTS
KANSAS HEALING ARTS ACT

65-2801. Purpose. Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control

and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

HISTORY: L. 1957, ch. 343, § 1; July 1.

65-2802. Definitions. For the purpose of this act the following definitions shall apply:

(a) The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic.

(b) "Board" shall mean the state board of healing arts.

(c) "License" shall mean a license to practice the healing arts granted under this act.

(d) "Licensed" or "licensee" shall mean a person licensed under this act to practice medicine and surgery, osteopathic medicine and surgery or chiropractic.

(e) Wherever the masculine gender is used it shall be construed to include the feminine, and the singular number shall include the plural when consistent with the intent of this act.

HISTORY: L. 1957, ch. 343, § 2; L. 1976, ch. 273, § 1; Feb. 13.

65-2803. License prerequisite to practice of the healing arts; exceptions; penalty.

(a) It shall be unlawful for any person who is not licensed under the Kansas healing arts act or whose license has been revoked or suspended to engage in the practice of the healing arts as defined in the Kansas healing arts act.

(b) This section shall not apply to any person licensed by the board whose license was expired or lapsed and reinstated within a six month period pursuant to K.S.A. 65-2809 and amendments thereto.

(c) This section shall not apply to any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident as authorized by K.S.A. 65-2891 and amendments thereto.

(d) Violation of this section is a class B misdemeanor.

HISTORY: L. 1957, ch. 343, § 3; L. 1992, ch. 32, § 1; July 1.

65-2804. Attainment of legal age required prior to receiving permanent license. No person shall receive a permanent license under this act until the person has furnished satisfactory evidence to the board that the person has attained legal age.

HISTORY: L. 1957, ch. 343, § 4; L. 1969, ch. 299, § 1; L. 1972, ch. 231, § 7; L. 1976, ch. 273, § 2; L. 1983, ch. 213, § 6; July 1.

65-2806. Form and type of license. Every license to practice a branch of the healing arts shall be in the form of a certificate and of a type prescribed by the board.

HISTORY: L. 1957, ch. 343, § 6; L. 1976, ch. 273, § 3; Feb. 13.

65-2807. License presumptive evidence of right to practice. Every license issued under this act shall be presumptive evidence of the right of the holder to practice that branch of the healing arts and only such branch as is specified therein. The records of the board shall reflect the type of license issued to each applicant.

HISTORY: L. 1957, ch. 343, § 7; L. 1976, ch. 273, § 4; Feb. 13.

65-2808. Filing names and records of applicants for examination; index; record of licenses issued; application forms; records open to public inspection. The name, age, place of birth, current address, school, and date of graduation, and date of license, if one be issued, with rating or grades received, of all applicants for examination shall be filed in the office of the board, which office shall be located in the city of Topeka. The names of applicants shall be appropriately indexed, and all other records relating to that application or license granted shall be given the same designation. A suitable record shall also be kept of those granted licenses. Applications shall be upon forms prepared by the board, and completed applications shall be retained as a part of its permanent records. All applications based on licenses granted in other states shall be received upon forms prepared by the board and entered as near as may be in the same form as are those applying for examinations. In addition to the date of license, the length of time of practice in all other states shall be given and entered. All such records shall be open to public inspection under proper regulations adopted by the board.

HISTORY: L. 1957, ch. 343, § 8; L. 1975, ch. 325, § 1; L. 1976, ch. 273, § 5; Feb. 13.

65-2809. Expiration date of licenses; continuing education requirements; evidence licensee maintaining professional liability insurance; notice of expiration; fees; cancellation of license; reinstatement, when; exempt licensees; inactive license; federally active license.

(a) The license shall expire on the date established by rules and regulations of the board which may provide renewal throughout the year on a continuing basis. In each case in which a license is renewed for a period of time of more or less than 12 months, the board may prorate the amount of the fee established under K.S.A. 65-2852 and amendments thereto. The request for renewal shall be on a form provided by the board and shall be accompanied by the prescribed fee, which shall be paid not later than the expiration date of the license.

(b) Except as otherwise provided in this section, the board shall require every licensee in the active practice of the healing arts within the state to submit evidence of satisfactory completion of a program of continuing education required by the board. The requirements for continuing education for licensees of each branch of the healing arts shall be established by rules and regulations adopted by the board.

(c) The board, prior to renewal of a license, shall require the licensee, if in the active practice of the healing arts within the state, to submit to the board evidence satisfactory to the board that the licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402 and amendments thereto and has paid the premium surcharges as required by K.S.A. 40-3404 and amendments thereto.

(d) At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If the licensee fails to pay the renewal fee by the date of the expiration of the license, the licensee shall be given a second notice that the licensee's license has expired, that the license will be deemed canceled if not renewed within 30 days following the date of expiration, that upon receipt of the renewal fee and an additional fee established by rules and regulations of the board not to exceed $ 500 within the thirty-day period the license will not be canceled and that, if both fees are not received within the thirty-day period, the license shall be deemed canceled by operation of law and without further proceedings.

(e) Any license canceled for failure to renew may be reinstated within two years of cancellation upon recommendation of the board and upon payment of the renewal fees then due and upon proof of compliance with the continuing educational requirements established by the board by rules and regulations. Any person who has not been in the active practice of the branch of the healing arts for which reinstatement is sought or who has not been engaged in a formal educational program during the two years preceding the application for reinstatement may be required to complete such

additional testing, training or education as the board may deem necessary to establish the licensee's present ability to practice with reasonable skill and safety.

(f) There is hereby created a designation of exempt license. The board is authorized to issue an exempt license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an exempt license established pursuant to K.S.A. 65-2852 and amendments thereto. The board may issue an exempt license to a person who is not regularly engaged in the practice of the healing arts in Kansas and who does not hold oneself out to the public as being professionally engaged in such practice. An exempt license shall entitle the holder to all privileges attendant to the branch of the healing arts for which such license is issued. Each exempt license may be renewed subject to the provisions of this section. Each exempt licensee shall be subject to all provisions of the healing arts act, except as otherwise provided in this subsection (f). The holder of an exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing education required by this section. Each exempt licensee may apply for a license to regularly engage in the practice of the appropriate branch of the healing arts upon filing a written application with the board. The request shall be on a form provided by the board and shall be accompanied by the license fee established pursuant to K.S.A. 65-2852 and amendments thereto. For the licensee whose license has been exempt for less than two years, the board shall adopt rules and regulations establishing appropriate continuing education requirements for exempt licensees to become licensed to regularly practice the healing arts within Kansas. Any licensee whose license has been exempt for more than two years and who has not been in the active practice of the healing arts or engaged in a formal educational program since the license has been exempt may be required to complete such additional testing, training or education as the board may deem necessary to establish the licensee's present ability to practice with reasonable skill and safety. Nothing in this subsection (f) shall be construed to prohibit a person holding an exempt license from serving as a coroner or as a paid employee of (1) a local health department as defined by K.S.A. 65-241 and amendments thereto, or (2) an indigent health care clinic as defined by K.S.A. 75-6102 and amendments thereto.

(g) There is hereby created a designation of inactive license. The board is authorized to issue an inactive license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an inactive license established pursuant to K.S.A. 65-2852 and amendments thereto. The board may issue an inactive license only to a person who is not regularly engaged in the practice of the healing arts in Kansas, who does not hold oneself out to the public as being professionally engaged in such practice and who meets the definition of inactive health care provider as defined in K.S.A. 40-3401 and amendments thereto. An inactive license shall not entitle the holder to practice the healing arts in this state. Each inactive license may be renewed subject to the provisions of this section. Each inactive licensee shall be subject to all provisions of the healing arts act, except as otherwise provided in this subsection (g). The holder of an inactive license shall not be required to submit evidence of satisfactory completion of a program of continuing education required by K.S.A. 65-2809 and amendments thereto. Each inactive licensee may apply for a license to regularly engage in the practice of the appropriate branch of the healing arts upon filing a written application with the board. The request shall be on a form provided by the board and shall be accompanied by the license fee established pursuant to K.S.A. 65-2852 and amendments thereto. For those licensees whose license has been inactive for less than two years, the board shall adopt rules and regulations establishing appropriate continuing education requirements for inactive licensees to become licensed to regularly practice the healing arts within Kansas. Any licensee whose license has been inactive for more than two years and who has not been in the active practice of the healing arts or engaged in a formal education program since the licensee has been inactive may be required to complete such additional testing, training or education as the board may deem necessary to establish the licensee's present ability to practice with reasonable skill and safety.

(h)

(1) There is hereby created a designation of federally active license. The board is authorized to issue a federally active license to any licensee who makes written application for such license on a form provided by the board and remits the same fee required for a license established under K.S.A. 65-2852 and amendments thereto. The board may issue a federally active license only to a person who meets all the requirements for a license to practice the healing arts in Kansas and who practices that branch of the healing arts solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies. A person issued a federally active license may engage in limited practice outside of the course of federal employment consistent with the scope of practice of exempt licensees under subsection (f), except that the scope of practice of a federally active licensee shall be limited to the following: (A) performing administrative functions, including peer review, disability determinations, utilization review and expert opinions; (B) providing direct patient care services gratuitously or providing supervision, direction or consultation for no

compensation except that nothing in this subpart (1)(B) shall prohibit a person licensed to practice the healing arts issued a federally active license from receiving payment for subsistence allowances or actual and necessary expenses incurred in providing such services; and (C) rendering professional services as a charitable health care provider as defined in K.S.A. 75-6102 abd amendments thereto.

(2) The provisions of subsections (a), (b), (d) and (e) of this section relating to continuing education, expiration and renewal of a license shall be applicable to a federally active license issued under this subsection.

(3) A person who practices under a federally active license shall not be deemed to be rendering professional service as a health care provider in this state for purposes of K.S.A. 40-3402 and amendments thereto.

HISTORY: L. 1957, ch. 343, § 9; L. 1966, ch. 35, § 1 (Budget Session); L. 1969, ch. 299, § 2; L. 1976, ch. 273, § 6; L. 1976, ch. 274, § 3; L. 1978, ch. 249, § 5; L. 1986, ch. 229, § 34; L. 1986, ch. 239, § 1; L. 1987, ch. 242, § 2; L. 1988, ch. 250, § 1; L. 1991, ch. 192, § 1; L. 1992, ch. 253, § 2; L. 1993, ch. 29, § 1; L. 1995, ch. 82, § 1; L. 2000, ch. 141, § 1; July 1.

65-2811. Issuance of temporary permits; postgraduate permits.

(a) The board may issue a temporary permit to practice the appropriate branch of the healing arts to any person who has made proper application for a license by endorsement, has the required qualifications for such license and has paid the prescribed fees, and such permit, when issued, shall authorize the person receiving the permit to practice within the limits of the permit until the license is issued or denied by the board, but no more than one such temporary permit shall be issued to any one person without the approval of 2/3 of the members of the board.

(b) The board may issue a postgraduate permit to practice the appropriate branch of the healing arts to any person who is engaged in a full time, approved postgraduate training program; has made proper application for such postgraduate permit upon forms approved by the board; meets all qualifications of licensure, except the examinations required under K.S.A. 65-2873 and amendments thereto and postgraduate training, as required by this act; has paid the prescribed fees established by the board for such postgraduate permit; has passed such examinations in the basic and clinical sciences approved under rules and regulations adopted by the board; and, if the person is a graduate of a foreign medical school, has passed an examination given by the educational commission for foreign medical graduates.

(c) The postgraduate permit issued under subsection (b) shall authorize the person receiving the permit to practice the appropriate branch of the healing arts in the postgraduate training program while continuously so engaged but shall not authorize the person receiving the permit to engage in the private practice of the healing arts.

(d) A postgraduate permit issued under subsection (b) shall be canceled if:

(1) The holder thereof ceases to be engaged in the postgraduate training program; or

(2) the holder thereof has engaged in the practice of the healing arts outside of the postgraduate training program.

HISTORY: L. 1957, ch. 343, § 11; L. 1969, ch. 299, § 3; L. 1970, ch. 260, § 1; L. 1976, ch. 273, § 7; L. 1984, ch. 235, § 1; L. 1985, ch. 216, § 1; L. 1987, ch. 240, § 3; L. 1988, ch. 251, § 1; L. 1989, ch. 196, § 4; L. 1995, ch. 82, § 2; L. 2000, ch. 141, § 2; July 1.

65-2811a. Special permits; issuance; conditions and qualifications; limitations on practice; expiration of permit.

(a) The state board of healing arts may issue a special permit to practice the appropriate branch of the healing arts, under the supervision of a person licensed to practice such branch of the healing arts, to any person who has completed undergraduate training in a branch of the healing arts and who has not engaged in a full-time approved postgraduate training program.

(b) Such special permit shall be issued only to a person who:

(1) Has made proper application for such special permit upon forms approved by the state board of healing arts;

(2) meets all qualifications of licensure except examinations and postgraduate training, as required by the Kansas healing arts act;

(3) is not yet but will be engaged in a full-time, approved postgraduate training program in Kansas;

(4) has obtained the sponsorship of a person licensed to practice the branch of the healing arts in which the applicant is training, which sponsor practices in an area of Kansas which is determined under K.S.A. 76-375 and amendments thereto to be medically underserved; and

(5) has paid the prescribed fees as established by the state board of healing arts for the application for and granting of such special permit.

(c) The special permit, when issued, shall authorize the person to whom the special permit is issued to practice the branch of the healing arts in which such person is training under the supervision of the person licensed to practice that branch of the healing arts who has agreed to sponsor such special permit holder. The special permit shall not authorize the person holding the special permit to engage in the private practice of the healing arts. The holder of a special permit under this section shall not charge patients a fee for services rendered but may be compensated directly by the person under whose supervision and sponsorship the permit holder is practicing. The special permit shall expire on the day the person holding the special permit becomes engaged in a full-time, approved postgraduate training program or one year from its date of issuance, whichever occurs first.

(d) This section shall be part of and supplemental to the Kansas healing arts act.

HISTORY: L. 1978, ch. 249, § 4; L. 1987, ch. 239, § 2; L. 1987, ch. 240, § 4; L. 2002, ch. 103, § 5; July 1.

65-2824. Application for examination, contests; fees; documents and affidavits. Any person desiring to take the examination for a license hereunder shall make application to the board on a form provided by the board and sworn to by the applicant. Such application shall specify that branch of the healing arts in which the applicant desires to be examined and shall be accompanied by the prescribed examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be filed in the form, within the time, and in accordance with the rules of the board.

HISTORY: L. 1957, ch. 343, § 24; July 1.

65-2825. Accredited schools; list. The board shall prepare and keep up to date a list of accredited healing arts schools, but no school shall be accredited without the formal action of the board. Any such school whose graduates or students desire to take the examination in this state shall supply the board with the necessary data to allow it to determine whether such school should be accredited.

HISTORY: L. 1957, ch. 343, § 25; July 1.

65-2826. Where and when examinations held. The sessions for the purpose of giving examinations shall be held at such times and places as the board may fix and not to exceed four in any one year.

HISTORY: L. 1957, ch. 343, § 26; July 1.

65-2827. List of eligible applicants prior to examinations. Prior to each examination the board shall prepare a list of applicants who are eligible to take the examination.

HISTORY: L. 1957, ch. 343, § 27; July 1.

65-2828. Rules and regulations designating examinations and passing grade; reexamination.

(a) The board shall adopt rules and regulations designating the examinations required under K.S.A. 65-2873 and amendments thereto and the passing grade on each examination.

(b) Any applicant who fails any examination required under K.S.A. 65-2873 and amendments thereto may have a reexamination in accordance with criteria established by rules and regulations of the board, which criteria may limit the number of times an applicant may retake the examination until the applicant has submitted evidence acceptable to the board of further professional study.

HISTORY: L. 1957, ch. 343, § 28; L. 1978, ch. 249, § 1; L. 1995, ch. 82, § 3; July 1.

65-2831. Issuance of license; record. After each examination the board shall issue a proper license to successful candidates, and make the required entry.

HISTORY: L. 1957, ch. 343, § 31; July 1.

65-2832. Preservation of examination results; availability. The results of any examination for a license shall be preserved for two (2) years. During this time the results of an examination shall be available to the applicant or the duly authorized representative of the applicant under regulations prescribed by the board.

HISTORY: L. 1957, ch. 343, § 32; L. 1976, ch. 273, § 12; L. 1978, ch. 249, § 2; Feb. 14.

65-2833. Endorsement licenses; requirements. The board, without examination, may issue a license to a person who has been in the active practice of a branch of the healing arts in some other state, territory, the District of Columbia or other country upon certificate of the proper licensing authority of that state, territory, District of Columbia or other country certifying that the applicant is duly licensed, that the applicant's license has never been limited, suspended or revoked, that the licensee has never been censured or had other disciplinary action taken and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement. The applicant shall also present proof satisfactory to the board:

(a) That the state, territory, District of Columbia or country in which the applicant last practiced has and maintains standards at least equal to those maintained by Kansas.

(b) That the applicant's original license was based upon an examination at least equal in quality to the examination required in this state and that the passing grade required to obtain such original license was comparable to that required in this state.

(c) Of the date of the applicant's original and any and all endorsed licenses and the date and place from which any license was attained.

(d) That the applicant has been actively engaged in practice under such license or licenses since issued, and if not, fix the time when and reason why the applicant was out of practice.

(e) That the applicant has a reasonable ability to communicate in English.

An applicant for endorsement registration shall not be licensed unless the applicant's individual qualifications meet the Kansas legal requirements.

In lieu of any other requirement prescribed by law for satisfactory passage of any examination in any branch of the healing arts the board may accept evidence satisfactory to it that the applicant or licensee has satisfactorily passed an equivalent examination given by a national board of examiners in chiropractic, osteopathic medicine and surgery or medicine and surgery as now required by Kansas statutes for endorsement from other states.

HISTORY: L. 1957, ch. 343, § 33; L. 1965, ch. 382, § 9; L. 1969, ch. 299, § 9; L. 1976, ch. 273, § 13; L. 1979, ch. 198, § 1; L. 1986, ch. 229, § 40; July 1.

65-2835. Certificate of standing; application; fee. Any licensee shall receive, upon application to the board and the payment of the required fee, a certified statement that the licensee is a duly licensed practitioner in the branch of the healing arts for which he or she is licensed in this state.

HISTORY: L. 1957, ch. 343, § 35; L. 1979, ch. 198, § 2; July 1.

65-2836. Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall

have authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate either in the course of an investigation or a disciplinary proceeding. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c and amendments thereto or to a committee consisting of the officers of the board elected pursuant to K.S.A. 65-2818 and amendments thereto and the executive director appointed pursuant to K.S.A. 65-2878 and amendments thereto or to a presiding officer authorized pursuant to K.S.A. 77-514 and amendments thereto. The determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of a renewal to practice the healing arts in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122 and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.

(n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(q) The licensee has violated a federal law or regulation relating to controlled substances.

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a and amendments thereto.

(z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404 and amendments thereto.

(aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

(bb) The licensee as the responsible physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406 as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2002 Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405 and amendments thereto.

HISTORY: L. 1957, ch. 343, § 36; L. 1969, ch. 299, § 10; L. 1972, ch. 231, § 8; L. 1976, ch. 273, § 14; L. 1976, ch. 275, § 1; L. 1979, ch. 198, § 3; L. 1983, ch. 214, § 1; L. 1983, ch. 213, § 7; L. 1984, ch. 236, § 1; L. 1986, ch. 234, § 5; L. 1986, ch. 229, § 41; L. 1986, ch. 239,§ 2; L. 1987, ch. 176, § 5; L. 1987, ch. 239, § 3; L. 1987, ch. 242, § 3; L. 1989,

ch. 196, § 1; L. 1991, ch. 192, § 2; L. 1995, ch. 251, § 36; L. 1998, ch. 142, § 12; L. 2000, ch. 141, § 5; L. 2001, ch. 31, § 2; July 1.

65-2837. Professional incompetency, unprofessional conduct; definitions. As used in K.S.A. 65-2836, and amendments thereto, and in this section:

(a) "Professional incompetency" means:

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

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

(b) "Unprofessional conduct" means:

(1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.

(2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.

(3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.

(4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed.

(5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.

(6) Willful betrayal of confidential information.

(7) Advertising professional superiority or the performance of professional services in a superior manner.

(8) Advertising to guarantee any professional service or to perform any operation painlessly.

(9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.

(10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107, and amendments thereto.

(11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.

(12) Conduct likely to deceive, defraud or harm the public.

(13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.

(14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.

(15) Allowing another person or organization to use the licensee's license to practice the healing arts.

(16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.

(17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.

(18) Obtaining any fee by fraud, deceit or misrepresentation.

(19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

(20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.

(21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering, distributing a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice.

(24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

(28) Prescribing, dispensing, administering or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(29) Referring a patient to a health care entity for services if the licensee has a significant investment interest in the health care entity, unless the licensee informs the patient in writing of such significant investment interest and that the patient may obtain such services elsewhere.

(30) Failing to properly supervise, direct or delegate acts which constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.

(31) Violating K.S.A. 65-6703 and amendments thereto.

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

(e) "Licensee" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean all persons issued a license, permit or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes Annotated.

(f) "License" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean any license, permit or special permit granted under article 28 of chapter 65 of the Kansas Statutes Annotated.

(g) "Health care entity" means any corporation, firm, partnership or other business entity which provides services for diagnosis or treatment of human health conditions and which is owned separately from a referring licensee's principle practice.

(h) "Significant investment interest" means ownership of at least 10% of the value of the firm, partnership or other business entity which owns or leases the health care entity, or ownership of at least 10% of the shares of stock of the corporation which owns or leases the health care entity.

HISTORY: L. 1957, ch. 343, § 37; L. 1976, ch. 273, § 15; L. 1979, ch. 198, § 4; L. 1979, ch. 200, § 1; L. 1983, ch. 214, § 2; L. 1984, ch. 237, § 2; L. 1986, ch. 229, § 42; L. 1987, ch. 176, § 6; L. 1989, ch. 196, § 2; L. 1991, ch. 192, § 3; L. 1993, ch. 205, § 1; L. 1998, ch. 170, § 2; L. 2000, ch. 141, § 6; July 1.

65-2837a. Restrictions on prescribing, ordering, dispensing, administering, selling, supplying or giving certain amphetamine or sympathomimetic amine controlled substances; unprofessional conduct.

(a) It shall be unlawful for any person licensed to practice medicine and surgery to prescribe, order, dispense, administer, sell, supply or give or for a mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto to prescribe, administer, supply or give any amphetamine or sympathomimetic amine designated in schedule II, III or IV under the uniform controlled substances act, except as provided in this section. Failure to comply with this section by a licensee shall constitute unprofessional conduct under K.S.A. 65-2837 and amendments thereto.

(b) When any licensee prescribes, orders, dispenses, administers, sells, supplies or gives or when any mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto prescribes, administers, sells, supplies or gives any amphetamine or sympathomimetic amine designated in schedule II, III or IV under the uniform controlled substances act, the patient's medical record shall adequately document and the prescription order shall indicate in the licensee's or mid-level practitioner's own handwriting, the purpose for which the drug is being given. Such purpose shall be restricted to one or more of the following:

(1) The treatment of narcolepsy.

(2) The treatment of drug-induced brain dysfunction.

(3) The treatment of hyperkinesis.

(4) The differential diagnostic psychiatric evaluation of depression.

(5) The treatment of depression shown by adequate medical records and documentation to be unresponsive to other forms of treatment.

(6) The clinical investigation of the effects of such drugs or compounds, in which case, before the investigation is begun, the licensee shall, in addition to other requirements of applicable laws, apply for and obtain approval of the investigation from the board of healing arts.

(7) The treatment of obesity with controlled substances, as may be defined by rules and regulations adopted by the board of healing arts.

(8) The treatment of any other disorder or disease for which such drugs or compounds have been found to be safe and effective by competent scientific research which findings have been generally accepted by the scientific community, in which case, the licensee before prescribing, ordering, dispensing, administering, selling, supplying or giving the drug or compound for a particular condition, or the licensee before authorizing a mid-level practitioner to prescribe the drug or compound for a particular condition, shall obtain a determination from the board of healing arts that the drug or compound can be used for that particular condition.

HISTORY: L. 1984, ch. 237, § 1; L. 1997, ch. 57, § 1; L. 1999, ch. 115, § 12; Apr. 1, 2000.

65-2838. Disciplinary action against licensee; procedure; stipulations; temporary suspension or limitation; emergency proceedings.

(a) The board shall have jurisdiction of proceedings to take disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against any licensee practicing under this act. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee entering into such stipulation.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist under K.S.A. 65-2836 and amendments thereto for disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

HISTORY: L. 1957, ch. 343, § 38; L. 1976, ch. 273, § 16; L. 1978, ch. 250, § 1; L. 1979, ch. 198, § 5; L. 1984, ch. 238, § 12; L. 1984, ch. 313, § 118; L. 1986, ch. 229, § 43; July 1.

65-2839a. Investigations and proceedings conducted by board; access to evidence; subpoenas; access to criminal history; confidentiality of information.

(a) In connection with any investigation by the board, the board or its duly authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any document, report, record or other physical evidence of any person being investigated, or any document, report, record or other evidence maintained

by and in possession of any clinic, office of a practitioner of the healing arts, laboratory, pharmacy, medical care facility or other public or private agency if such document, report, record or evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts.

(b) For the purpose of all investigations and proceedings conducted by the board:

(1) The board may issue subpoenas compelling the attendance and testimony of witnesses or the production for examination or copying of documents or any other physical evidence if such evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee safely to practice the healing arts. Within five days after the service of the subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced. Any member of the board, or any agent designated by the board, may administer oaths or affirmations, examine witnesses and receive such evidence.

(2) Any person appearing before the board shall have the right to be represented by counsel.

(3) The district court, upon application by the board or by the person subpoenaed, shall have jurisdiction to issue an order:

(A) Requiring such person to appear before the board or the boards duly authorized agent to produce evidence relating to the matter under investigation; or

(B) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

(c) The board may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining initial and continuing qualifications of licensees and registrants of and applicants for licensure and registration by the board. Disclosure or use of any such information received by the board or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license or registration issued under this act. Nothing in this subsection shall be construed to make unlawful the disclosure of any such information by the board in a hearing held pursuant to this act.

(d) Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, other reports or oral statements relating to diagnostic findings or treatment of patients, information from which a patient or a patient's family might be identified, peer review or risk management records or information received and records kept by the board as a result of the investigation procedure outlined in this section shall be confidential and shall not be disclosed.

(e) Nothing in this section or any other provision of law making communications between a physician and the physician's patient a privileged communication shall apply to investigations or proceedings conducted pursuant to this section. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this section.

HISTORY: L. 1986, ch. 229, § 39; L. 1992, ch. 253, § 3; July 1.

65-2842. Mental or physical examination or drug screen, or any combination thereof, of licensee; requirement by board; computation of time limit for hearing. Whenever the board directs, pursuant to subsection (i) of K.S.A. 65-

2836 and amendments thereto, that a licensee submit to a mental or physical examination or drug screen, or any combination thereof, the time from the date of the board's directive until the submission to the board of the report of the examination or drug screen, or both, shall not be included in the computation of the time limit for hearing prescribed by the Kansas administrative procedure act.

HISTORY: L. 1957, ch. 343, § 42; L. 1979, ch. 198, § 6; L. 1983, ch. 214, § 3; L. 1984, ch. 238, § 14; L. 1984, ch. 313, § 119; L. 1991, ch. 192, § 4; July 1.

65-2844. Reinstatement of license; application; burden of proof; reapplication for reinstatement, when; proceedings. A person whose license has been revoked may apply for reinstatement of the license after the expiration of three years from the effective date of the revocation. Application for reinstatement shall be on a form provided by the board and shall be accompanied by a reinstatement of a revoked license fee established by the board under K.S.A. 65-2852 and amendments thereto. The burden of proof by clear and convincing evidence shall be on the applicant to show sufficient rehabilitation to justify reinstatement of the license. If the board determines a license should not be reinstated, the person shall not be eligible to reapply for reinstatement for three years from the effective date of the denial. All proceedings conducted on an application for reinstatement shall be in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the act for judicial review and civil enforcement of agency actions. The board, on its own motion, may stay the effectiveness of an order of revocation of license.

HISTORY: L. 1957, ch. 343, § 44; L. 1976, ch. 273, § 20; L. 1984, ch. 313, § 120; L. 1987, ch. 240, § 8; L. 1991, ch. 193, § 1; July 1.

65-2846. Costs of proceedings; assessment of costs incurred.

(a) If the board's order is adverse to the licensee or applicant for reinstatement of license, costs incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances including the nature of the proceeding and the level of participation by the parties. If the board is the unsuccessful party, the costs shall be paid from the healing arts fee fund.

(b) For purposes of this section costs incurred shall mean the presiding officer fees and expenses, costs of making any transcripts, witness fees and expenses, mileage, travel allowances and subsistence expenses of board employees and fees and expenses of agents of the board who provide services pursuant to K.S.A. 65-2878a and amendments thereto. Costs incurred shall not include presiding officer fees and expenses or costs of making and preparing the record unless the board has designated or retained the services of independent contractors to perform such functions.

(c) The board shall make any assessment of costs incurred as part of the final order rendered in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.

HISTORY: L. 1957, ch. 343, § 46; L. 1965, ch. 382, § 10; L. 1973, ch. 309, § 22; L. 1991, ch. 193, § 2; July 1.

65-2847. Same; costs due state; uncollectible, paid by board. All costs accrued at the instance of the state, when it is the successful party, and which the attorney general certifies cannot be collected from the defendant, shall be paid out of any available funds in the state treasury to the credit of the board.

HISTORY: L. 1957, ch. 343, § 47; July 1.

65-2849. Hearing of cause in district court; precedence. The cause shall be heard by the court at a time fixed by it, and shall take precedence over all other cases upon the court docket except workmen's compensation and criminal cases.

HISTORY: L. 1957, ch. 343, § 49; July 1.

65-2850. Same; appeal bond of licensee. In the event the board appeals, no bond shall be required. If the licensee appeals, the only bond required shall be one running to the state, in an amount to be fixed by the court for the payment of the costs both before the board and in the district court, and the bond shall be approved by the judge of the district court.

HISTORY: L. 1957, ch. 343, § 50; L. 1976, ch. 273, § 23; L. 1984, ch. 313, § 121; L. 1992, ch. 314, § 16; July 1

65-2852. Fees; collection by board. The following fees shall be established by the board by rules and regulations and collected by the board:

(a) For a license, issued upon the basis of an examination given by the board, in a sum of not more than $ 300;

(b) for a license, issued without examination and by endorsement, in a sum of not more than $ 300;

(c) for a license, issued upon a certificate from the national boards, in a sum of not more than $ 300;

(d) for the renewal of a license, the sum of not more than $ 500;

(e) for a temporary permit, in a sum of not more than $ 60;

(f) for an institutional license, in a sum of not more than $ 300;

(g) for a visiting professor temporary license, in a sum of not more than $ 50;

(h) for a certified statement from the board that a licensee is licensed in this state, the sum of not more than $ 30;

(i) for any copy of any license issued by the board, the sum of not more than $ 30;

(j) for any examination given by the board, a sum in an amount equal to the cost to the board of the examination;

(k) for application for and issuance of a special permit under K.S.A. 65-2811a and amendments thereto, the sum of not more than $ 60;

(l) for an exempt or inactive license or renewal of an exempt or inactive license, the sum of not more than $ 150;

(m) for conversion of an exempt or inactive license to a license to practice the healing arts, the sum of not more than $ 300;

(n) for reinstatement of a revoked license, in a sum of not more than $ 1,000;

(o) for a visiting clinical professor license, or renewal of a visiting clinical professor license, in a sum of not more than $ 300;

(p) for a postgraduate permit in a sum of not more than $ 60;

(q) for a limited permit or renewal of a limited permit, the sum of not more than $ 60; and

(r) for a written verification of any license or permit, the sum of not more than $ 25.

HISTORY: L. 1957, ch. 343, § 52; L. 1966, ch. 35, § 2 (Budget Session); L. 1969, ch. 299, § 11; L. 1974, ch. 255, § 1; L. 1978, ch. 249, § 3; L. 1985, ch. 217, § 1; L. 1985, ch. 216, § 5; L. 1987, ch. 239, § 4; L. 1987, ch. 242, § 4; L. 1988, ch. 251, § 2; L. 1991, ch. 193, § 3; L. 1992, ch. 156, § 3; L. 1995, ch. 82, § 4; L. 1997, ch. 94, § 2; L. 2000, ch. 141, § 3; July 1.

65-2855. Fees; disposition of; healing arts fee fund. The board shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from the healing arts fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president.

HISTORY: L. 1957, ch. 343, § 55; L. 1963, ch. 398, § 15; L. 1965, ch. 382, § 11; L. 1966, ch. 35, § 3 (Budget Session); L. 1969, ch. 299, § 12; L. 1973, ch. 309, § 23; L. 1987, ch. 240, § 9; L. 2001, ch. 5, § 238; July 1.

65-2857. Injunction and quo warranto for unlawful practice of the healing arts. An action in injunction or quo warranto may be brought and maintained in the name of the state of Kansas to enjoin or oust from the unlawful practice of the healing arts, any person who shall practice the healing arts as defined in this act without being duly licensed therefor.

HISTORY: L. 1957, ch. 343, § 57; L. 1976, ch. 273, § 24; Feb. 13.

65-2858. Same; authority conferred by 65-2857 additional to authority to prosecute criminally. The authority conferred by the preceding section shall be in addition to, and not in lieu of, authority to prosecute criminally any person unlawfully engaged in the practice of the healing arts. The granting and enforcing of an injunction or quo warranto to prevent the unlawful practice of the healing arts is a preventive measure, not a punitive measure, and the fact that a person has been charged with or convicted of criminally having so practiced shall not prevent the issuance of a writ of injunction or quo warranto to prevent his further practice; nor shall the fact that a writ of injunction or quo warranto has been granted to prevent further practice preclude the institution of criminal prosecution and punishment.

HISTORY: L. 1957, ch. 343, § 58; July 1.

65-2859. Filing false documents with board; forgery; penalty. Any person who shall file or attempt to file with the board any false or forged diploma, certificate, affidavit or identification or qualification, or any other written or printed instrument, shall be guilty of forgery as provided by K.S.A. 21-3710 and a severity level 8, nonperson felony.

HISTORY: L. 1957, ch. 343, § 59; L. 1976, ch. 273, § 25; L. 1993, ch. 291, § 231; July 1.

65-2860. False impersonation; fraud; penalty. Any person who shall present to the board a diploma or certificate of which he or she is not the rightful owner for the purpose of procuring a license, or who shall falsely impersonate anyone to whom a license has been issued by said board, shall be deemed guilty of a class A misdemeanor.

HISTORY: L. 1957, ch. 343, § 60; L. 1976, ch. 273, § 26; Feb. 13.

65-2861. False swearing; penalty. Any person who swears falsely in any affidavit or oral testimony made or given by virtue of the provisions of this act or the rules and regulations of the board shall be deemed guilty of a severity level 9, nonperson felony.

HISTORY: L. 1957, ch. 343, § 61; L. 1976, ch. 273, § 27; L. 1993, ch. 291, § 232; July 1.

65-2862. Penalties for violations of act; second conviction. Any person violating any of the provisions of this act, except as specific penalties are herein otherwise imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than fifty dollars ($ 50) nor more than two hundred dollars ($ 200) for each separate offense, and a person for a second violation of any of the provisions of this act, wherein another specific penalty is not

expressly imposed, shall be deemed guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than one hundred dollars ($ 100) nor more than five hundred dollars ($ 500) for each separate offense.

HISTORY: L. 1957, ch. 343, § 62; July 1.

65-2863a. Administrative fines.

(a) The state board of healing arts, in addition to any other penalty prescribed under the Kansas healing arts act, may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for a violation of the Kansas healing arts act in an amount not to exceed $ 5,000 for the first violation, $ 10,000 for the second violation and $ 15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) This section shall be part of and supplemental to the Kansas healing arts act.

HISTORY: L. 1986, ch. 229, § 20; L. 2001, ch. 5, § 239; July 1.

65-2864. Enforcement of act; investigations; evidence. The board shall enforce the provisions of this act and for that purpose shall make all necessary investigations relative thereto. Every licensee in this state, including members of the board, shall furnish the board such evidence as he may have relative to any alleged violation which is being investigated. He shall also report to the board the name of every person without a license that he has reason to believe is engaged in practicing the healing arts in this state.

HISTORY: L. 1957, ch. 343, § 64; July 1.

65-2865. Rules and regulations; filing. The board shall promulgate all necessary rules and regulations, not inconsistent herewith, for carrying out the provisions of this act, which rules and regulations shall include standards for the dispensing of drugs by persons licensed to practice medicine and surgery. It may also adopt rules and regulations supplementing any of the provisions herein contained but not inconsistent with this act. All rules and regulations promulgated and adopted by the board shall be filed with the secretary of state as required by law.

HISTORY: L. 1957, ch. 343, § 65; L. 1979, ch. 198, § 8; L. 1988, ch. 366, § 19; June 1.

65-2866. Attorney general, county or district attorney to prosecute violations. Upon the request of the board, the attorney general or county or district attorney of the proper county shall institute in the name of the state or board the proper proceedings against any person regarding whom a complaint has been made charging him or her with the violation of any of the provisions of this act, and the attorney general, and such county or district attorney, at the request of the attorney general or of the board shall appear and prosecute any and all such actions.

HISTORY: L. 1957, ch. 343, § 66; L. 1976, ch. 273, § 28; Feb. 13.

65-2867. Certain acts prohibited; exceptions; penalty.

(a) It shall be unlawful for any person who is not licensed under the Kansas healing arts act or whose license has been revoked or suspended to open or maintain an office for the practice of the healing arts as defined in this act or to announce or hold out to the public the intention, authority or skill to practice the healing arts as defined in the Kansas healing arts act by the use of any professional degree or designation, sign, card, circular, device, advertisement or representation.

(b) This section shall not apply to any person licensed by the board whose license was expired or lapsed and reinstated within a six month period pursuant to K.S.A. 65-2809 and amendments thereto.

(c) This section shall not apply to any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident as authorized by K.S.A. 65-2891 and amendments thereto.

(d) Violation of this section is a class C misdemeanor.

HISTORY: L. 1957, ch. 343, § 67; L. 1992, ch. 32, § 2; July 1.

65-2869. Persons deemed engaged in practice of medicine and surgery. For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery:

(a) Persons who publicly profess to be physicians or surgeons, or publicly profess to assume the duties incident to the practice of medicine or surgery or any of their branches.

(b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease, physical or mental illness or psychological disorder, of human beings.

(c) Persons who attach to their name the title M.D., surgeon, physician, physician and surgeon, or any other word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases or injuries of human beings.

HISTORY: L. 1957, ch. 343, § 69; L. 1969, ch. 299, § 14; L. 1976, ch. 273, § 30; L. 1988, ch. 251, § 5; July 1.

65-2870. Persons deemed engaged in practice of osteopathy. For the purpose of this act the following persons shall be deemed to be engaged in the practice of osteopathy or to be osteopathic physicians and surgeons:

(a) Persons who publicly profess to be osteopathic physicians, or publicly profess to assume the duties incident to the practice of osteopathy, as heretofore interpreted by the supreme court of this state, shall be deemed to be engaged in the practice of osteopathy.

(b) Osteopathic physicians and surgeons shall mean and include those persons who receive a license to practice medicine and surgery pursuant to the provisions of this act.

HISTORY: L. 1957, ch. 343, § 70; L. 1969, ch. 299, § 15; L. 1976, ch. 273, § 31; Feb. 13.

65-2871. Persons deemed engaged in practice of chiropractic. For the purpose of this act the following persons shall be deemed to be engaged in the practice of chiropractic:

(a) Persons who examine, analyze and diagnose the human living body, and its diseases by the use of any physical, thermal or manual method and use the X-ray diagnosis and analysis taught in any accredited chiropractic school or college and

(b) persons who adjust any misplaced tissue of any kind or nature, manipulate or treat the human body by manual, mechanical, electrical or natural methods or by the use of physical means, physiotherapy (including light, heat, water or exercise), or by the use of foods, food concentrates, or food extract, or who apply first aid and hygiene, but chiropractors are expressly prohibited from prescribing or administering to any person medicine or drugs in materia medica, or from performing any surgery, as hereinabove stated, or from practicing obstetrics.

HISTORY: L. 1957, ch. 343, § 71; L. 1976, ch. 273, § 32; Feb. 13.

65-2872. Persons not engaged in the practice of the healing arts. The practice of the healing arts shall not be construed to include the following persons:

(a) Persons rendering gratuitous services in the case of an emergency.

(b) Persons gratuitously administering ordinary household remedies.

(c) The members of any church practicing their religious tenets provided they shall not be exempt from complying with all public health regulations of the state.

(d) Students while in actual classroom attendance in an accredited healing arts school who after completing one year's study treat diseases under the supervision of a licensed instructor.

(e) Students upon the completion of at least three years study in an accredited healing arts school and who, as a part of their academic requirements for a degree, serve a preceptorship not to exceed 90 days under the supervision of a licensed practitioner.

(f) Persons who massage for the purpose of relaxation, muscle conditioning, or figure improvement, provided no drugs are used and such persons do not hold themselves out to be physicians or healers.

(g) Persons whose professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under this act.

(h) Persons in the general fields of psychology, education and social work, dealing with the social, psychological and moral well-being of individuals and/or groups provided they do not use drugs and do not hold themselves out to be the physicians, surgeons, osteopathic physicians or chiropractors.

(i) Practitioners of the healing arts in the United States army, navy, air force, public health service, and coast guard or other military service when acting in the line of duty in this state.

(j) Practitioners of the healing arts licensed in another state when and while incidentally called into this state in consultation with practitioners licensed in this state.

(k) Dentists practicing their professions, when licensed and practicing in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(l) Optometrists practicing their professions, when licensed and practicing under and in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(m) Nurses practicing their profession when licensed and practicing under and in accordance with the provisions of article 11 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(n) Podiatrists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(o) Every act or practice falling in the field of the healing art, not specifically excepted herein, shall constitute the practice thereof.

(p) Pharmacists practicing their profession, when licensed and practicing under and in accordance with the provisions of article 16 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.

(q) A dentist licensed in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated who administers general and local anesthetics to facilitate medical procedures conducted by a person licensed to practice medicine and surgery if such dentist is certified by the board of healing arts under K.S.A. 65-2899, and amendments thereto, to administer such general and local anesthetics.

(r) Practitioners of the healing arts duly licensed under the laws of another state who do not open an office or maintain or appoint a place to regularly meet patients or to receive calls within this state, but who order services which are performed in this state in accordance with rules and regulations of the Board. The Board shall adopt rules and regulations identifying circumstances in which professional services may be performed in this state based upon an order by a practitioner of the healing arts licensed under the laws of another state.

HISTORY: L. 1957, ch. 343, § 72; L. 1976, ch. 273, § 33; L. 1976, ch. 276, § 2; July 1.

65-2873. License to practice healing arts by examination; prerequisites; postgraduate study; use of title and degree.

(a) Each applicant for a license by examination to practice any branch of the healing arts in this state shall:

(1) Present to the board evidence of proficiency in the basic sciences issued by the national board of medical examiners, the board of examiners of osteopathic physicians and surgeons or the national board of chiropractic examiners or such other examining body as may be approved by the board or in lieu thereof pass such examination as the board may require in the basic science subjects;

(2) present proof that the applicant is a graduate of an accredited healing arts school or college; and

(3) pass an examination prescribed and conducted by the board covering the subjects incident to the practice of the branch of healing art for which the applicant applies.

(b) Any person seeking a license to practice medicine and surgery shall present proof that such person has completed acceptable postgraduate study as may be required by the board by regulations.

(c) The board may authorize an applicant who does not meet the requirements of paragraph (2) of subsection (a) to take the examination for licensure if the applicant:

(1) Has completed three years of postgraduate training as approved by the board;

(2) is a graduate of a school which has been in operation for not less than 15 years and the graduates of which have been licensed in another state or states which has standards similar to Kansas; and

(3) meets all other requirements for taking the examination for licensure of the Kansas healing arts act.

(d) In addition to the examination required under paragraph (3) of subsection (a), if the applicant is a foreign medical graduate the applicant shall pass an examination given by the educational commission for foreign medical graduates.

(e) No person licensed to practice and actively engaged in the practice of the healing arts shall attach to such person's name any title, or any word or abbreviation indicating that such person is a doctor of any branch of the healing arts other than the branch of the healing arts in which such person holds a license but shall attach to such person's name the degree or degrees to which such person is entitled by reason of such person's diploma.

HISTORY: L. 1957, ch. 343, § 73; L. 1969, ch. 299, § 16; L. 1976, ch. 273, § 34; L. 1985, ch. 216, § 2; July 1.

65-2873a. Board authorized to grant license in particular circumstances; exceptions; requirements. Notwithstanding the provisions of K.S.A. 65-2873, the state board of healing arts may grant a license to practice medicine and surgery and renew the same annually as provided in K.S.A. 65-2809 to any person who meets all of the requirements of K.S.A. 65-2873, except the requirements of clause (2) of subsection (a) of such section, if such person is a citizen of the United States, a resident of Kansas, has a fellowship license, has been employed as a physician or by the state of Kansas for twenty (20) years or more, has been the head of a state hospital for five (5) years or more and has successfully completed the licensing examinations given by the state board of healing arts.

HISTORY: L. 1978, ch. 248, § 1; Feb. 4.

65-2874. Accredited school of medicine defined; rules and regulations establishing criteria; questionnaire developed by board; authority to contract for assistance in obtaining information about schools.

(a) An accredited school of medicine for the purpose of this act shall be a school or college which requires the study of medicine and surgery in all of its branches, which the board shall determine to have a standard of education substantially equivalent to the University of Kansas School of Medicine. All such schools shall be approved by the board.

(b) The board shall adopt rules and regulations establishing the criteria which a school shall satisfy in meeting the standard established under subsection (a). The criteria shall establish the minimum standards in the following areas:

(1) Admission requirements;

(2) basic science coursework;

(3) clinical coursework;

(4) qualification of faculty;

(5) ratio of faculty to students;

(6) library;

(7) clinical facilities;

(8) laboratories;

(9) equipment;

(10) specimens;

(11) financial qualifications; and

(12) accreditation by independent agency.

(c) The board may send a questionnaire developed by the board to any school for which the board does not have sufficient information to determine whether the school meets the requirements of this statute or rules and regulations adopted pursuant to this statute. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school to be considered for approval.

(d) The board is authorized to contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools. In entering such contracts the authority to approve schools shall remain solely with the board.

HISTORY: L. 1957, ch. 343, § 74; L. 1985, ch. 216, § 3; July 1.

65-2875. Accredited schools of osteopathic medicine defined. An accredited school of osteopathic medicine for the purpose of this act shall be a school or college which requires the study of osteopathic medicine and surgery in all of its branches which the board shall determine to have a standard of education not below that of the Kirksville College of Osteopathy and Surgery. All such schools shall be approved by the board.

HISTORY: L. 1957, ch. 343, § 75; L. 1976, ch. 273, § 35; Feb. 13.

65-2876. Accredited school or college of chiropractic, defined. An accredited school or college of chiropractic for the purpose of this act shall be a school or college teaching chiropractic which the board shall determine to have a standard of education not below that required for a recognized or accredited status with the council on chiropractic education. All such schools shall be approved by the board.

HISTORY: L. 1957, ch. 343, § 76; L. 1976, ch. 273, § 36; L. 1978, ch. 251, § 1; July 1.

65-2877. Approval of healing arts schools; inspection. No school of the healing arts shall be deemed accredited until it has permitted an inspection thereof, if requested, and has been approved by the board.

HISTORY: L. 1957, ch. 343, § 77; July 1.

65-2885. Use of title by licensee. No person licensed hereunder shall use a title in connection with his name which in any way represents him as engaged in the practice of any branch of the healing arts for which he holds no license: Provided, however, That every such licensee when using the letters or term "Dr." or "Doctor" shall use the appropriate words or letters to identify himself with the particular branch of the healing arts in which he holds a license.

HISTORY: L. 1957, ch. 343, § 85; July 1.

65-2886. Licensee to comply with public health laws and regulations. Every licensee hereunder shall be subject to all state and municipal regulations relating to the control of contagious and infectious diseases; sign death certificates and any and all matters pertaining to public health, and shall report all matters pertaining to public health as required by law.

HISTORY: L. 1957, ch. 343, § 86; July 1.

65-2887. Assisting unlicensed persons to practice optometry not authorized; exceptions.

(a) Nothing in this act shall be construed to authorize any person licensed under this act to knowingly perform any act which in any way assists an unlicensed person, except as provided under subsections (b) and (c), firm, association or corporation

(1) to make an examination of the eyes for the prescription of glasses, or

(2) to perform any of the practice acts for which optometrists are licensed.

(b) A person who is licensed to practice medicine and surgery may delegate to assistants the performance of screening procedures for visual acuities, color vision, visual fields, and intraocular pressure.

(c) A person who is licensed to practice medicine and surgery and who has completed an approved postgraduate training program in ophthalmology or who is practicing as a fulltime ophthalmologist on the effective date of this act may utilize not more than three (3) assistants to perform examination procedures which may be performed by a person licensed to practice optometry. The examination procedures performed by assistants to ophthalmologists shall be limited to data gathering at the direct request of the ophthalmologist and to those examination procedures which do not require

professional interpretation or professional judgment. These examination procedures may be performed by assistants only under the immediate and personal supervision and within the office of an ophthalmologist. Delegation to such assistants of the external and internal evaluation of the eye, biomicroscopic evaluation, subjective refraction, gonioscopic evaluation, final contact lens fit evaluation, orthoptic and strabismus evaluations, visual training evaluations, analysis of findings and the prescribing of ophthalmic lenses are prohibited.

HISTORY: L. 1957, ch. 343, § 87; L. 1978, ch. 252, § 1; July 1.

65-2888. Invalidity of part. If any division, section, subsection, sentence, clause, phrase or requirement of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions thereof. The legislature hereby declares that it would have passed this act, and each division, section, subsection, sentence, clause, phrase or requirement thereof irrespective of the fact that any one or more divisions, sections, subsections, sentences, clauses, phrases, or requirements be declared unconstitutional.

HISTORY: L. 1957, ch. 343, § 88; July 1.

65-2890. Name of act; citation. This act shall be known and cited as "the Kansas healing arts act."

HISTORY: L. 1957, ch. 343, § 90; July 1.

65-2891. Emergency care by health care providers; liability; standards of care applicable.

(a) Any health care provider who in good faith renders emergency care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.
(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by negligence.

(d) Any provision herein contained notwithstanding, the ordinary standards of care and rules of negligence shall apply in those cases wherein emergency care and assistance is rendered in any physician's or dentist's office, clinic, emergency room or hospital with or without compensation.

(e) As used in this section the term "health care provider" means any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, licensed podiatrist, licensed pharmacist, licensed physical therapist, and any physician assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physicians' assistants of the American board of medical examiners, any registered athletic trainer, any licensed occupational therapist, any licensed respiratory therapist, any person who holds a valid attendant's certificate under K.S.A. 65-6129, and amendments thereto, any person who holds a valid certificate for the successful completion of a course in first aid offered or approved by the American red cross, by the American heart association, by the mining enforcement and safety administration of the bureau of mines of the department of interior, by the national safety council or by any instructor-coordinator, as defined in K.S.A. 65-6112, and amendments thereto, and any person engaged in a postgraduate training program approved by the state board of healing arts.

HISTORY: L. 1965, ch. 385, § 1; L. 1969, ch. 300, § 1; L. 1971, ch. 214, § 1; L. 1973, ch. 252, § 1; L. 1975, ch. 326, § 1; L. 1976, ch. 277, § 1; L. 1977, ch. 220, § 1; L. 1986, ch. 231, § 32; L. 1988, ch. 252, § 1; L. 1988, ch. 246, § 18; L. 1988, ch. 253, § 1; L. 1993, ch. 146, § 1; L. 2000, ch. 93, § 1; L. 2002, ch. 203, § 17; L. 2003, ch. 128, § 24; Apr. 1, 2004.

65-2892. Examination and treatment of persons under 18 for venereal disease; liability. Any physician, upon consultation by any person under eighteen (18) years of age as a patient, may, with the consent of such person who is hereby granted the right of giving such consent, make a diagnostic examination for venereal disease and prescribe for and treat such person for venereal disease including prophylactic treatment for exposure to venereal disease whenever such person is suspected of having a venereal disease or contact with anyone having a venereal disease. All such examinations and treatment may be performed without the consent of, or notification to, the parent, parents, guardian or any other person having custody of such person. Any physician examining or treating such person for venereal disease may, but shall not be obligated to, in accord with his opinion of what will be most beneficial for such person, inform the spouse, parent, custodian, guardian or fiance of such person as to the treatment given or needed without the consent of such person. Such informing shall not constitute libel or slander or a violation of the right of privacy or privilege or otherwise subject the physician to any liability whatsoever. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered, provided reasonable care has been taken to elicit from such person under eighteen (18) years of age any history of sensitivity or previous adverse reaction to the medication.

HISTORY: L. 1969, ch. 222, § 1; L. 1972, ch. 161, § 17; July 1.

65-2892a. Examination and treatment of minors for drug abuse, misuse or addiction; liability. Any physician licensed to practice the healing arts in Kansas, upon consultation with any minor as a patient, may examine and treat such minor for drug abuse, misuse or addiction if such physician has secured the prior consent of such minor to the examination and treatment. All such examinations and treatment may be performed without the consent of any parent, guardian or other person having custody of such minor, and all minors are hereby granted the right to give consent to such examination and treatment. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered, if reasonable care has been taken.

HISTORY: L. 1971, ch. 212, § 1; July 1.

65-2893. Autopsies; performance of; authorization. In any case of death wherein notification of the coroner is not required by K.S.A. 19-1031 and amendments thereto, or any case in which the coroner does not elect to perform an autopsy, an autopsy may be performed upon the body of a deceased person by a physician or surgeon when so authorized, in writing by the decedent during his lifetime. Additionally, unless the physician or surgeon has knowledge that contrary directions have been given by the decedent, the following persons in the order of priority stated, may consent to the performance of an autopsy:

(1) The spouse, if one survives and if not incapacitated. If no spouse survives or if the spouse is incapacitated;

(2) an adult child;

(3) either parent;

(4) an adult brother or sister;

(5) the guardian of the decedent at the time of his death;

(6) any other person or agency authorized or under obligation to dispose of the body.

If there is no surviving spouse and an adult child is not immediately available at the time of death, the autopsy may be authorized by either parent; if a parent is not immediately available, it may be authorized by any adult brother or sister: Provided, That such autopsy shall not be performed under a consent given as required by a member of the class listed in (2), (3) or (4) above, if, before such autopsy is performed, any member of the class shall object to the performance of such autopsy in writing to the physician or surgeon by whom the autopsy is to be performed.

HISTORY: L. 1969, ch. 144, § 1; July 1.

65-2895. Institutional license; qualifications; rights and restrictions; term of license.

(a) There is hereby created a designation of institutional license which may be issued by the board to a person who is a graduate of an accredited school of the healing arts or a school which has been in operation for not less than 15 years and the graduates of which have been licensed in another state or states which have standards similar to Kansas and who is employed as provided in this section. Subject to the restrictions of this section, the institutional license shall confer upon the holder the right and privilege to practice that branch of the healing arts in which the holder of the institutional license is proficient and shall obligate the holder to comply with all requirements of such license. The practice privileges of institutional license holders are restricted as follows: The institutional license shall be valid only during the period in which:

(1) The holder is employed by the department of social and rehabilitation services, employed by any institution within the department of corrections or employed pursuant to a contract entered into by the department of social and rehabilitation services or the department of corrections with a third party, and only within the institution to which the holder is assigned;

(2) the holder was issued an institutional license prior to May 8, 1997, and is employed to provide mental health services in the employ of a Kansas licensed community mental health center, or one of its contracted affiliates, or a federal, state, county or municipal agency, or other political subdivision, or a contractor of a federal, state, county or municipal agency, or other political subdivision, or a duly chartered educational institution, or a medical care facility licensed under K.S.A. 65-425 et seq, and amendments thereto, in a psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto, or a contractor of such educational institution, medical care facility or psychiatric hospital, and whose practice, in any such employment, is limited to providing mental health services, is a part of the duties of such licensee's paid position and is performed solely on behalf of the employer; or

(3) the holder was issued an institutional license prior to May 8, 1997, and is providing mental health services pursuant to a written protocol with a person who holds a license to practice medicine and surgery other than an institutional license.

(b) An institutional license shall be valid for a period of two years after the date of issuance and may be renewed if the applicant for renewal is eligible to obtain an institutional license under this section, has successfully completed the examination required under subsection (a)(3) of K.S.A. 65-2873 and amendments thereto and has submitted evidence of satisfactory completion of a program of continuing education required by the board. The board shall require each applicant for renewal of an institutional license under this section to submit evidence of satisfactory completion of a program of continuing education required by the board of licensees of the branch of the healing arts in which the applicant is proficient.

(c) Notwithstanding the provisions of subsection (b), an institutional license may be renewed once for two years if the holder was issued an institutional license prior to May 8, 1997, has successfully completed two years of postgraduate training in the United States and has submitted evidence of satisfactory completion of a program of continuing education required by the board.

(d) This section shall be a part of and supplemental to the Kansas Healing Arts Act.

HISTORY: L. 1969, ch. 299, § 20; L. 1976, ch. 273, § 38; L. 1985, ch. 216, § 4; L. 1987, ch. 239, § 5; L. 1987, ch. 240, § 11; L. 1988, ch. 254, § 1; L. 1989, ch. 196, § 3; L. 1997, ch. 142, § 10; L. 2000, ch. 141, § 4; July 1.

65-2898. Immunity from liability in civil actions for reporting, communicating and investigating certain information concerning alleged malpractice incidents and other information; conditions.

(a) No person reporting to the state board of healing arts in good faith any information such person may have relating to alleged incidents of malpractice, or the qualifications, fitness or character of, or disciplinary action taken against, a person licensed, registered or certified by the board shall be subject to a civil action for damages as a result of reporting such information.

(b) Any state, regional or local association composed of persons licensed to practice a branch of the healing arts and the individual members of any committee thereof, which in good faith investigates or communicates information pertaining to the alleged incidents of malpractice, or the qualifications, fitness or character of, or disciplinary action taken against, any licensee, registrant or certificate holder to the state board of healing arts or to any committee or agent thereof, shall be immune from liability in any civil action, that is based upon such investigation or transmittal of information if the investigation and communication was made in good faith and did not represent as true any matter not reasonably believed to be true.

HISTORY: L. 1976, ch. 261, § 1; L. 1979, ch. 201, § 1; L. 1983, ch. 213, § 9; July 1.

65-2898a. Confidentiality of complaints and reports relating thereto; disclosure, when.

(a) Any complaint or report, record or other information relating to a complaint which is received, obtained or maintained by the board shall be confidential and shall not be disclosed by the board or its employees in a manner which identifies or enables identification of the person who is the subject or source of the information except the information may be disclosed:

(1) In any proceeding conducted by the board under the law or in an appeal of an order of the board entered in a proceeding, or to any party to a proceeding or appeal or the party's attorney;

(2) to a hospital committee which is authorized to grant, limit or deny hospital privileges, if any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto has at any time been taken against the licensee or if the board has at any time denied a license to the person;

(3) to the person who is the subject of the information or to any person or entity when requested by the person who is the subject of the information, but the board may require disclosure in such a manner that will prevent identification of any other person who is the subject or source of the information; or

(4) to a state or federal licensing, regulatory or enforcement agency with jurisdiction over the subject of the information or to an agency with jurisdiction over acts or conduct similar to acts or conduct which would constitute grounds for action under this act. Any confidential complaint or report, record or other information disclosed by the board as authorized by this section shall not be redisclosed by the receiving agency except as otherwise authorized by law.

(b) This section shall be part of and supplemental to the Kansas healing arts act.

HISTORY: L. 1979, ch. 198, § 9; L. 1986, ch. 229, § 45; L. 1992, ch. 253, § 4; July 1.

65-2899. Certification of licensed dentists to administer anesthetics to facilitate medical procedures; suspension or revocation of certificate; procedure. A dentist licensed in accordance with the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated shall be certified by the board of healing arts to administer general and local anesthetics to facilitate medical procedures conducted by a person licensed to practice medicine and surgery if such dentist has completed a course of study and residency program in anesthesia from the university of Kansas school of medicine and if such dentist has received a certificate attesting to the successful completion of such course of study and residency program. The board of healing arts may limit, suspend or revoke such certification if a person so certified is found to have committed any of the acts enumerated in K.S.A. 65-2836, and amendments thereto, where applicable. The

procedure for limitation, suspension or revocation of such certification shall be in accordance with the provisions of the Kansas administrative procedure act.

HISTORY: L. 1976, ch. 276, § 1; L. 1984, ch. 313, § 123; July 1, 1985.

65-28,100. Temporary license for visiting professor; designation; qualifications; application; rights conferred; validity of license; section supplemental.

(a) There is hereby created a designation of visiting professor temporary license which may be issued by the board to a person who holds a degree from an accredited school of medicine or an accredited school of osteopathy; is licensed to practice medicine and surgery in another state, territory, the District of Columbia or another country; and is employed by the university of Kansas school of medicine or by a licensed medical care facility which is engaged in the education of medical students, nurses, physicians' assistants or other paramedical personnel, is offering an approved postgraduate program or is engaged in the continuing education of its medical personnel. The chief administrative officer of the University of Kansas School of Medicine or of the licensed medical care facility shall apply to the board on behalf of the visiting professor a visiting professor temporary license. The application for a visiting professor temporary license shall be submitted by the chief administrative officer upon forms approved by the board. Such application shall state that the visiting professor is licensed to practice medicine and surgery in another state, territory, the District of Columbia or another country, that the professor is known to be professionally qualified and that no fee will be charged for services of the visiting professor. The visiting professor temporary license shall confer upon the holder the right and privilege to practice medicine and surgery and shall obligate the holder to comply with all requirements of such license. The visiting professor temporary license shall be valid only during the period in which the holder is employed by the University of Kansas School of Medicine or by a licensed medical care facility described above, and such license shall be valid only for the practice of medicine and surgery which is required to perform the professorship.

(b) This section shall be a part of and supplemental to the Kansas healing arts act.

HISTORY: L. 1976, ch. 273, § 39; L. 1987, ch. 240, § 14; Jan. 1, 1988.

65-28,101. Withholding or withdrawal of life-sustaining procedures; legislative finding and declaration. The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances of a terminal condition.

In order that the rights of patients may be respected even after they are no longer able to participate actively in decisions about themselves, the legislature hereby declares that the laws of this state shall recognize the right of an adult person to make a written declaration instructing his or her physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

HISTORY: L. 1979, ch. 199, § 1; July 1.

65-28,102. Same; definitions. As used in this act:

(a) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(b) "Declaration" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of K.S.A. 65-28,103.

(c) "Life-sustaining procedure" means any medical procedure or intervention which, when applied to a qualified patient, would serve only to prolong the dying process and where, in the judgment of the attending physician, death will occur whether or not such procedure or intervention is utilized. "Life-sustaining

procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

(d) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.

(e) "Qualified patient" means a patient who has executed a declaration in accordance with this act and who has been diagnosed and certified in writing to be afflicted with a terminal condition by two physicians who have personally examined the patient, one of whom shall be the attending physician.

HISTORY: L. 1979, ch. 199, § 2; July 1.

65-28,103. Same; declaration authorizing; effect during pregnancy of qualified patient; duty to notify attending physician; form of declaration; severability of directions.

(a) Any adult person may execute a declaration directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The declaration made pursuant to this act shall be:

(1) In writing;

(2) signed by the person making the declaration, or by another person in the declarant's presence and by the declarant's expressed direction;

(3) dated; and

(4) (A) signed in the presence of two or more witnesses at least 18 years of age neither of whom shall be the person who signed the declaration on behalf of and at the direction of the person making the declaration, related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care; or

(B) acknowledged before a notary public. The declaration of a qualified patient diagnosed as pregnant by the attending physician shall have no effect during the course of the qualified patient's pregnancy.

(b) It shall be the responsibility of declarant to provide for notification to the declarant's attending physician of the existence of the declaration. An attending physician who is so notified shall make the declaration, or a copy of the declaration, a part of the declarant's medical records.

(c) The declaration shall be substantially in the following form, but in addition may include other specific directions. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in the declaration are severable.

DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed _____

City, County and State
of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of declarant or codicil thereto, or directly financially responsible for declarant's medical care.

Witness _____ Witness _____

(OR)

STATE OF _____) ss:
COUNTY OF _____)

This instrument was acknowledged before me on _____ (date) by _____
(name of person)

_____
(Signature of notary public)

(Seal, if any)

My appointment expires: _____

Copies

HISTORY: L. 1979, ch. 199, § 3; L. 1994, ch. 224, § 2; July 1.

65-28,104. Same; revocation of declaration.

(a) A declaration may be revoked at any time by the declarant by any of the following methods:

(1) By being obliterated, burnt, torn, or otherwise destroyed or defaced in a manner indicating intention to cancel;

(2) by a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant; or

(3) by a verbal expression of the intent to revoke the declaration, in the presence of a witness eighteen (18) years of age or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective upon receipt by the attending physician of the above mentioned

writing. The attending physician shall record in the patient's medical record the time, date and place of when he or she received notification of the revocation.

(b) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

HISTORY: L. 1979, ch. 199, § 4; July 1.

65-28,105. Same; written certification and confirmation of declarant's terminal condition; effect of failure to comply. An attending physician who has been notified of the existence of a declaration executed under this act, without delay after the diagnosis of a terminal condition of the declarant, shall take the necessary steps to provide for written certification and confirmation of the declarant's terminal condition, so that declarant may be deemed to be a qualified patient under this act.

An attending physician who fails to comply with this section shall be deemed to have refused to comply with the declaration and shall be subject to subsection (a) of K.S.A. 65-28,107.

HISTORY: L. 1979, ch. 199, § 5; July 1.

65-28,106. Same; desires of qualified patient supersede declaration; presumptions relating to declaration; immunity from civil or criminal liability for persons acting pursuant to declaration. The desires of a qualified patient shall at all times supersede the effect of the declaration.

If the qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures, a declaration executed in accordance with K.S.A. 65-28,103 is presumed to be valid. For the purpose of this act, a physician or medical care facility may presume in the absence of actual notice to the contrary that an individual who executed a declaration was of sound mind when it was executed. The fact of an individual's having executed a declaration shall not be considered as an indication of a declarant's mental incompetency. Age of itself shall not be a bar to a determination of competency.

No physician, licensed health care professional, medical care facility or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-sustaining procedures from a qualified patient pursuant to a declaration made in accordance with this act shall, as a result thereof, be subject to criminal or civil liability, or be found to have committed an act of unprofessional conduct.

HISTORY: L. 1979, ch. 199, § 6; July 1.

65-28,107. Same; attending physician's refusal to comply with declaration of qualified patient; transfer of patient; unprofessional conduct; unlawful acts.

(a) An attending physician who refuses to comply with the declaration of a qualified patient pursuant to this act shall effect the transfer of the qualified patient to another physician. Failure of an attending physician to comply with the declaration of a qualified patient and to effect the transfer of the qualified patient shall constitute unprofessional conduct as defined in K.S.A. 65-2837.

(b) Any person who willfully conceals, cancels, defaces, obliterates or damages the declaration of another without such declarant's consent or who falsifies or forges a revocation of the declaration of another shall be guilty of a class A misdemeanor.

(c) Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a class E felony.

HISTORY: L. 1979, ch. 199, § 7; July 1.

65-28,108. Same; construction and effect of act.

(a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this act shall not, for any purpose, constitute a suicide and shall not constitute the crime of assisting suicide as defined by K.S.A. 21-3406.

(b) The making of a declaration pursuant to K.S.A. 65-28,103 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, medical care facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan or nonprofit medical and hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

(d) Nothing in this act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this act are cumulative.

(e) This act shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition.

HISTORY: L. 1979, ch. 199, § 8; L. 1997, ch. 8, § 13; July 1.

65-28,121. Reports by hospitals and others; administrative fines for failure to report.

(a) Subject to the provisions of subsection (c) of K.S.A. 65-4923, and amendments thereto, a medical care facility licensed under K.S.A. 65-425 et seq., and amendments thereto, shall, and any person may, report under oath to the state board of healing arts any information such facility or person has which appears to show that a person licensed to practice the healing arts has committed an act which may be a ground for disciplinary action pursuant to K.S.A. 65-2836, and amendments thereto.

(b) A medical care facility shall inform the state board of healing arts whenever the practice privileges of any person licensed to practice the healing arts are terminated, suspended or restricted or whenever such privileges are voluntarily surrendered or limited for reasons relating to such person's professional competence.

(c) Any medical care facility which fails to report within 30 days after the receipt of information required to be reported by this section shall be reported by the state board of healing arts to the secretary of health and environment and shall be subject, after proper notice and an opportunity to be heard, to a civil fine assessed by the secretary of health and environment in an amount not exceeding $ 1,000 per day for each day thereafter that the incident is not reported. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

HISTORY: L. 1983, ch. 213, § 2; L. 1986, ch. 229, § 46; L. 1988, ch. 255, § 1; L. 2001, ch. 5, § 240; July 1.

65-28,122. Person licensed to practice healing arts required to report knowledge of violation of 65-2836 to state board of healing arts.

(a) Subject to the provisions of subsection (c) of K.S.A. 65-4923, any person licensed to practice the healing arts who possesses knowledge not subject to the physician-patient privilege that another person so licensed has committed any act enumerated under K.S.A. 65-2836 and amendments thereto which may be a ground for disciplinary action pursuant to K.S.A. 65-2836 and amendments thereto shall immediately report such knowledge, under oath, to the state board of healing arts. A person licensed to practice the healing arts who possesses such knowledge shall reveal fully such knowledge upon official request of the state board of healing arts.

(b) This section shall be part of and supplemental to the Kansas healing arts act.

HISTORY: L. 1983, ch. 213, § 4; L. 1986, ch. 229, § 47; July 1

CHAPTER 65. PUBLIC HEALTH
ARTICLE 29. PHYSICAL THERAPY

65-2901. Definitions. As used in article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto:

(a) "Physical therapy" means examining, evaluating and testing individuals with mechanical, anatomical, physiological and developmental impairments, functional limitations and disabilities or other health and movement-related conditions in order to determine a diagnosis solely for physical therapy, prognosis, plan of therapeutic intervention and to assess the ongoing effects of physical therapy intervention. Physical therapy also includes alleviating impairments, functional limitations and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; functional training in community or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; patient-related instruction; reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations and engaging in administration, consultation, education and research. Physical therapy also includes the care and services provided by a physical therapist or a physical therapist assistant under the direction and supervision of a physical therapist that is licensed pursuant to this act. Physical therapy does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, the practice of any branch of the healing arts and the making of a medical diagnosis.

(b) "Physical therapist" means a person who is licensed to practice physical therapy pursuant to this act. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist and may designate or describe oneself as a physical therapist, physiotherapist, licensed physical therapist, P.T., Ph. T., M.P.T., D.P.T. or L.P.T. Physical therapists may evaluate patients without physician referral but may initiate treatment only after consultation with and approval by a physician licensed to practice medicine and surgery, a licensed podiatrist, a licensed chiropractor or a licensed dentist in appropriately related cases or a therapeutic licensed optometrist pursuant to subsection (e) of K.S.A. 65-1501, and amendments thereto.

(c) "Physical therapist assistant" means a person who is certified pursuant to this act and who works under the direction of a physical therapist, and who assists the physical therapist in selected components of physical therapy intervention. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist assistant, and may designate or describe oneself as a physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst.

(d) "Board" means the state board of healing arts.

(e) "Council" means the physical therapy advisory council.

HISTORY: L. 1963, ch. 318, § 1; L. 1973, ch. 253, § 1; L. 1983, ch. 215, § 1; L. 1988, ch. 246, § 19; L. 2003, ch. 128, § 1; Apr. 1, 2004.

65-2903. Physical therapy advisory council; membership; qualifications. There is hereby created a physical therapy advisory council to assist the board in carrying out the provisions of this law. The council shall consist of five members, citizens and residents of the State of Kansas, three of whom shall be physical therapists, one of whom shall be a physician licensed by the board to practice medicine and surgery and one of whom shall be a member of such board.

HISTORY: L. 1963, ch. 318, § 3; L. 1973, ch. 253, § 2; L. 1978, ch. 308, § 52; L. 1981, ch. 299, § 50; L. 1983, ch. 215, § 2; L. 1987, ch. 240, § 15; L. 2003, ch. 128, § 2; Apr. 1, 2004.

65-2904. Same; terms; oath. The council shall be appointed as follows: The board shall appoint one physician licensed to practice medicine and surgery and one member of the board, and the governor shall appoint three physical therapists who are duly licensed physical therapists who have at least three years' experience in physical therapy immediately preceding the appointment and are actively engaged, in this state, in physical therapy. The foregoing appointees shall constitute the council. Except as otherwise provided in this section, the members appointed in accordance with this section shall be appointed for terms of four years and shall serve until their successors are appointed and qualify. Members serving on the examining committee for physical therapy on the effective date of this act shall be members of the council and shall serve on the council until the conclusion of the terms for which they were appointed to the examining committee for physical therapy and until their successors are appointed and qualified. Each member of the council shall take an oath as required by law for state officers. No physical therapist member appointed by the governor shall be appointed for more than two successive four-year terms commencing on or after that date.

HISTORY: L. 1963, ch. 318, § 4; L. 1973, ch. 253, § 3; L. 1983, ch. 215, § 3; L. 1987, ch. 240, § 16; L. 2003, ch. 128, § 3; Apr. 1, 2004.

65-2905. Same; officers; executive director; powers and duties; quorum; records; employees; compensation and expenses.

(a) The physical therapy advisory council provided for in this act shall elect from their members a president and a vice-president, who shall serve for one year or until their successors are elected and qualified. The executive director of the board shall act as secretary of the council.

(b) The council shall serve in an advisory capacity to the board in matters pertaining to physical therapy. The board may adopt reasonable rules and regulations as may be found necessary for the performance of its duties. As to any matters coming under its jurisdiction, the council while in session may take testimony and any member may administer oaths in the taking of such testimony.

(c) A simple majority of the council shall constitute a quorum for the transaction of business. The secretary shall keep a record of all procedures of the council.

(d) The board may appoint and fix the compensation of such employees as may be necessary to assist the council, and the board shall have the power to employ such expert assistance as it may deem necessary to carry out the purposes of this act. Members of the council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.

HISTORY: L. 1963, ch. 318, § 5; L. 1973, ch. 253, § 4; L. 1974, ch. 348, § 28; L. 1983, ch. 215, § 4; L. 1987, ch. 240, § 17; L. 2003, ch. 128, § 4; Apr. 1, 2004.

65-2906. Duties of board; qualifications of applicants; form of application; approval of schools.

(a) The board, with the advice and assistance of the council, shall pass upon the qualifications of all applicants for licensure or certification and duly license or certify those applicants who meet the qualifications established by this act.

(b) An applicant applying for licensure as a physical therapist or for a certificate as a physical therapist assistant shall file a written application on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

(1) The applicant is of legal age;

(2) the applicant has successfully completed the academic requirements of an educational program in physical therapy approved by the board which is appropriate for the certification or licensure of the applicant or, if the applicant attended a program not approved by the board, the applicant shall present an evaluation by an entity approved by the board showing that applicant's educational program met the criteria a school must satisfy to be approved by the board;

(3) the applicant has passed an examination required by the board which is appropriate for the certification or licensure of the applicant to test the applicant's knowledge of the basic and clinical sciences relating to physical therapy theory and practice; and

(4) the applicant has paid to the board all applicable fees established under K.S.A. 65-2911 and amendments thereto.

(c) The board shall adopt rules and regulations establishing the criteria which a school shall satisfy in order to be approved by the board for purposes of subsection (b). The board may send a questionnaire developed by the board to any school for which the board does not have sufficient information to determine whether the school meets the requirements of the board for approval and rules and regulations adopted under this section. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools. In entering such contracts the authority to approve schools shall remain solely with the board.

HISTORY: L. 1963, ch. 318, § 6; L. 1972, ch. 237, § 1; L. 1973, ch. 253, § 5; L. 1974, ch. 256, § 1; L. 1983, ch. 215, § 5; L. 1983, ch. 213, § 10; L. 1988, ch. 243, § 10; L. 1994, ch. 134, § 1; L. 2003, ch. 128, § 5; Apr. 1, 2004.

65-2909. Examinations; when not required; fees; temporary permits.

(a) The board may issue a license in physical therapy without examination to an applicant who presents evidence satisfactory to the board of having passed the examination in physical therapy approved by the board or an examination before a lawfully authorized examining board in physical therapy of another state, District of Columbia, territory or foreign country, if the standards for licensure in physical therapy in such other state, district, territory or foreign country are determined by the board to be as high as those of this state. At the time of making such application, the applicant shall pay to the board a fee as prescribed, no part of which shall be returned.

(b) The board may issue a certificate as a physical therapist assistant without examination therein to an applicant who presents evidence satisfactory to the board of having passed an examination as a physical therapist assistant approved by the board or an examination before a lawfully authorized examining board in physical therapy of another state, District of Columbia, territory or foreign country, if the standards for certification in physical therapy in such other state, District of Columbia, territory or foreign country are determined by the board to be as high as those of this state. At the time of making such application, the applicant shall pay to the board a fee as prescribed, no part of which shall be returned.

(c) The board may issue a temporary permit to an applicant for licensure as a physical therapist or an applicant for certification as a physical therapist assistant who applies for a temporary permit on a form provided by the board, who meets the requirements for licensure as a physical therapist or for certification as a physical therapist assistant or who meets all of the requirements for licensure or certification except examination and who pays to the board the temporary permit fee as required under K.S.A. 65-2911 and amendments thereto. Such temporary permit shall expire three months from the date of issue or on the date that the board approves the application for licensure or certification, whichever occurs first. No more than one such temporary permit shall be granted to any one person.

HISTORY: L. 1963, ch. 318, § 9; L. 1973, ch. 253, § 8; L. 1983, ch. 215, § 8; L. 2003, ch. 128, § 6; Apr. 1, 2004.

65-2910. Renewal of license or certification; renewal requirements; expiration notice; fees; cancellation; reinstatement.

(a) The license of every licensed physical therapist and the certification of every certified physical therapist assistant shall expire on the date established by rules and regulations of the board which may provide renewal throughout the year on a continuing basis. In each case in which a license or certificate is renewed for a period of time of less than one year, the board may prorate the amount of the fee established under K.S.A. 65-2911 and amendments thereto. The request for renewal shall be on a form provided by the board and shall be accompanied by the renewal fee established under K.S.A. 65-2911 and amendments thereto which shall be paid not later than the expiration date of the license or certificate.

(b) The board shall require every licensed physical therapist or certified physical therapist assistant as a condition of renewal to submit with the application for a renewal evidence of satisfactory completion of a program of continuing education required by the board. The board shall establish the requirements for each such program of continuing education by rules and regulations. In establishing such requirements the board shall consider any existing programs of continuing education currently being offered to licensed physical therapists or certified physical therapist assistants.

(c) At least 30 days before the expiration of the license of a physical therapist or the certificate of a physical therapist assistant, the board shall notify the licensee or certificate holder of the expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If the licensee or certificate holder fails to pay the renewal fee by the date of expiration, the licensee or certificate holder shall be given a second notice that the license or certificate has expired and the license or certificate may be renewed only if the renewal fee and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, the license or certificate shall be canceled for failure to renew and shall be reissued only after the physical therapist or physical therapist assistant has been reinstated under subsection (d).

(d) Any licensee or certificate holder who allows the license or certificate to be canceled by failing to renew may be reinstated upon recommendation of the board, upon payment of the reinstatement fee and upon submitting evidence of satisfactory completion of any applicable reeducation and continuing education requirements established by the board. The board shall adopt rules and regulations establishing appropriate reeducation and continuing education requirements for reinstatement of persons whose licenses or certificates have been canceled for failure to renew.

HISTORY: L. 1963, ch. 318, § 10; L. 1973, ch. 253, § 9; L. 1976, ch. 274, § 4; L. 1983, ch. 215, § 9; L. 1992, ch. 253, § 5; L. 2003, ch. 128, § 7; Apr. 1, 2004.

65-2911. Rules and regulations; record of proceedings; roster of persons licensed or certified; fee limitations; examination fees; disposition of moneys; healing arts fee fund.

(a) The board may adopt such rules and regulations as necessary to carry out the purposes of this act. The executive director of the board shall keep a record of all proceedings under this act and a roster of all persons licensed or certified under the act. The roster shall show the name, address, date and number of the original license or certificate, and the renewal thereof.

(b) (1) The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:

Application based upon certificate of prior examination, not more than	$ 80
Application based on examination, not more than	100
Annual renewal fee, not more than	70
Late renewal fee, not more than	75
Reinstatement fee, not more than	80
Certified copy of license or certificate, not more than	15
Duplicate certificate	15
Temporary permit	25

(2) The board shall charge and collect in advance fees for any examination administered by the board under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto as fixed by the board by rules and regulations in an amount equal to the cost to the board of the examination. If the examination is not administered by the board, the board may require that fees paid for any examination under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto be paid directly to the examination service by the person taking the examination.

(3) The fees fixed by the board by rules and regulations under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto and in effect immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(c) The board shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president of the board.

HISTORY: L. 1963, ch. 318, § 11; L. 1973, ch. 309, § 24; L. 1983, ch. 215, § 10; L. 1987, ch. 240, § 18; L. 2001, ch. 5, § 241; L. 2003, ch. 128, § 8; Apr. 1, 2004.

65-2912. Grounds for refusal, suspension, revocation or limitation of license or certificate; censure; hearing procedure.

(a) The board may refuse to grant a license to any physical therapist or a certificate to any physical therapist assistant, or may suspend or revoke the license of any licensed physical therapist or certificate of any certified physical therapist assistant, or may limit the license of any licensed physical therapist or certificate of any certified physical therapist assistant or may censure a licensed physical therapist or certified physical therapist assistant for any of the following grounds:

(1) Addiction to or distribution of intoxicating liquors or drugs for other than lawful purposes;

(2) conviction of a felony if the board determines, after investigation, that the physical therapist or physical therapist assistant has not been sufficiently rehabilitated to warrant the public trust;

(3) obtaining or attempting to obtain licensure or certification by fraud or deception;

(4) finding by a court of competent jurisdiction that the physical therapist or physical therapist assistant is a disabled person and has not thereafter been restored to legal capacity;

(5) unprofessional conduct as defined by rules and regulations adopted by the board;

(6) the treatment or attempt to treat ailments or other health conditions of human beings other than by physical therapy and as authorized by this act;

(7) failure to refer patients to other health care providers if symptoms are present for which physical therapy treatment is inadvisable or if symptoms indicate conditions for which treatment is outside the scope of knowledge of the licensed physical therapist;

(8) initiating treatment without prior consultation and approval by a physician licensed to practice medicine and surgery, by a licensed podiatrist, by a licensed chiropractor, by a licensed dentist or by a therapeutic licensed optometrist pursuant to subsection (e) of K.S.A. 65-1501, and amendments thereto; and

(9) knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement.

(b) All proceedings pursuant to article 29 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof or supplemental thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the act for judicial review and civil enforcement of agency actions.

HISTORY: L. 1963, ch. 318, § 12; L. 1965, ch. 369, § 6; L. 1973, ch. 253, § 10; L. 1983, ch. 215, § 11; L. 1984, ch. 313, § 125; L. 1986, ch. 234, § 7; L. 1988, ch. 246, § 20; L. 2003, ch. 128, § 9; Apr. 1, 2004.

65-2913. Representation as physical therapist or physical therapist assistant; prohibitions; exceptions; construction of act.

(a) It shall be unlawful for any person who is not licensed under this act as a physical therapist or whose license has been suspended or revoked in any manner to represent oneself as a physical therapist or to use in connection with such person's name the words physical therapist, physiotherapist or licensed physical therapist or use the abbreviations P.T., Ph. T., M.P.T., D.P.T. or L.P.T., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist. A violation of this subsection shall constitute a class B nonperson misdemeanor.

(b) Any person who, in any manner, represents oneself as a physical therapist assistant, or who uses in connection with such person's name the words or letters physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist assistant, without a valid existing certificate as a physical therapist assistant issued to such person pursuant to the provisions of this act, shall be guilty of a class B nonperson misdemeanor.

(c) Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and practicing their profession. The provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto shall not apply to the following individuals so long as they do not hold themselves out in a manner prohibited under subsection (a) or (b) of this section:

(1) Persons rendering assistance in the case of an emergency;

(2) members of any church practicing their religious tenets;

(3) persons whose services are performed pursuant to the delegation of and under the supervision of a physical therapist who is licensed under this act;

(4) health care providers in the United States armed forces, public health services, federal facilities and coast guard or other military service when acting in the line of duty in this state;

(5) licensees under the healing arts act, and practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensee under subsection (g) of K.S.A. 65-2872 and amendments thereto;

(6) dentists practicing their professions, when licensed and practicing in accordance with the provisions of law;

(7) nurses practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed nurse under subsection (m) of K.S.A. 65-1124 and amendments thereto;

(8) health care providers who have been formally trained and are practicing in accordance with their training or have received specific training in one or more functions included in this act pursuant to established educational protocols or both;

(9) students while in actual attendance in an accredited health care educational program and under the supervision of a qualified instructor;

(10) self-care by a patient or gratuitous care by a friend or family member;

(11) optometrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(12) podiatrists practicing their profession when licensed and practicing in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(13) occupational therapists practicing their profession when licensed and practicing in accordance with the occupational therapy practice act and occupational therapy assistants practicing their profession when licensed and practicing in accordance with the occupational therapy practice act;

(14) respiratory therapists practicing their profession when licensed and practicing in accordance with the respiratory therapy practice act;

(15) physician assistants practicing their profession when licensed and practicing in accordance with the physician assistant licensure act;

(16) persons practicing corrective therapy in accordance with their training in corrective therapy;

(17) athletic trainers practicing their profession when registered and practicing in accordance with the athletic trainers registration act;

(18) persons who massage for the purpose of relaxation, muscle conditioning or figure improvement, so long as no drugs are used and such persons do not hold themselves out to be physicians or healers;

(19) barbers practicing their profession when licensed and practicing in accordance with the provisions of article 18 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(20) cosmetologists practicing their profession when licensed and practicing in accordance with the provisions of article 19 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(21) attendants practicing their profession when certified and practicing in accordance with the provisions of article 61 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(22) naturopathic doctors practicing their profession when registered and practicing in accordance with the naturopathic doctor registration act.

(d) Any patient monitoring, assessment or other procedures designed to evaluate the effectiveness of prescribed physical therapy must be performed by or pursuant to the delegation of a licensed physical therapist or other health care provider.

(e) Nothing in this act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon physical therapists to engage in any activity not conferred by this act.

HISTORY: L. 1963, ch. 318, § 13; L. 1973, ch. 253, § 11; L. 1983, ch. 215, § 12; L. 1994, ch. 134, § 2; L. 2003, ch. 128, § 10; Apr. 1, 2004.

65-2914. Fraud or deception in application for license; scope of authorized treatment.

(a) No person shall employ fraud or deception in applying for or securing a license as a physical therapist.

(b) A person licensed under this act as a physical therapist shall not treat ailments or other health conditions of human beings other than by physical therapy unless duly licensed or registered to provide such treatment under the laws of this state.

(c) A person certified under this act as a physical therapist assistant shall not treat ailments or other health conditions of human beings except under the direction of a physical therapist duly licensed under this act. The word "direction" as used in this subsection (c) shall mean that the physical therapist shall see all patients initially and evaluate them periodically except in those cases in a hospital setting when the physical therapist is not immediately available, the physical therapist assistant may initiate patient care after telephone contact with the physical therapist for documented instruction. The physical therapist must then evaluate the patient and establish a plan of treatment as soon as possible with a minimum weekly review.

(d) Any person violating the provisions of this section shall be guilty of a class B misdemeanor.

HISTORY: L. 1963, ch. 318, § 14; L. 1973, ch. 253, § 12; L. 1983, ch. 215, § 13; L. 1990, ch. 228, § 1; L. 2003, ch. 128, § 11; Apr. 1, 2004.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 32. UNIFORM ANATOMICAL GIFT ACT

65-3209. Definitions.

(a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

HISTORY: L. 1969, ch. 301, § 1; July 1.

65-3210. Persons who may execute an anatomical gift.

(a) Any individual of sound mind and 18 years of age or more may give all or any part of such person's body for any purpose specified in K.S.A. 65-3211, and amendments thereto, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a

member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in K.S.A. 65-3211, and amendments thereto:

(1) The agent for health care decisions established by a durable power of attorney for health care decisions pursuant to K.S.A. 58-625, et seq., and amendments thereto, if such power of attorney conveys to the agent the authority to make decisions concerning organ donation,

(2) the spouse,

(3) an adult son or daughter,

(4) either parent,

(5) an adult brother or sister,

(6) a guardian of the person of the decedent at the time of such person's death,

(7) any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by subsection (d) of K.S.A. 65-3215, and amendments thereto.

HISTORY: L. 1969, ch. 301, § 2; L. 1994, ch. 256, § 2; July 1.

65-3211. Persons who may become donees; purpose for which anatomical gifts may be made. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; or

(3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) any specified individual for therapy or transplantation needed by him.

HISTORY: L. 1969, ch. 301, § 3; July 1.

65-3212. Manner of executing anatomical gifts.

(a) A gift of all or part of the body under subsection (a) of K.S.A. 65-3210, and amendments thereto, may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under subsection (a) of K.S.A. 65-3210, and amendments thereto, may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in the donor's presence. If the donor cannot sign, the document may be signed for the donor at the donor's direction and in the donor's presence in the presence of two witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding subsection (b) of K.S.A. 65-3215, and amendments thereto, the donor may designate by will, card, or other document of gift the physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any physician for the purpose. The physician may direct an individual under such physician's supervision to carry out the appropriate procedures.

(e) Any gift by a person designated in subsection (b) of K.S.A. 65-3210, and amendments thereto, shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.

(f) A technical defect in the documentation of the gift shall not invalidate any gift if the intent to give such gift is clearly ascertained.

HISTORY: L. 1969, ch. 301, § 4; L. 1994, ch. 256, § 3; July 1.

65-3213. Search for determining document of gift; delivery of document of gift.

(a) The following persons shall make a reasonable search for the limited purpose of determining if there is a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) A law enforcement officer, firefighter, attendant, as defined in K.S.A. 65-6112, and amendments thereto, or other emergency rescuer finding an individual who the searcher believes is dead or near death; and

(2) a hospital, upon the arrival of an individual at or near the time of death, if there is not immediately available any other source of that information.

(b) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (a)(1), and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(c) If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

(d) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability.

HISTORY: L. 1969, ch. 301, § 5; L. 1994, ch. 256, § 4; July 1.

65-3214. Amendment or revocation of the gift.

(a) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement;

(2) an oral statement made in the presence of two persons and communicated to the donee;

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(4) a signed card or document found on such person or in such person's effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a).

(d) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

HISTORY: L. 1969, ch. 301, § 6; L. 1994, ch. 256, § 5; July 1.

65-3215. Rights and duties at death.

(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this act or the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

HISTORY: L. 1969, ch. 301, § 7; July 1.

65-3216. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: L. 1969, ch. 301, § 8; July 1.

65-3217. Short title. This act may be cited as the uniform anatomical gift act.

HISTORY: L. 1969, ch. 301, § 9; July 1.

65-3218. Hospitals to develop protocols for identifying potential donors of bodyparts; family of potential donor to be informed of option to donate parts of deceased's body; factors protocols may consider.

(a) Each hospital in this state shall develop a protocol for identifying potential donors of body parts. The protocol shall require that any potential donor's next of kin or other individual who may execute an anatomical gift pursuant to K.S.A. 65-3210 and amendments thereto, at or near the time of notification of death, be asked whether the potential donor had authorized the donation of any body parts. If not, the family shall be informed of the option to donate parts of the deceased's body pursuant to the uniform anatomical gift act. With the approval of the designated next of kin or other individual who may execute an anatomical gift pursuant to K.S.A. 65-3210 and amendments thereto, the hospital shall then notify an organ and tissue procurement organization and cooperate in the procurement of the anatomical gift or gifts. The protocol shall encourage reasonable discretion and sensitivity to the family circumstances in all discussion regarding donations of body parts. The protocol may take into account the deceased individual's religious beliefs or obvious nonsuitability for donation of body parts. The protocol may take into account the hospital's ability to maintain a potential donor in a condition which would allow for retrieval of body parts. If an organ and tissue procurement organization does not exist in the region, the hospital shall contact an organ or a tissue procurement organization, as appropriate. Laws pertaining to notification of the coroner shall be complied with in all cases of reportable deaths.

(b) This section shall be part of and supplemental to the uniform anatomical gift act.

HISTORY: L. 1986, ch. 227, § 1; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 35. LICENSURE OF ADULT CARE HOME ADMINISTRATORS

65-3501. Definitions. As used in this act, or the act of which this section is amendatory, the following words and phrases shall have the meanings respectively ascribed to them in this section:

(a) "Adult care home" means nursing facility, nursing facilities for mental health, intermediate care facilities for the mentally retarded, assisted living facility licensed for more than 60 residents and residential health care facility licensed for more than 60 residents as defined by K.S.A. 39-923 and amendments thereto or by the rules and regulations of the licensing agency adopted pursuant to such section for which a license is required under article 9 of chapter 39 of the Kansas Statutes Annotated, or acts amendatory thereof or supplemental thereto, except that the term "adult care home" shall not include a facility that is operated exclusively for the care and treatment of the mentally retarded and is licensed for 16 or fewer beds.

(b) "Board" means the board of adult care home administrators established by K.S.A. 65-3506 and amendments thereto.

(c) "Administrator" means the individual directly responsible for planning, organizing, directing and controlling the operation of an adult care home.

(d) "Person" means an individual and does not include the term firm, corporation, association, partnership, institution, public body, joint stock association or any group of individuals.

(e) "Sponsor" means entities approved by the board to provide continuing education programs or courses on an ongoing basis under this act and in accordance with any rules and regulations promulgated by the board in accordance with this act.

HISTORY: L. 1970, ch. 265, § 1; L. 1975, ch. 328, § 1; L. 1978, ch. 255, § 1; L. 1979, ch. 203, § 1; L. 1992, ch. 322, § 12; L. 1995, ch. 143, § 2; L. 1998, ch. 200, § 1; July 1.

65-3502. Adult care home administrator's license required; temporary licenses, limitation. From and after the effective date of this act, no adult care home in the state shall be operated unless it is under the supervision of an administrator who holds a currently valid adult care home administrator's license issued pursuant to this act. No person

shall practice or offer to practice adult care home administration in this state or use any title, sign, card or device to indicate that the person is an adult care home administrator, unless such person shall have been duly licensed as an adult care home administrator as required by this act. The board may authorize, by rules and regulations, the issuance of a temporary license as an adult care home administrator in the event of an emergency to be effective for a period of 60 days. The temporary license fee shall be fixed by rules and regulations. Such temporary license may be extended for two consecutive sixty-day periods of time, but in no case shall a temporary license be maintained in effect for a period of time greater than 180 days.

HISTORY: L. 1970, ch. 265, § 2; L. 1975, ch. 328, § 3; L. 1976, ch. 278, § 1; L. 1993, ch. 64, § 1; July 1.

65-3503. Duties of board of adult care home administrators; criminal history record information.

(a) It shall be the duty of the board to:

(1) Develop, impose and enforce standards which shall be met by individuals in order to receive a license as an adult care home administrator, which standards shall be designed to ensure that adult care home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as adult care home administrators;

(2) develop examinations and investigations for determining whether an individual meets such standards;

(3) issue licenses to individuals who meet such standards, and revoke or suspend licenses issued by the board or reprimand, censure or otherwise discipline a person holding any such license as provided under K.S.A. 65-3508, and amendments thereto;

(4) establish and carry out procedures designed to ensure that individuals licensed as adult care home administrators comply with the requirements of such standards; and

(5) receive, investigate and take appropriate action under K.S.A. 65-3505, and amendments thereto, and rules and regulations adopted by the board with respect to any charge or complaint filed with the board to the effect that any person licensed as an adult care home administrator may be subject to disciplinary action under K.S.A. 65-3505 and 65-3508, and amendments thereto.

(b) The board shall also have the power to make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to have subpoenas issued pursuant to K.S.A. 60-245, and amendments thereto, in the board's exercise of its power and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the social security act, the federal rules and regulations promulgated thereunder and other pertinent federal authority.

(c) The board shall fix by rules and regulations the licensure fee, temporary license fee, renewal fee, late renewal fee, reinstatement fee, reciprocity fee, sponsorship fee, wall or wallet card license replacement fee, duplicate wall license fee for any administrator serving as administrator in more than one facility and, if necessary, an examination fee under this act. Such fees shall be fixed in an amount to cover the costs of administering the provisions of the act. No fee shall be more than $ 200. The secretary of health and environment shall remit all moneys received from fees, charges or penalties under this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) The board upon request shall receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

HISTORY: L. 1970, ch. 265, § 3; L. 1975, ch. 328, § 4; L. 1978, ch. 255, § 2; L. 1984, ch. 313, § 127; L. 1990, ch. 230, § 1; L. 1993, ch. 64, § 2; L. 1995, ch. 143, § 7; L. 1998, ch. 200, § 2; L. 2001, ch. 5, § 254; L. 2003, ch. 71, § 1; July 1.

65-3504. Qualifications for admission to examination.

(a) The board shall admit to examination for licensure as an adult care home administrator any candidate who pays a licensure and examination fee, if required, to the department of health and environment to be fixed by rules and regulations; submits evidence that such candidate is at least 18 years old; has completed preliminary education satisfactory to the board as prescribed in rules and regulations; and has met board established standards of good character, training and experience.

(b) Nothing in the provisions of article 35 of chapter 65 of the Kansas Statutes Annotated or acts amendatory of the provisions thereof or supplemental thereto or any rules and regulations adopted pursuant thereto shall prohibit a candidate for licensure as an adult care home administrator who is a member of a recognized church or religious denomination whose religious teachings prohibit the acquisition of formal education which would qualify such candidate for examination as required by the board under subsection (a) from being admitted to examination under subsection (a) so long as such candidate otherwise meets the qualifications for admission to examination under subsection (a). A candidate for licensure as an adult care home administrator who qualifies to take the examination for licensure under this subsection (b), who passes the examination and who is licensed as an adult care home administrator shall engage in the practice of adult care home administration only in an adult care home which is owned and operated by such recognized church or religious denomination.

HISTORY: L. 1970, ch. 265, § 4; L. 1975, ch. 328, § 5; L. 1981, ch. 252, § 1; L. 1990, ch. 230, § 2; L. 1993, ch. 64, § 3; L. 2003, ch. 71, § 2; July 1.

65-3505. Renewal of license; application, fee and evidence; reinstatement of license, fee; reciprocal relations with other states.

(a) Every individual who holds a valid license as an administrator issued by the board shall apply to the board for renewal of such license in accordance with rules and regulations adopted by the board and report any facts requested by the board on forms provided for such purpose.

(b) Upon making an application for a renewal of license, such individual shall pay a renewal fee to be fixed by rules and regulations and shall submit evidence satisfactory to the board that during the period immediately preceding application for renewal the applicant has attended a program or course of study as provided by the rules and regulations of the board. Any individual who submits an application for a renewal of license within 30 days after the date of expiration shall also pay a late renewal fee fixed by rules and regulations. Any individual who submits an application for a renewal of license after the thirty-day period following the date of expiration shall be considered as having a license that has lapsed for failure to renew and shall be reissued a license only after the individual has been reinstated under subsection (d).

(c) Upon receipt of such application for renewal of license, the renewal fee and the evidence required, the board shall issue a license to such administrator.

(d) An administrator who has been duly licensed in this state, whose license has not been revoked or suspended, and whose license has expired because of temporary abandonment of the practice of nursing home administration, or has moved from the state, or for such other reason, may be licensed within the state upon complying with the provisions of this section for renewal of license, filing with the board an application, and submission of a renewal fee and reinstatement fee fixed by rules and regulations.

(e) Notwithstanding the foregoing provisions of this section, the board may enter into reciprocal relations with boards of other states or endorse the training acquired by an applicant whereby licenses may be granted, without examination and upon payment of a licensure fee and a reciprocity fee, to duly licensed administrators from other states, provided the requirements for licensure of the state from which the applicant applies are as high as those in Kansas and the applicant is favorably recommended, in writing, by the board of the state in which the applicant is licensed.

(f) The expiration date of each license issued or renewed shall be established by rules and regulations of the board. Subject to the provisions of this subsection each license shall be renewable on a biennial basis upon the filing of a renewal application prior to the expiration date of the license and upon payment of the renewal fee established pursuant

to rules and regulations of the board. To provide for a system of biennial renewal of licenses the board may provide by rules and regulations that licenses issued or renewed for the first time after the effective date of this act may expire less than two years from the date of issuance or renewal. In each case in which a license is issued or renewed for a period of time less than two years, the board shall prorate to the nearest whole month the license or renewal fee established pursuant to rules and regulations. No proration shall be made under this subsection (f) on delinquent license renewals or on temporary licenses.

HISTORY: L. 1970, ch. 265, § 5; L. 1975, ch. 328, § 6; L. 1978, ch. 255, § 3; L. 1981, ch. 252, § 2; L. 1993, ch. 64, § 4; July 1.

65-3506. Board of adult care home administrators established; duties; members; appointment; qualifications; meetings; final orders; compensation and expenses.

(a) There is hereby established the board of adult care home administrators. The board shall be attached to the department of health and environment and shall be within the department as a part thereof. All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the secretary of health and environment. The department shall serve as the administrative agency of the board in all respects and shall perform such services and duties as it may be legally called upon to perform. The attorney for the board shall be an assistant attorney general appointed by the attorney general. The office of the attorney general shall serve as the enforcement agency for the board. All vouchers for expenditures and all payrolls of the board shall be approved by the chairperson of the board and by the secretary of health and environment.

(b) The board of adult care home administrators shall be composed of seven members appointed by the governor, three of whom are representatives of professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients, two consumer representatives who have no current or previous involvement in the financial affairs or as a member of the governing body of any adult care home or any association directly concerned with the regulation or licensure of adult care homes in the state and two adult care home administrators who, at the time of their appointment, are licensed by the state and are actively engaged in the administration of adult care homes within the state. No more than three members of the board may be licensed administrators. Members of the board, other than the licensed administrators, shall have no direct financial interest in adult care homes. Members of the board shall serve on the board for terms of two years or until otherwise disqualified from serving on the board, except two of the members first appointed shall serve on the board for terms of one year and thereafter, upon the expiration of such one year terms, successors shall be appointed in the same manner as the original appointments for terms of two years. The provisions of this act shall not affect the office of any member of the board of adult care home administrators appointed prior to the effective date of this act. All members of the board appointed after the effective date of this act shall be appointed by the governor.

(c) Members of the board of adult care home administrators shall meet at such times as may be appropriate but in no case less than once each four months. The chairperson of the board shall be elected annually from among the members of the board. All final orders shall be in writing and shall be issued in accordance with the Kansas administrative procedure act.

(d) Members of the board who attend meetings of such board, or attend a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

HISTORY: L. 1975, ch. 328, § 2; L. 1980, ch. 194, § 1; L. 1988, ch. 352, § 2; L. 2001, ch. 197, § 3; L. 2003, ch. 71, § 3; July 1.

65-3507. Transfer to board of powers, duties and functions relating to licensure and registration of administrators.

(a) All of the powers, duties and functions of the secretary of health and environment granted by K.S.A. 65-3501 to 65-3505, inclusive, relating to the licensure and registration of skilled nursing home administrators, are transferred to and

conferred and imposed upon the board of adult care home administrators established by K.S.A. 65-3506, except as otherwise provided by this act.

(b) Whenever the secretary of health and environment or the department of health and environment, or words of like effect, is referred to or designated by a contract or other document executed pursuant to the powers, duties and functions granted to the secretary of health and environment by K.S.A. 65-3501 to 65-3505, inclusive, such reference or designation shall be deemed to apply to the board of adult care home administrators established by K.S.A. 65-3506.

(c) All rules and regulations and all orders or directives of the secretary of health and environment adopted in administering the powers, duties and functions granted to such secretary by K.S.A. 65-3501 to 65-3505, inclusive, and in existence on the effective date of this act shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the board of adult care home administrators created by K.S.A. 65-3506, until revised, amended, repealed or nullified pursuant to law.

HISTORY: L. 1975, ch. 328, § 7; April 18.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 37. HUMAN BLOOD

65-3701. Human blood; nature of supplying; liability. The procuring, furnishing, donating, processing, distributing or using human whole blood, plasma, blood products, blood derivatives and products for the purpose of injecting or transfusing any of them in the human body is declared for all purposes to be the rendition of a service by every person, firm or corporation participating therein, whether or not any remuneration is paid therefor, and is declared not to be a sale of any such items and no warranties of any kind or description shall be applicable thereto. No such person, firm or corporation participating in rendering such services shall be liable for damages unless negligence is proven.

HISTORY: L. 1971, ch. 215, § 1; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 40. ALCOHOLISM AND INTOXICATION TREATMENT

65-4001. Purpose of act. It shall be the purpose of this act to provide for the development, establishment and enforcement of standards:

(1) For the care and treatment of individuals in public and private treatment facilities as defined herein;

(2) for the construction, maintenance and operation of public and private treatment facilities as defined herein, which will promote safe and adequate treatment of such individuals in alcohol treatment facilities.

HISTORY: L. 1972, ch. 241, § 1; L. 1982, ch. 268, § 1; July 1.

65-4002. Declaration of policy. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

HISTORY: L. 1972, ch. 241, § 2; July 1.

65-4012. Licensure of treatment facilities. No person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a treatment facility in this state without a license under this law.

HISTORY: L. 1972, ch. 241, § 12; L. 1996, ch. 235, § 7; Oct. 1.

65-4013. Application for license; rules and regulations; fees.

(a) An application for a license to establish, conduct, manage or operate a treatment facility shall be made to the secretary upon forms provided by the secretary and shall contain such information as the secretary may require, which may include affirmative evidence of ability to comply with such reasonable standards and rules and regulations as are lawfully adopted under this act and amendments thereto. In addition, the secretary may require that all applications be accompanied by an application fee of not to exceed $ 100 as prescribed by such rules and regulations of the secretary.

(b) The secretary of health and environment may adopt reasonable rules and regulations with regard to the health standards which must be maintained by treatment facilities and may enforce such rules and regulations in accordance with the authority granted the secretary of health and environment under K.S.A. 65-425 et seq. and amendments thereto. If the rules and regulations of the secretary of health and environment establish such standards, an application under this section shall be accompanied by certification from the secretary of health and environment that the applicant has met the requirements established by such rules and regulations.

HISTORY: L. 1972, ch. 241, § 13; L. 1975, ch. 330, § 10; L. 1976, ch. 280, § 24; L. 1976, ch. 279, § 1; L. 1979, ch. 191, § 16; L. 1985, ch. 208, § 6; L. 1987, ch. 243, § 1; L. 1996, ch. 235, § 8; Oct. 1.

65-4014. Issuance or renewal of license; fees; term of license; rules and regulations.

(a) Upon receipt of an application for license, if the secretary approves the applicant as meeting the minimum requirements established by or pursuant to this act for a treatment facility, the secretary shall issue a license. A license, unless suspended or revoked, shall be renewable as set forth in subsection (b) upon the filing of an annual report upon uniform dates and containing information in the form as the secretary requires by rules and regulations. Such rules and regulations may require that all applications for renewal of a license be accompanied by a fee, in an amount prescribed by such rules and regulations, not to exceed $ 100. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the secretary. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) The secretary may issue a license renewable at the end of one, two or three years depending upon a facility's level of compliance with the standards and rules and regulations adopted by the secretary pursuant to K.S.A. 65-4016 and amendments thereto.

HISTORY: L. 1972, ch. 241, § 14; L. 1975, ch. 330, § 11; L. 1987, ch. 243, § 2; L. 1996, ch. 235, § 9; Oct. 1.

65-4015. Denial, suspension or revocation of license; notice and hearing; judicial review. The secretary, after notice and opportunity for hearing to the applicant or licensee, may deny, suspend or revoke a license if the secretary finds that there has been a substantial failure to comply with the requirements established under this act. Such notice shall fix a date, not less than 30 days from the date of such notice, at which the applicant or licensee shall be given an opportunity for a hearing.

Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Any action of the secretary under this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

HISTORY: L. 1972, ch. 241, § 15; L. 1975, ch. 330, § 12; L. 1986, ch. 318, § 108; L. 1988, ch. 356, § 212; L. 1996, ch. 235, § 10; Oct. 1.

65-4016. Rules and regulations; qualifications and selection of employees. The secretary shall adopt rules and regulations with respect to treatment facilities to be licensed and designed to further the accomplishment of the purposes of this law in promoting a safe and adequate treatment program for individuals in treatment facilities in the interest of public health, safety and welfare including, but not limited to, minimum qualifications for employees of licensed or certified programs which are less than the qualifications required for a registered alcohol and other drug abuse counselor. Boards of trustees or directors of institutions licensed under this act shall have the right to select the professional staff members of such institutions and to select and employ interns, nurses and other personnel.

HISTORY: L. 1972, ch. 241, § 16; L. 1975, ch. 330, § 13; L. 1976, ch. 279, § 2; L. 1992, ch. 184, § 6; L. 1994, ch. 14, § 1; L. 1996, ch. 235, § 11; Oct. 1.

65-4017. Time for compliance with rules, regulations and standards. Any treatment facility which is in operation at the time of adoption of rules and regulations or minimum standards under this act shall be given a reasonable time, under the particular circumstances not to exceed two years from the date of such adoption to comply with such rules and regulations and minimum standards.

HISTORY: L. 1972, ch. 241, § 17; L. 1996, ch. 235, § 12; Oct. 1.

65-4018. Inspections and investigations; rules and regulations concerning facility alteration or construction; preliminary inspections; consultations. The secretary shall make or cause to be made inspections and investigations as the secretary deems necessary. A licensee shall be inspected at least once each licensing period. The secretary may adopt rules and regulations that any licensee or applicant desiring to make specified types of alteration or additions to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the secretary of health and environment for preliminary inspection and approval or recommendations with respect to compliance with the standards and rules and regulations authorized by Kansas statutes. Necessary conferences and consultations may be provided.

HISTORY: L. 1972, ch. 241, § 18; L. 1975, ch. 330, § 14; L. 1987, ch. 243, § 3; L. 1996, ch. 235, § 13; Oct. 1.

65-4019. Information confidential. Information received by the secretary through filed reports, inspections, or as otherwise authorized under this act, shall not be disclosed in such manner as to identify any individual, except in a proceeding involving the question of licensure or pursuant to an order by a court of competent jurisdiction.

HISTORY: L. 1972, ch. 241, § 19; L. 1975, ch. 330, § 15; July 1.

65-4020. Annual report of secretary. The secretary shall prepare and publish an annual report of activities and operations under this act.

HISTORY: L. 1972, ch. 241, § 20; L. 1975, ch. 330, § 16; July 1.

65-4022. Penalties. Any person establishing, conducting, managing, or operating any treatment facility without a license under this law shall be guilty of a class C misdemeanor.

HISTORY: L. 1972, ch. 241, § 22; July 1.

65-4023. Unlawful acts; penalties; injunction.

(a) It shall be unlawful for any person, corporation or governmental unit to establish, conduct, manage or operate a treatment facility for alcoholics without first obtaining a license therefor. Any violation of this subsection shall constitute a class C misdemeanor.

(b) Notwithstanding the existence or pursuit of any other remedy, the secretary may maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a treatment facility without a license under this law.

HISTORY: L. 1972, ch. 241, § 23; L. 1975, ch. 330, § 17; L. 1976, ch. 279, § 3; July 1.

65-4024. Acceptance for treatment; rules and regulations; standards. The secretary shall adopt rules and regulations for acceptance of persons into the treatment program for the purpose of early and effective treatment of alcoholics and intoxicated persons. In adopting rules and regulations the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment.

(3) A person shall not be denied treatment solely because such person has withdrawn from treatment against medical advice on a prior occasion or because such person has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provisions shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available other appropriate treatment.

HISTORY: L. 1972, ch. 241, § 24; L. 1975, ch. 330, § 18; L. 1996, ch. 235, § 14; Oct. 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 41. CONTROLLED SUBSTANCES
UNIFORM CONTROLLED SUBSTANCES ACT

65-4101. Definitions. As used in this act:

(a) "Administer" means the direct application of a controlled substance, 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; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy.

(d) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(e) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments to these sections.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery, or pursuant to the prescription of a mid-level practitioner.

(i) "Dispenser" means a practitioner or pharmacist who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.

(m) "Immediate precursor" means a substance which the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(o) "Marijuana" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil,
or cake or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

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

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain
cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102 and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species Papaver somniferum l. except its seeds.

(s) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(t) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(u) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(v) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "Ultimate user" means a person who lawfully possesses a controlled substance for such person's own use or for the use of a member of such person's household or for administering to an animal owned by such person or by a member of such person's household.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Medical care facility" shall have the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto.

(aa) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(bb) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(cc) "Mid-level practitioner" means an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto or a physician assistant licensed under 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.

HISTORY: L. 1972, ch. 234, § 1; L. 1974, ch. 258, § 1; L. 1975, ch. 332, § 1; L. 1980, ch. 195, § 1; L. 1985, ch. 214, § 2; L. 1989, ch. 192, § 4; L. 1990, ch. 100, § 7; L. 1994, ch. 160, § 1; L. 1999, ch. 170, § 3; L. 2000, ch. 162, § 21; L. 2001, ch. 31, § 3; L. 2001, ch. 171, § 2; L. 2002, ch. 155, § 2; L. 2003, ch. 124, § 9; July 1.

65-4105. Substances included in schedule I.

(a) The controlled substances listed in this section are included in schedule I and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

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

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl] phenylacetamide.....9815

(2) Acetylmethadol.....9601

(3) Allylprodine.....9602

(4) Alphacetylmethadol.....9603
(except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM)

(5) Alphameprodine 9604

(33) Levophenacylmorphan 9631

(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide) 9813

(35) 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) 9833

(36) Morpheridine. 9632

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine) 9661

(38) Noracymethadol.....9633

(39) Norlevorphanol.....9634

(40) Normethadone 9635

(41) Norpipanone 9636

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide 9812

(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine).....9663

(44) Phenadoxone..... 9637

(45) Phenampromide. 9638

(46) Phenomorphan. 9647

(47) Phenoperidine. 9641

(48) Piritramide 9642

(49) Proheptazine. 9643

(50) Properidine..... 9644

(51) Propiram 9649

(52) Racemoramide. 9645

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide 9835

(54) Tilidine. 9750

(55) Trimeperidine 9646

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

(1) Acetorphine 9319

(2) Acetyldihydrocodeine.....9051

(3) Benzylmorphine..... 9052

(4) Codeine methylbromide..... 9070

(5) Codeine-N-Oxide.....9053

(6) Cyprenorphine. 9054

(7) Desomorphine..... 9055

(8) Dihydromorphine.....9145

(9) Drotebanol. 9335

(10) Etorphine (except hydrochloride salt).....9056

(11) Heroin. 9200

(12) Hydromorphinol 9301

(13) Methyldesorphine 9302

(14) Methyldihydromorphine. 9304

(15) Morphine methylbromide. 9305

(16) Morphine methylsulfonate.....9306

(17) Morphine-N-Oxide. 9307

(18) Myrophine 9308

(19) Nicocodeine. 9309

(20) Nicomorphine 9312

(21) Normorphine..... 9313

(22) Pholcodine 9314

(23) Thebacon 9315

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

(1) 4-bromo-2,5-dimethoxy-amphetamine 7391
Some trade or other names: 4-bromo-2,5-dimethoxy-alphamethylphenethylamine; 4-bromo-2,5-DMA

(2) 2,5-dimethoxyamphetamine 7396
Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.

(3) 4-methoxyamphetamine 7411
Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.....7401

(5) 4-methyl-2,5-dimethoxy-amphetamine 7395
Some trade or other names: 4-methyl-2,5-dimethoxy-alphamethylphenethylamine; "DOM"; and "STP"

(6) 3,4-methylenedioxy amphetamine 7400

(7) 3,4-methylenedioxymethamphetamine (MDMA). 7405

(8) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA) 7404

(9) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA) 7402

(10) 3,4,5-trimethoxy amphetamine 7390

(11) Bufotenine 7433
Some trade or other names: 3-(Beta-Dimethyl-aminoethyl) -5-hydroxyindole; 3-(2-dimethyl-aminoethyl) -5-indolol; N,N -dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.

(12) Diethyltryptamine 7434
Some trade or other names: N,N-Diethyltryptamine; DET.

(13) Dimethyltryptamine. 7435
Some trade or other names: DMT.

(14) Ibogaine 7260
Some trade or other names: 7-Ethyl-6,6 Beta,7,8,9,10,12,13 octahydro-2-methoxy-6,9-methano -5H-pyrido[1',2':1,2] azepino [5,4-b]indole; Tabernanthe iboga.

(15) Lysergic acid diethylamide 7315

(16) Marihuana 7360

(17) Mescaline 7381

(18) Parahexyl 7374
Some trade or other names: 3-Hexyl-l-hydroxy-7,8,9,10-tetrahydro-6,6,9- trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.

(19) Peyote 7415
Meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts.

(20) N-ethyl-3-piperidyl benzilate 7482

(21) N-methyl-3-piperidyl benzilate 7484

(22) Psilocybin 7437

(23) Psilocyn 7438

(24) Tetrahydrocannabinols 7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol,

and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(25) Ethylamine analog of phencyclidine 7455
Some trade or other names: N-ethyl-1-phenyl-cyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE.

(26) Pyrrolidine analog of phencyclidine 7458
Some trade or other names: 1-(1-phenylcyclo-hexyl)- pyrrolidine; PCPy; PHP.

(27) Thiophene analog of phencyclidine 7470
Some trade or other names: 1-[1-(2-thienyl)- cyclohexyl] -piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP.

(28) 1-[1-(2-thienyl)-cyclohexyl] pyrrolidine 7473
Some other names: TCPy

(29) 2,5-dimethoxy-4-ethylamphetamine 7399
Some trade or other names: DOET

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

(1) Mecloqualone 2572

(2) Methaqualone 2565

(3) Gamma hydroxybutyric acid

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

(1) Fenethylline 1503

(2) N-ethylamphetamine 1475

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

(4) N,N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine) 1480

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

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

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

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

(3) Methcathinone (some other names: 2-methylamino-1-phenylpropan-1-one: Ephedrone: Monomethylpropion: UR 1431, its salts, optical isomers and salts of optical isomers) 1237

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

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

HISTORY: L. 1972, ch. 234, § 5; L. 1982, ch. 269, § 2; L. 1985, ch. 220, § 1; L. 1986, ch. 241, § 1; L. 1987, ch. 244, § 1; L. 1989, ch. 200, § 1; L. 1991, ch. 199, § 1; L. 1992, ch. 174, § 1; L. 1993, ch. 70, § 1; L. 1994, ch. 54, § 1; L. 2001, ch. 171, § 3; July 1.

65-4105a. Treatment of a controlled substance analog. A controlled substance analog, to the extent intended for human consumption, must be treated, for the purposes of this act, as a substance included in K.S.A. 65-4105 and amendments thereto. Within 10 days after the initiation of prosecution with respect to a controlled substance analog by indictment, complaint or information, the prosecuting attorney shall notify the board of information relevant to emergency scheduling as provided for in subsection (e) of K.S.A. 65-4102 and amendments thereto. After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued. The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

HISTORY: L. 1994, ch. 160, § 5; July 1.

65-4107. Substances included in schedule II.

(a) The controlled substances listed in this section are included in schedule II and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

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

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

(A) Raw opium	9600
(B) Opium extracts	9610
(C) Opium fluid	9620
(D) Powdered opium	9639
(E) Granulated opium	9640
(F) Tincture of opium	9630
(G) Codeine	9050
(H) Ethylmorphine	9190
(I) Etorphine hydrochloride	9059
(J) Hydrocodone	9193
(K) Hydromorphone	9150
(L) Metopon	9260

(M) Morphine	9300
(N) Oxycodone	9143
(O) Oxymorphone	9652
(P) Thebaine	9333

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

(3) Opium poppy and poppy straw.

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

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

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

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

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

(1) Alfentanil	9737
(2) Alphaprodine	9010
(3) Anileridine	9020
(4) Bezitramide	9800
(5) Bulk dextropropoxyphene (nondosage forms)	9273
(6) Carfentanil	9743
(7) Dihydrocodeine	9120
(8) Diphenoxylate	9170
(9) Fentanyl	9801
(10) Isomethadone	9226
(11) Levomethorphan	9210
(12) Levorphanol	9220
(13) Metazocine	9240
(14) Methadone	9250
(15) Methadone-intermediate,4-cyano-2-dimethyl amino-4,4-diphenyl butane	9254
(16) Moramide-intermediate, 2-methyl-3- morpholino-1, 1-diphenylpropane-carboxylic acid	9802
(17) Pethidine (meperidine)	9230
(18) Pethidine-intermediate-A, 4-cyano-1-methyl- 4-phenylpiperidine	9232
(19) Pethidine-intermediate-B, ethyl-4-phenyl- piperidine-4-carboxylate	9233
(20) Pethidine-intermediate-C, 1-methyl-4-phenyl- piperidine-4-carboxylic acid	9234
(21) Phenazocine	9715
(22) Piminodine	9730

(23) Racemethorphan	9732
(24) Racemorphan	9733
(25) Sufentanil	9740
(26) Levo-alphacetyl methadol	9648
Some other names: levo-alpha-acetyl methadol, levomethadyl acetate or LAAM	

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

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

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

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

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

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone

8501 Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine	7460
(B) 1-piperidinocyclohexanecarbonitrile (PCC)	8603

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

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

HISTORY: L. 1972, ch. 234, § 7; L. 1974, ch. 258, § 3; L. 1978, ch. 257, § 1; L. 1980, ch. 195, § 2; L. 1982, ch. 269, § 3; L. 1985, ch. 220, § 2; L. 1986, ch. 241, § 2; L. 1987, ch. 244, § 2; L. 1989, ch. 200, § 2; L. 1991, ch. 199, § 2; L. 1992, ch. 174, § 2; L. 1994, ch. 54, § 2; L. 2000, ch. 108, § 2; Apr. 27.

65-4109. Substances included in schedule III.

(a) The controlled substances listed in this section are included in schedule III and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

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

(1) Any compound, mixture or preparation containing:

(A) Amobarbital	2126
(B) Secobarbital	2316
(C) Pentobarbital	2271

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(A) Amobarbital	2126
(B) Secobarbital	2316
(C) Pentobarbital	2271

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules 2100

(4) Chlorhexadol 2510

(5) Lysergic acid 7300

(6) Lysergic acid amide 7310

(7) Methyprylon 2575

(8) Sulfondiethylmethane 2600

(9) Sulfonethylmethane 2605

(10) Sulfonmethane 2610

(11) Tiletamine and zolazepam or any salt thereof 7295

Some trade or other names for a tiletamine-zolazepam combination product: Telazol
Some trade or other names for tiletamine: 2- (ethylamino)-2-(2-thienyl)-cyclohexanone
Some trade or other names for zolazepam: 4- (2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon

(12) Ketamine, its salts, isomers, and salts of Isomers 7285

Some other names for ketamine: (plus-minus) -2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone

(13) Gamma hydroxybutyric acid, any salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid contained in a drug product for which an application has been approved under section 505 of the federal food, drug and cosmetic act

(c) Nalorphine 9400

(d) Any material, compound, mixture or preparation containing any of the following narcotic drugs or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium 9803

(2) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9804

(3) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams perdosage unit with a fourfold or greater quantity of an isoquinolinealkaloid of opium 9805

(4) not more than 300 milligrams of dihydrocodeinone (hydrocodone) or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9806

(5) not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9807

(6) not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9808

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9809

(8) not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9810

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

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substance listed in schedule II, which compounds, mixtures or preparations were listed on August 25, 1971, as excepted compounds under section 308.32 of title 21 of the code of federal regulations, and any other drug of the quantitive compositionshown in that list for those drugs or which is the same, except that it contains a lesser quantity of controlled substances 1405

(2) Benzphetamine 1228
(3) Chlorphentermine 1645
(4) Chlortermine 1647
(5) Phendimetrazine 1615

(f) Anabolic steroids 4000

"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

(1) boldenone

(2) chlorotestosterone (4-chlortestosterone)

(3) clostebol

(4) dehydrochlormethyltestosterone

(5) dihydrotestosterone (4-dihydrotestosterone)

(6) drostanolone

(7) ethylestrenol

(8) fluoxymesterone

(9) formebulone (formebolone)

(10) mesterolone

(11) methandienone

(12) methandranone

(13) methandriol

(14) methandrostenolone

(15) methenolone

(16) methyltestosterone

(17) mibolerone

(18) nandrolone

(19) norethandrolone

(20) oxandrolone

(21) oxymesterone

(22) oxymetholone

(23) stanolone

(24) stanozolol

(25) testolactone

(26) testosterone

(27) trenbolone

(28) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

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

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

(g) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substance, its salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation: (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product7369 Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro -6-6-9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-0l, or (-)-delta-9- (trans)-tetrahydrocannabinol.

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

HISTORY: L. 1972, ch. 234, § 9; L. 1974, ch. 258, § 4; L. 1978, ch. 257, § 2; L. 1982, ch. 269, § 4; L. 1985, ch. 20, § 3; L. 1989, ch. 200, § 3; L. 1991, ch. 199, § 3; L. 1992, ch. 174, § 3; L. 2000, ch. 108, § 3; L. 2001, ch. 171, § 4; July 1.

65-4111. Substances included in schedule IV.

(a) The controlled substances listed in this section are included in schedule IV and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

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

(1) Alprazolam 2882

(2) Barbital 2145

(3) Bromazepam 2748

(4) Camazepam 2749

(33) Midazolam 2884

(34) Nimetazepam 2837

(35) Nitrazepam 2834

(36) Nordiazepam 2838

(37) Oxazepam 2835

(38) Oxazolam 2839

(39) Paraldehyde 2585

(40) Petrichloral 2591

(41) Phenobarbital 2285

(42) Pinazepam 2883

(43) Prazepam 2764

(44) Quazepam 2881

(45) Temazepam 2925

(46) Tetrazepam 2886

(47) Triazolam 2887

(48) Zolpidem 2783

(49) Zaleplon 2781

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

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

(1) Cathine (()-norpseudoephedrine) 1230

(2) Diethylpropion 1610

(3) Fencamfamin 1760

(4) Fenproporex 1575

(5) Mazindol 1605

(6) Mefenorex.....1580

(7) Pemoline (including organometallic complexes and chelates thereof).....1530

(8) Phentermine.....1640

The provisions of this subsection (d)(8) shall expire on the date phentermine and its salts and isomers are removed from schedule IV of the federal controlled substances act (21 United States code 812; 21 code of federal regulations 1308.14).

(9) Pipradrol.....1750

(10) SPA((-)-1-dimethylamino-1,2-diphenylethane).....1635

(11) Sibutramine.....1675

(12) Mondafinil.....1680

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

(1) Pentazocine.....9709

(2)Butorphanol (including its optical isomers).....9720

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

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.....9167

(2) Dextropropoxyphene (alpha-()-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).....9278

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

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

HISTORY: L. 1972, ch. 234, § 11; L. 1974, ch. 258, § 5; L. 1978, ch. 257, § 3; L. 1979, ch. 204, § 1; L. 1982, ch. 269, § 5; L. 1985, ch. 220, § 4; L. 1986, ch. 241, § 3; L. 1989, ch. 200, § 4; L. 1990, ch. 231, § 1; L. 1991, ch. 199, § 4; L. 1993, ch. 70, § 2; L. 1996, ch. 257, § 2; L. 1998, ch. 190, § 1; L. 2000, ch. 108, § 4;. L. 2001, ch. 171, § 5; July 1.

65-4113. Substances included in schedule V.

(a) The controlled substances or drugs, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section are included in schedule V.

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

Buprenorphine.....9064

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

(1) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than .5 milligram of difenoxin (9168) and not less than 25 micrograms of atropine sulfate per dosage unit.

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

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

(2) Pyrovalerone.....1485

(e) Except as provided in subsection (g), any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.

(f) Except as provided in subsection (g), any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

(g) The scheduling of the substances in subsections (e) and (f) shall not apply to any compounds, mixtures or preparations of ephedrine or pseudoephedrine which are in liquid, liquid capsule or gel capsule form.

HISTORY: L. 1972, ch. 234, § 13; L. 1982, ch. 269, § 6; L. 1984, ch. 243, § 1; L. 1985, ch. 220, § 5; L. 1991, ch. 199, § 5; L. 1992, ch. 174, § 4; L. 1995, ch. 218, § 3; May 18.

65-4115. Fees. The board may charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state.

HISTORY: L. 1972, ch. 234, § 15; L. 1974, ch. 258, § 7; July 1

65-4116. Registration requirements, exceptions; termination of registration.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state shall obtain

annually a registration issued by the board in accordance with the uniform controlled substances act and with rules and regulations adopted by the board.

(b) Persons registered by the board under this act to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this act.

(c) The following persons need not register and may lawfully possess controlled substances under this act, as specified in this subsection:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of such agent or employee's business or employment;

(2) a common carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or a mid-level practitioner or in lawful possession of a schedule V substance;

(4) persons licensed and registered by the board under the provisions of the acts contained in article 16 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, to manufacture, dispense or distribute drugs are considered to be in compliance with the registration provision of the uniform controlled substances act without additional proceedings before the board or the payment of additional fees, except that manufacturers and distributors shall complete and file the application form required under the uniform controlled substances act;

(5) any person licensed by the state board of healing arts under the Kansas healing arts act;

(6) any person licensed by the state board of veterinary examiners;

(7) any person licensed by the Kansas dental board;

(8) a mid-level practitioner; and

(9) any person who is a member of the Native American Church, with respect to use or possession of peyote, whose use or possession of peyote is in, or for use in, bona fide religious ceremonies of the Native American Church, but nothing in this paragraph shall authorize the use or possession of peyote in any place used for the confinement or housing of persons arrested, charged or convicted of criminal offenses or in the state security hospital.

(d) The board may waive by rules and regulations the requirement for registration of certain manufacturers, distributors or dispensers if the board finds it consistent with the public health and safety, except that licensure of any person by the state board of healing arts to practice any branch of the healing arts, Kansas dental board or the state board of veterinary examiners shall constitute compliance with the registration requirements of the uniform controlled substances act by such person for such person's place of professional practice. Evidence of abuse as determined by the board relating to a person licensed by the state board of healing arts shall be submitted to the state board of healing arts and the attorney general within 60 days. The state board of healing arts shall, within 60 days, make findings of fact and take such action against such person as it deems necessary. All findings of fact and any action taken shall be reported by the state board of healing arts to the board of pharmacy and the attorney general. Evidence of abuse as determined by the board relating to a person licensed by the state board of veterinary examiners shall be submitted to the state board of veterinary examiners and the attorney general within 60 days. The state board of veterinary examiners shall, within 60 days, make findings of fact and take such action against such person as it deems necessary. All findings of fact and any action taken shall be reported by the state board of veterinary examiners to the board of pharmacy and the attorney general. Evidence of abuse as determined by the board relating to a dentist licensed by the Kansas dental board shall be submitted to the Kansas dental board and the attorney general within 60 days. The Kansas dental board shall, within 60 days, make findings of

fact and take such action against such dentist as it deems necessary. All findings of fact and any action taken shall be reported by the Kansas dental board to the board of pharmacy and the attorney general.

(e) A separate annual registration is required at each place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules and regulations.

(g) (1) The registration of any person or location shall terminate when such person or authorized representative of a location dies, ceases legal existence, discontinues business or professional practice or changes the location as shown on the certificate of registration. Any registrant who ceases legal existence, discontinues business or professional practice, or changes location as shown on the certificate of registration, shall notify the board promptly of such fact and forthwith deliver the certificate of registration directly to the secretary or executive secretary of the board. In the event of a change in name or mailing address the person or authorized representative of the location shall notify the board promptly in advance of the effective date of this change by filing the change of name or mailing address with the board. This change shall be noted on the original application on file with the board.

(2) No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the board may specifically designate and then only pursuant to the written consent of the board.

HISTORY: L. 1972, ch. 234, § 16; L. 1973, ch. 258, § 1; L. 1974, ch. 259, § 1; L. 1981, ch. 253, § 1; L. 1987, ch. 244, § 3; L. 1999, ch. 87, § 4; L. 1999, ch. 149, § 9; L. 2003, ch. 124, § 10; July 1.

65-4117. Registration.

(a) The board shall register an applicant to manufacture, dispense or distribute controlled substances included in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments to these sections, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) compliance with applicable state and local law;

(3) any conviction of the applicant under any federal and state laws relating to any controlled substance;

(4) past experience in the manufacture, dispensing or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

(c) Practitioners shall be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to prescribe or to conduct research under the laws of this state.

(d) Pharmacists shall be registered to dispense schedule I designated prescription substances and controlled substances in schedules II through V if none of the grounds for revocation, suspension or refusal to renew a registration exist at the time of application.

(e) The board need not require separate registration under this act for practitioners or pharmacists engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this act in another capacity. Practitioners or pharmacists registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the board evidence of that federal registration.

(f) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

HISTORY: L. 1972, ch. 234, § 17; L. 1986, ch. 242, § 1; May 1.

65-4118. Revocation and suspension of registration.

(a) A registration under K.S.A. 65-4117 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this act;

(2) has been convicted of a felony under any state or federal law relating to any controlled substance;

(3) has violated any rule or regulation of the board controlling the manufacture, distribution or dispensing of the controlled substances contained in the schedules promulgated in the rules and regulations of the board; or

(4) has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition shall be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court upon application therefor orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances shall be forfeited to the state.

(d) The board shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

HISTORY: L. 1972, ch. 234; § 18; L. 1974, ch. 258, § 8; July 1.

65-4121. Registrants to keep records and inventories. Persons registered to manufacture, distribute or dispense controlled substances under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules and regulations the board issues.

HISTORY: L. 1972, ch. 234, § 21; July 1.

65-4122. Order forms for distribution of substances in schedules I and II. Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

HISTORY: L. 1972, ch. 234, § 22; July 1.

65-4123. Dispensing; schedule I designated prescription substance; prescriptions, limitations on refilling.

(a) Except as otherwise provided in K.S.A. 65-4117 and amendments thereto or in this subsection (a), no schedule I controlled substance may be dispensed. The board by rules and regulations may designate in accordance with the provisions of this subsection (a) a schedule I controlled substance as a schedule I designated prescription substance. A schedule I controlled substance designated as a schedule I designated prescription substance may be dispensed only upon the written prescription of a practitioner. Prior to designating a schedule I controlled substance as a schedule I designated prescription substance, the board shall find: (1) That the schedule I controlled substance has an accepted medical use in treatment in the United States; (2) that the public health will benefit by the designation of the substance as a schedule I designated prescription substance; and (3) that the substance may be sold lawfully under federal law pursuant to a prescription. No prescription for a schedule I designated prescription substance may be refilled.

(b) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner or a mid-level practitioner. In emergency situations, as defined by rules and regulations of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner or a mid-level practitioner reduced promptly to writing and filed by the pharmacy. No prescription for a schedule II substance may be refilled.

(c) Except when dispensed by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV which is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner or a mid-level practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times.

(d) A controlled substance shall not be distributed or dispensed other than for a medical purpose. Prescriptions shall be retained in conformity with the requirements of K.S.A. 65-4121 and amendments thereto.

HISTORY: L. 1972, ch. 234, § 23; L. 1972, ch. 235, § 1; L. 1982, ch. 269, § 7; L. 1986, ch. 242, § 2; L. 1999, ch. 115, § 15; Apr. 1, 2000.

65-4127c. General penalties; criminal penalties not applicable to violations of regulations. Except as otherwise provided in K.S.A. 65-4127a and 65-4127b and K.S.A. 65-4160 through 65-4164 and amendments thereto, any person violating any of the provisions of the uniform controlled substances act shall be guilty of a class A nonperson misdemeanor. The criminal penalties prescribed for violations of the uniform controlled substances act shall not be applicable to violations of the rules and regulations adopted by the board pursuant thereto.

HISTORY: L. 1973, ch. 259, § 3; L. 1974, ch. 258, § 10; L. 1994, ch. 291, § 78; L. 1994, ch. 338, § 12; July 1.

65-4127d. Act supplemental to uniform controlled substances act. This act shall be a part of and supplemental to the uniform controlled substances act.

HISTORY: L. 1973, ch. 259, § 4; July 1.

65-4128. Penalties in addition to remedies under other laws. Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

HISTORY: L. 1972, ch. 234, § 28; July 1.

65-4130. Enforcement. It is hereby made the duty of the state board of pharmacy and its duly authorized officers, agents, inspectors and representatives, and all law enforcement officers within the state, all county attorneys, the attorney general and the secretary of health and environment to enforce all provisions of this act, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic, hypnotic, somnifacient or stimulating drugs.

HISTORY: L. 1972, ch. 234, § 30; L. 1975, ch. 462, § 105; July 1.

65-4131. Inspection. The board and its duly authorized agents and employees may inspect controlled premises and practitioners' offices during business hours and in a lawful manner upon presenting appropriate credentials for the purpose of examining:

(a) Any books, inventories, records or other documents required to be kept by a registrant under the provisions of this act or regulations issued pursuant thereto;

(b) all pertinent equipment, finished and unfinished material, containers and labeling found therein and, all other things therein, including but not limited to processes, controls and facilities; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof upon payment therefor.

HISTORY: L. 1972, ch. 234, § 31; July 1.

65-4134. Identity of patient or research subject of practitioner confidential. A practitioner engaged in medical practice or research or a mid-level practitioner acting in the usual course of such mid-level practitioner's practice is not required or compelled to furnish the name or identity of a patient or research subject to the board, nor may such practitioner or mid-level practitioner be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner or mid-level practitioner is obligated to keep confidential.

HISTORY: L. 1972, ch. 234, § 34; L. 1999, ch. 115, § 16; Apr. 1, 2000.

65-4138. Medical care facility exemption. Nothing in this act shall be construed to prohibit a medical care facility licensed by the secretary of health and environment from keeping controlled items in a drug room of the medical care facility or supplying such controlled items in a drug room of the medical care facility or supplying such controlled items to its patients as provided under the provisions of K.S.A. 65-1648 and amendments thereto.

HISTORY: L. 1972, ch. 234, § 38; L. 1975, ch. 462, § 106; L. 1985, ch. 214, § 3; April 18.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 42. EXAMINATION, LICENSURE AND REGULATION OF MENTAL HEALTH TECHNICIANS

65-4201. Citation of act. This act may be cited as the mental health technician's licensure act.

HISTORY: L. 1973, ch. 308, § 1; July 1, 1974.

65-4202. Definitions. As used in this act:

(a) "Board" means the state board of nursing.

(b) The "practice of mental health technology" means the performance, under the direction of a physician licensed to practice medicine and surgery or registered professional nurse, of services in caring for and treatment of the mentally ill, emotionally disturbed, or mentally retarded for compensation or personal profit, which services:

(1) Involve responsible nursing and therapeutic procedures for mentally ill or mentally retarded patients requiring interpersonal and technical skills in the observations and recognition of symptoms and reactions of such patients, the accurate recording of such symptoms and reactions and the carrying out of treatments and medications as prescribed by a licensed physician or a mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto; and

(2) require an application of techniques and procedures that involve understanding of cause and effect and the safeguarding of life and health of the patient and others; and

(3) require the performance of duties that are necessary to facilitate rehabilitation of the patient or are necessary in the physical, therapeutic and psychiatric care of the patient and require close work with persons licensed to practice medicine and surgery, psychiatrists, psychologists, rehabilitation therapists, social workers, registered nurses, and other professional personnel.

(c) A "licensed mental health technician" means a person who lawfully practices mental health technology as defined in this act.

(d) An "approved course in mental health technology" means a program of training and study including a basic curriculum which shall be prescribed and approved by the board in accordance with the standards prescribed herein, the successful completion of which shall be required before licensure as a mental health technician, except as hereinafter provided.

HISTORY: L. 1973, ch. 308, § 2; L. 1988, ch. 259, § 1; L. 1992, ch. 151, § 3; L. 1999, ch. 115, § 17; Apr. 1, 2000.

65-4203.Licensure of mental health technicians; application; qualifications; examination; refresher course; temporary permits; exempt license; rules and regulations.

(a) Qualification. An applicant for a license to practice as a mental health technician shall:

(1) Have graduated from a high school accredited by the appropriate legal accrediting agency or has obtained the equivalent of a high school education, as determined by the state department of education;

(2) have satisfactorily completed an approved course of mental health technology; and

(3) file with the board a written application for a license.

(b) The board may issue a license to an applicant to practice as a mental health technician who has:

(1) Met the qualifications set forth in subsection (a);

(2) passed a written examination in mental health technology as prescribed and conducted by the board; and

(3) no disqualifying factors under K.S.A. 65-4209 and amendments thereto.

(c) Licensure examination within 24 months of graduation.

(1) Persons who do not take the licensure examination within 24 months after graduation shall petition the board for permission prior to taking the licensure examination. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination.

(2) Persons who are unsuccessful in passing the licensure examination within 24 months after graduation shall petition the board for permission prior to subsequent attempts. The board may require the applicant to submit and complete a plan of study prior to taking the licensure examination a subsequent time. The study plan shall contain subjects related to deficiencies identified on the failed examination profiles.

(d) An application for initial licensure will be held awaiting completion of meeting qualifications for a time period specified in rules and regulations.

(e) Refresher course. Notwithstanding the provisions of subsection (a), an applicant for a license to practice as a mental health technician who has not been licensed to practice as a mental health technician for five years preceding application shall be required to successfully complete a refresher course as defined by the board in rules and regulations.

(f) The board may issue a one-time temporary permit to practice as a mental health technician for a period not to exceed 120 days when a reinstatement application has been made.

(g) Exempt license. The board may issue an exempt license to any licensee as defined in rules and regulations who makes written application for such license on a form provided by the board, who remits a fee as established pursuant to K.S.A. 65-4208 and amendments thereto and who is not regularly engaged in mental health technician practice in Kansas but volunteers mental health technician service or is a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto. Each exempt licensee shall be subject to all provisions of the mental health technician act, except as otherwise provided in this subsection (e). Each exempt license may be renewed biennially subject to the provisions of this section. The holder of the exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing education for renewal. To convert an exempt license to an active license, the exempt licensee shall meet all the requirements of subsection (b) or K.S.A. 65-4205 and amendments thereto. The board shall have authority to write rules and regulations to carry out the provisions of this section.

(h) The board may adopt rules and regulations as necessary to administer the mental health technician's licensure act.

HISTORY: L. 1973, ch. 308, § 3; L. 1975, ch. 333, § 1; L. 1983, ch. 207, § 5; L. 1987, ch. 247, § 1; L. 1992, ch. 151, § 4; L. 1993, ch. 194, § 17; L. 1995, ch. 97, § 4; L. 1997, ch. 158, § 8; L. 1999, ch. 84, § 4; L. 2001, ch. 161, § 11; July 1.

65-4204. Title and abbreviations. Any person so licensed as a mental health technician in this state shall have the right to use the title "licensed mental health technician" and the abbreviation "L.M.H.T.," and it shall be unlawful for any person not licensed as herein provided to assume or use such title or abbreviation.

HISTORY: L. 1973, ch. 308, § 4; July 1, 1974.

65-4205. Renewal of license; application; fees; continuing education; renewal of lapsed license; notification of change in name or address.

(a) The board shall mail an application for renewal of license to all licensed mental health technicians at least 60 days prior to the expiration date of December 31. Every mental health technician who desires to renew a license shall file with the board, on or before December 31 of even-numbered years, a renewal application together with the prescribed renewal fee. Every licensee who is no longer engaged in the active practice of mental health technology may so state by affidavit and submit such affidavit with the renewal application. An inactive license may be requested along with payment of a fee as determined by rules and regulations of the board.

Except for the first renewal period following licensure by examination or for the first nine months following licensure by reinstatement or endorsement, the board shall require every licensee with an active mental health technology license to submit with the renewal application evidence of satisfactory completion of a program of continuing education required by the board. The board by duly adopted rules and regulations shall establish the requirements for such program of continuing education. Continuing education means learning experiences intended to build upon the educational and experiential bases of the licensed mental health technician for the enhancement of practice, education, administration, research or theory development to the end of improving the health of the public.

Upon receipt of such application and evidence of satisfactory completion of the required program of continuing education and upon being satisfied that the applicant meets the requirements set forth in K.S.A. 65-4203 and amendments thereto in effect at the time of initial licensure of the applicant, the board shall verify the accuracy of the application and grant a renewal license.

(b) Any licensee who fails to secure a renewal license within the time specified may secure a reinstatement of such lapsed license by making verified application therefor on a form prescribed by the board together with the prescribed reinstatement fee and, satisfactory evidence as required by the board that the applicant is presently competent and qualified to perform the responsibilities of a mental health technician and of satisfying all the requirements for reinstatement. A reinstatement application for licensure will be held awaiting completion of such documentation as may be required, but such application shall not be held for a period of time in excess of that specified in rules and regulations.

(c) Each licensee shall notify the board in writing of a change in name or address within 30 days of the change. Failure to so notify the board shall not constitute a defense in an action relating to failure to renew a license, nor shall it constitute a defense in any other proceeding.

HISTORY: L. 1973, ch. 308, § 5; L. 1983, ch. 207, § 6; L. 1993, ch. 194, § 18; L. 1995, ch. 97, § 5; L. 1997, ch. 146, § 3; May 8.

65-4206. Approved courses of mental health technology; standards; qualifications; providers of continuing education offerings.

(a) An approved course of mental health technology is one which has been approved by the board as meeting the standards of this act and the rules and regulations of the board. The course, at a minimum, shall be of six months duration in which the institution shall provide for 18 weeks of schooling, one-half devoted to classroom instruction and one-half to clinical experience and shall include the study of:

(1) Basic nursing concepts;

(2) psychiatric therapeutic treatment; and

(3) human growth, development and behavioral sciences.

(b) An institution which intends to offer a course on mental health technology shall apply to the board for approval and submit evidence that the institution is prepared to and will maintain the standards and curriculum as prescribed by this act and the rules and regulations of the board. The application shall be made in writing upon a form prescribed by the board with the application fee fixed by the board by rules and regulations.

(c) The approval of a school of mental health technology shall expire five years after the granting of such approval by the board. An institution desiring to continue to conduct a course of mental health technology shall apply to the board for the renewal of approval and submit satisfactory proof that the institution will maintain the standards and the basic mental health technology curriculum as prescribed by this act and the rules and regulations of the board. Applications for renewal of approval shall be made in writing on forms supplied by the board. Each institution offering a course of mental health technology shall submit annually to the board an annual fee fixed by the board by rules and regulations to maintain approval status.

(d) Providers of continuing education.

(1) To qualify as an approved provider of continuing education offerings, persons, organizations or institutions proposing to provide such continuing education offerings shall apply to the board for approval and submit evidence that the applicant is prepared to meet the standards and requirements established by the rules and regulations of the board for such continuing education offerings. Initial applications shall be made in writing on forms supplied by the board and shall be submitted to the board together with the application fee fixed by the board.

(2) A long-term provider means a person, organization or institution that is responsible for the development, administration and evaluation of continuing education programs and offerings. Qualification as a long-term approved provider of continuing education offerings shall expire five years after the granting of such approval by the board. An approved long-term provider of continuing education offerings shall submit annually to the board the annual fee established by rules and regulations, along with an annual report for the previous fiscal year. Applications for renewal as an approved long-term provider of continuing education offerings shall be made in writing on forms supplied by the board.

(3) Qualification as an approved provider of a single continuing education offering, which may be offered once or multiple times, shall expire two years after the granting of such approval by the board. Approved single continuing education providers shall not be subject to an annual fee or annual report.

(4) In accordance with rules and regulations adopted by the board, the board may approve individual educational offerings for continuing education which shall not be subject to approval under other subsections of this section.

(5) The board shall accept offerings as approved continuing education presented by: Colleges that are approved by a state or the national department of education and providers approved by other state boards of nursing, the national league for nursing, the national federation of licensed practical nurses, the American nurses credentialing center or other such national organizations as listed in rules and regulations adopted by the board.

HISTORY: L. 1973, ch. 308, § 6; L. 1992, ch. 151, § 5; L. 1997, ch. 146, § 4; May 8.

65-4207. List of approved courses; survey of proposed course and institution; resurvey; notice to deficient institution; removal from list; records.

(a) The board shall prepare and maintain a master list of approved courses on mental health technology:

(1) Which qualify graduates thereof, if they have the other necessary qualifications provided for in this act, to be eligible to apply for a license as a mental health technician; and

(2) which meet the requirements of the board for qualification under a continuing education program for licensed mental health technicians.

(b) A survey of the proposed course and of the institution applying for accreditation of the course on mental health technology shall be made by an authorized employee of the board or members of the board who shall submit a written report concerning such study. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about such course and institution. In entering such contracts the authority to approve such courses shall remain solely with the board.

(c) If, in the opinion of the board, the requirements as prescribed in its rules and regulations for approved courses of mental health technology are met, it shall approve the application and course and post evidence of such approval upon the master list. From time to time, as deemed necessary, the board shall cause to be made a resurvey of approved courses and shall have written reports of such resurvey submitted. If the board determines that any previously approved course is not maintaining the content required by this act and by the rules and regulations prescribed, a notice thereof shall be given immediately to the institution specifying the nature and extent of the deficiency. A failure to correct such condition or conditions to the satisfaction of the board within one year following the notice shall cause the course to be removed from the master list of approved courses on mental health technology. Personnel conducting approved courses shall maintain accurate and current records showing in full the theoretical and practical instruction given to all students.

HISTORY: L. 1973, ch. 308, § 7; L. 1983, ch. 207, § 9; L. 1988, ch. 243, § 11; July 1.

65-4209. Grounds for disciplinary actions; proceedings; witnesses; costs; professional incompetency defined; criminal history record information.

(a) The board may deny, revoke, limit or suspend any license to practice as a mental health technician issued or applied for in accordance with the provisions of this act, may publicly or privately censure a licensee or may otherwise discipline a licensee upon proof that the licensee:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice mental health technology;

(2) is unable to practice with reasonable skill and safety due to current abuse of drugs or alcohol;

(3) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(4) is incompetent or grossly negligent in carrying out the functions of a mental health technician;

(5) has committed unprofessional conduct as defined by rules and regulations of the board;

(6) has been convicted of a felony or has been convicted of a misdemeanor involving an illegal drug offense, unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice as a licensed mental health technician shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;

(7) has committed an act of professional incompetency as defined in subsection (e);

(8) to have willfully or repeatedly violated the provisions of the mental health technician's licensure act or rules and regulations adopted under that act and amendments thereto; or

(9) to have a license to practice mental health technology denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (9).

(b) Upon filing a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct an investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds to believe the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the Kansas administrative procedure act.

(c) No person shall be excused from testifying in any proceedings before the board under the mental health technician's licensure act or in any civil proceedings under such act before a court of competent jurisdiction on the ground that the testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(d) If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the

board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) As used in this section, "professional incompetency" means:

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

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

(f) The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

(g) All proceedings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

HISTORY: L. 1973, ch. 308, § 9; L. 1983, ch. 207, § 8; L. 1984, ch. 313, § 129; L. 1987, ch. 247, § 2; L. 1993, ch. 194, § 5; L. 1995, ch. 97, § 6; L. 1997, ch. 158, § 10; July 1.

65-4212. Exclusions. The provisions of this act shall not be construed as prohibiting:

(a) Gratuitous care of the mentally ill, emotionally disturbed or mentally retarded by friends or members of the family;

(b) The practice of mental health technology by students enrolled in approved courses of mental health technology;

(c) The practice of mental health technology by graduates of an approved course in mental health technology who are practicing as mental health technicians pending the results of the first licensing examination scheduled by the board following graduation;

(d) Practice by short-term trainees exploring the practice of mental health technology as a prospective vocation;

(e) Service conducted in accordance with the practice of the tenets of any religious denomination in which persons of good faith rely solely upon spiritual means or prayer in the exercise of their religion to prevent or cure disease;

(f) The practice of any legally qualified mental health technician of this state or another who is employed by the United States government of any bureau, division or agency thereof, while in the discharge of official duties;

(g) Temporary assistance in the therapeutic care of patients where adequate medical, nursing, and/or other supervision is provided;

(h) Subsidiary workers in hospitals or related institutions from assisting in the nursing care of patients where adequate medical and nursing supervision is provided; and

(i) The employment of psychiatric aides who have received at least three months instruction in an approved basic aide training program and who work under the supervision of licensed personnel.

HISTORY: L. 1973, ch. 308, § 12; L. 1976, ch. 281, § 1; July 1.

65-4214. Violations; penalties.

(a) It is a violation of law for any person, including any corporation, association, partnership to:

(1) Fraudulently obtain, sell, transfer, or furnish any mental health technician diploma, license, renewal of license or record, or aid or abet another therein;

(2) advertise, represent, or hold oneself out in any manner as a mental health technician or to practice as a mental health technician without having a license to so practice issued under the mental health technician's licensure act, except as provided in K.S.A. 65-4212 and amendments thereto;

(3) use in connection with one's name any designation intending to imply that such person is a licensed mental health technician without having such license issued as herein provided;

(4) practice as a mental health technician during the time such person's license is suspended or revoked;

(5) otherwise violate any of the provisions of the mental health technician's licensure act; or

(6) represent that a provider of continuing education is approved for educating mental health technicians, unless the provider of continuing education has been approved by the board and the approval is in full force.

(b) Any person who violates this section is guilty of a class B misdemeanor, except that, upon conviction of a second or subsequent violation of this section, such person is guilty of a class A misdemeanor.

HISTORY: L. 1973, ch. 308, § 14; L. 1993, ch. 194, § 6; July 1.

65-4215. Practice of medicine not authorized. Nothing in this act shall be construed as authorizing a licensed mental health technician to practice medicine or surgery or to undertake the prevention, treatment or cure of disease, pain, injury, deformity or mental or physical condition.

HISTORY: L. 1973, ch. 308, § 15; July 1, 1974.

65-4216. Report of certain actions of mental health technician; persons required to report; medical care facility which fails to report subject to civil fine; definitions.

(a) Subject to the provisions of subsection (c) of K.S.A. 65-4923, and amendments thereto:

(1) Every employer of a mental health technician shall report under oath to the board of nursing any information such employer has which appears to show that a mental health technician has committed an act which may be a ground for disciplinary action pursuant to K.S.A. 65-4209, and amendments thereto, or that the employer has taken disciplinary action against a mental health technician for committing any such act or has accepted the resignation of a mental health technician in lieu of taking disciplinary action therefor.

(2) Every health care provider shall report under oath to the board of nursing any information such health care provider has which appears to show that a mental health technician has committed an act which may be a ground for disciplinary action pursuant to K.S.A. 65-4209, and amendments thereto.

(3) Any person, other than those persons specified in provisions (1) and (2), may report under oath to the board of nursing any information such person has which appears to show that a mental health technician has committed an act which may be a ground for disciplinary action pursuant to K.S.A. 65-4209, and amendments thereto.

(b) Any medical care facility which fails to report within 30 days after the receipt of information required to be reported by this section shall be reported by the board of nursing to the secretary of health and environment and shall be subject, after proper notice and an opportunity to be heard, to a civil fine assessed by the secretary of health and environment in an amount not exceeding $ 1,000 per day for each day thereafter that the incident is not reported. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) As used in this section:

(1) "Medical care facility" has the meaning provided by K.S.A. 65-4921, and amendments thereto.

(2) "Health care provider" has the meaning provided by K.S.A. 65-4921, and amendments thereto.

HISTORY: L. 1983, ch. 216, § 1; L. 1988, ch. 236, § 6; L. 2001, ch. 5, § 255; July 1.

65-4217. Immunity from liability in civil actions for reporting, communicating or investigating certain information.

(a) No person reporting to the board of nursing under oath and in good faith any information such person is required to report or is authorized to report under K.S.A. 65-4216 and amendments thereto shall be subject to a civil action for damages as a result of reporting such information.

(b) Any state, regional or local association of licensed mental health technicians, and the individual members of any committee thereof, which in good faith investigates or communicates information to the board of nursing or to any committee or agent thereof pertaining to the alleged commission by a mental health technician of an act which may be a ground for disciplinary action pursuant to K.S.A. 65-4209 and amendments thereto shall be immune from liability in any civil action that is based upon such information or transmittal of information if the investigation and communication were made in good faith and did not represent as true any matter not reasonably believed to be true.

HISTORY: L. 1983, ch. 216, § 3; L. 1988, ch. 236, § 7; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 49. HEALTH CARE PROVIDERS
MEDICAL MALPRACTICE SCREENING PANELS

65-4901. Medical malpractice screening panels; convening; membership; chairperson; list of health care providers by state agency. If a petition is filed in a district court of this state claiming damages for personal injury or death on account of alleged medical malpractice of a health care provider and one of the parties to the action requests, by filing a memorandum with the court, that a medical malpractice screening panel be convened, the judge of the district court or, if the district court has more than one division, the chief judge of such court shall convene a medical malpractice screening panel, hereafter referred to as the "screening panel." If a petition is filed in a district court of this state claiming damages for personal injury or death on account of alleged medical malpractice of a health care provider and none of the parties to the action requests that a screening panel be convened, the judge may convene a screening panel upon the judge's own motion. If a claim for damages for personal injury or death on account of alleged medical malpractice of a health care provider has not been formalized by the filing of a petition, any party affected by such claim may request, by filing a memorandum with the court, that a screening panel be convened, and if such request is made the judge of the district court or, if the district court has more than one division, the chief judge of such court shall convene a screening panel.

The membership of the screening panel shall be selected as follows:

(a) A health care provider designated by the defendant or by the person against whom the claim is made if no petition has been filed;

(b) a health care provider designated by the plaintiff or by the claimant if no petition has been filed;

(c) a health care provider selected jointly by the plaintiff and the defendant or by the claimant and the person against whom the claim is made if no petition has been filed; and

(d) an attorney selected by the judge of the district court or, if the district court has more than one division, the chief judge of such court from a list of attorneys maintained by the judge of the district court or, if the district court has more than one division, the chief judge of such court for such purpose. Such attorney shall be a nonvoting member of the screening panel but shall act as chairperson of the screening panel.

The state agency which licenses, registers, certifies or otherwise is responsible for the practice of any group of health care providers shall maintain and make available to the parties to the proceeding a current list of health care providers who are willing and available to serve on the screening panel. The persons appointed shall constitute the screening panel for the particular medical malpractice claim to be heard.

HISTORY: L. 1976, ch. 249, § 1; L. 1979, ch. 206, § 1; L. 1999, ch. 57, § 63; July 1.

65-4902. Notice to parties of convening of panel and appointment; joint selection of health care provider or selection by judge. The district judge or, if the district court has more than one division, the chief judge of such court shall notify the parties to the action that a screening panel has been convened and that the members of such screening panel are to be appointed within 10 days of the receipt of such notice. If the plaintiff and the defendant or, if no petition has been filed, the claimant and the party against whom the claim is made are unable to jointly select a health care provider within 10 days after receipt of notice that a screening panel has been convened, the judge of the district court or, if the district court has more than one division, the chief judge of such court shall select such health care provider.

HISTORY: L. 1976, ch. 249, § 2; L. 1986, ch. 229, § 48; L. 1999, ch. 57, § 64; July 1.

65-4903. Convening of panel; notice; findings; notice, organization and conduct of meetings; rules by supreme court; meetings held in camera. The screening panel shall convene with notice in writing to all parties and their counsel and shall decide, after consideration of medical records and medical care facility records, contentions of the parties, examination of x-rays, test results and treatises, whether there was a departure from the standard practice of the health care provider specialty involved and whether a causal relationship existed between the damages suffered by the claimant and any such departure. The screening panel shall give notice, organize and conduct its meetings in accordance with rules of procedure adopted by the supreme court of Kansas to govern notice, organization and conduct of such meetings, except strict adherence of the rules of procedure and evidence applicable in civil cases shall not be required. All meetings of the screening panel shall be held in camera.

HISTORY: L. 1976, ch. 249, § 3; July 1.

65-4904. Recommendation on issue; concurring and dissenting opinions; notice to parties; copy of opinion to judge; admissibility in subsequent legal proceedings.

(a) Within 90 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the health care provider departed from the standard of care in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide a copy of its opinion and any concurring or dissenting opinion to each party and each attorney

of record and to the judge of the district court or, if the district court has more than one division, the chief judge of such court.

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial.

HISTORY: L. 1976, ch. 249, § 4; L. 1986, ch. 229, § 49; L. 1999, ch. 57, § 65; L. 2001, ch. 6, § 2; July 1.

65-4905. Rejection by one or more parties; court action. In the event that one or more of the parties rejects the final determination of the screening panel, the plaintiff may proceed with the action in the district court.

HISTORY: L. 1976, ch. 249, § 5; July 1.

65-4906. Immunity of screening panel from damages, when. No member of the screening panel shall be subject to a civil action for damages as a result of any action taken or recommendation made by such member acting without malice and in good faith within the scope of such member's official capacity as a member of the screening panel.

HISTORY: L. 1976, ch. 249, § 6; July 1.

65-4907. Compensation of panel members; assessment of costs.

(a) Each health care provider member of the screening panel shall be paid a total of $ 250 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court, and in addition thereto, reasonable travel expense. The chairperson of the panel shall be paid a total of $ 500 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court, and in addition thereto reasonable travel expenses. The chairperson shall keep an accurate record of the time and expenses of all the members of the panel, and the record shall be submitted to the parties for payment with the panel's report.

(b) Costs of the panel including travel expenses and other expenses of the review shall be paid by the side in whose favor the majority opinion is written. If the panel is unable to make a recommendation, then each side shall pay 1/2 of the costs. Items which may be included in the taxation of costs shall be those items enumerated by K.S.A. 60-2003 and amendments thereto.

HISTORY: L. 1976, ch. 249, § 7; L. 1986, ch. 229, § 50; L. 1991, ch. 175, § 2; July 1.

65-4908. Filing memorandum request for panels to toll statute of limitations, when. In those cases before a screening panel which have not been formalized by filing a petition in a court of law, the filing of a memorandum requesting the convening of a screening panel shall toll any applicable statute of limitations and such statute of limitations shall remain tolled until thirty (30) days after the screening panel has issued its written recommendations.

HISTORY: L. 1976, ch. 249, § 8; July 1.

65-4909. Limited liability for certain associations of health care providers, review organizations, committee members and individuals or entities acting at request thereof; good faith requirement; "health care provider" defined.

(a) There shall be no liability on the part of and no action for damages shall arise against any:

(1) State, regional or local association of health care providers;

(2) state, regional or local association of licensed adult care home administrators;

(3) organization delegated review functions by law, and the individual members of any committee thereof (whether or not such individual members are health care providers or licensed adult care home administrators); or

(4) individual or entity acting at the request of any committee, association or organization listed in subsections (1) through (3), which in good faith investigates or communicates information regarding the quality, quantity or cost of care being given patients by health care providers or being furnished residents of adult care homes for any act, statement or proceeding undertaken or performed within the scope of the functions and within the course of the performance of the duties of any such association, organization or committee if such association, organization or committee or such individual member thereof acted in good faith and without malice.

(b) As used in this section, "health care provider" means a person licensed to practice any branch of the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, mid-level practitioner as defined under K.S.A. 65-468, and amendments thereto, licensed dentist, licensed professional nurse, licensed practical nurse, licensed optometrist, licensed podiatrist, licensed pharmacist, physical therapist or respiratory therapist.

HISTORY: L. 1976, ch. 267, § 2; L. 1978, ch. 262, § 1; L. 1986, ch. 231, § 33; L. 1988, ch. 246, § 21; L. 1992, ch. 158, § 9; April 30.

65-4914. Public policy relating to provision of health care. It is the declared public policy of the state of Kansas that the provision of health care is essential to the well-being of its citizens as is the achievement of an acceptable quality of health care. Such goals may be achieved by requiring a system which combines a reasonable means to monitor the quality of health care with the provision of a reasonable means to compensate patients for the risks related to receiving health care rendered by health care providers licensed by the state of Kansas.

HISTORY: L. 1984, ch. 238, § 1; July 1.

65-4915. Peer review; health care providers, services and costs; definitions; authority of peer review officer or committee; records and testimony of information contained therein privileged; licensing agency disciplinary proceedings; exceptions.

(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 the mentally retarded, 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.

(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 indicated 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.

HISTORY: L. 1984, ch. 238, § 7; L. 1987, ch. 176, § 7; L. 1988, ch. 236, § 1; L. 1993, ch. 171, § 1; L. 1996, ch. 5, § 1; L. 1997, ch. 149, § 1; L. 1999, ch. 87, § 5; L. 2000, ch. 162, § 22; L. 2002, ch. 203, § 18; L. 2003, ch. 128, § 25; Apr. 1, 2004.

65-4916. Severability of act. If any part or parts of this act [*] are held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

HISTORY: L. 1984, ch. 238, § 16; July 1.

65-4921. Definitions. As used in K.S.A. 65-4921 through 65-4930, and amendments thereto:

(a) "Appropriate licensing agency" means the agency that issued the license to the individual or health care provider who is the subject of a report under this act.

(b) "Department" means the department of health and environment.

(c) "Health care provider" means:

(1) Those persons and entities defined as a health care provider under K.S.A. 40-3401 and amendments thereto; and

(2) 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 and a respiratory therapist licensed by the state board of healing arts.

(d) "License," "licensee" and "licensing" include comparable terms which relate to regulation similar to licensure, such as registration.

(e) "Medical care facility" means:

(1) A medical care facility licensed under K.S.A. 65-425 et seq. and amendments thereto;

(2) a private psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto; and

(3) state psychiatric hospitals and state institutions for the mentally retarded, as follows: Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(f) "Reportable incident" means an act by a health care provider which:

(1) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or

(2) may be grounds for disciplinary action by the appropriate licensing agency.

(g) "Risk manager" means the individual designated by a medical care facility to administer its internal risk management program and to receive reports of reportable incidents within the facility.

(h) "Secretary" means the secretary of health and environment.

HISTORY: L. 1986, ch. 229, § 2; L. 1987, ch. 176, § 8; L. 1988, ch. 236, § 2; L. 1999, ch. 87, § 6; L. 2002, ch. 203, § 19; L. 2003, ch. 128, § 26; Apr. 1, 2004.

65-4922. Medical care facilities; risk management program required; submission of plan; inspections and investigations; approval of plan; reports and records confidential.

(a) Each medical care facility shall establish and maintain an internal risk management program which shall consist of:

(1) A system for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(2) measures to minimize the occurrence of reportable incidents and the resulting injuries within the facility; and

(3) a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer or risk manager of the facility.

(b) Not less than 60 days before the time for renewal of its license in 1987, each medical care facility shall submit to the department its plan for establishing and implementing an internal risk management program. Such plan may rely upon policies and procedures adopted by the medical care facility and its departments and committees. Failure to submit such a plan shall result in denial of the renewal of the facility's license.

(c) The department shall make or cause to be made such inspections and investigations as it deems necessary to reasonably assure that each medical care facility is implementing the internal risk management program required by this section. In making such inspections and investigations, the department may review and copy the reports and records of all executive committees designated to investigate reportable incidents under this act.

(d) Upon review of a plan submitted pursuant to subsection (b), the department shall determine whether the plan meets criteria of this section. If the plan does not meet such criteria, the department shall disapprove the plan and return it to the facility, along with the reasons for disapproval. Within 60 days, the facility shall submit to the department a revised plan which meets the requirements of this section and any rules and regulations adopted hereunder. No medical care facility shall be granted renewal of its license in 1988 unless its plan has been approved by the department.

(e) A medical care facility shall not be liable for compliance with or failure to comply with the provisions of this section or any rules and regulations adopted hereunder, except as provided in K.S.A. 65-430 and amendments thereto.

(f) The secretary shall adopt such rules and regulations as necessary to administer and enforce the provisions of this section.

(g) Any reports and records reviewed or obtained by the department and in the department's possession, pursuant to subsection (a) of K.S.A. 65-4925, and amendments thereto, shall be confidential and privileged and not subject to discovery, subpoena or legal compulsion for their release to any person or entity, nor shall they be admissible in any civil or administrative action other than a disciplinary proceeding by the department.

HISTORY: L. 1986, ch. 229, § 3; L. 1987, ch. 176, § 9; L. 1989, ch. 201, § 1; April 27.

65-4923. Reporting requirements.

(a) If a health care provider, or a medical care facility agent or employee who is directly involved in the delivery of health care services, has knowledge that a health care provider has committed a reportable incident, such health care provider, agent or employee shall report such knowledge as follows:

(1) If the reportable incident did not occur in a medical care facility, the report shall be made to the appropriate state or county professional society or organization, which shall refer the matter to a professional practices

review committee duly constituted pursuant to the society's or organization's bylaws. The committee shall investigate all such reports and take appropriate action. The committee shall have the duty to report to the appropriate state licensing agency any finding by the committee that a health care provider acted below the applicable standard of care which action had a reasonable probability of causing injury to a patient, or in a manner which may be grounds for disciplinary action by the appropriate licensing agency, so that the agency may take appropriate disciplinary measures.

(2) If the reportable incident occurred within a medical care facility, the report shall be made to the chief of the medical staff, chief administrative officer or risk manager of the facility. The chief of the medical staff, chief administrative officer or risk manager shall refer the report to the appropriate executive committee or professional practices peer review committee which is duly constituted pursuant to the bylaws of the facility. The committee shall investigate all such reports and take appropriate action, including recommendation of a restriction of privileges at the appropriate medical care facility. In making its investigation, the committee may also consider treatment rendered by the health care provider outside the facility. The committee shall have the duty to report to the appropriate state licensing agency any finding by the committee that a health care provider acted below the applicable standard of care which action had a reasonable probability of causing injury to a patient, or in a manner which may be grounds for disciplinary action by the appropriate licensing agency, so that the agency may take appropriate disciplinary measures.

(3) If the health care provider involved in the reportable incident is a medical care facility, the report shall be made to the chief of the medical staff, chief administrative officer or risk manager of the facility. The chief of the medical staff, chief administrative officer or risk manager shall refer the report to the appropriate executive committee which is duly constituted pursuant to the bylaws of the facility. The executive committee shall investigate all such reports and take appropriate action. The committee shall have the duty to report to the department of health and environment any finding that the facility acted in a manner which is below the applicable standard of care and which has a reasonable probability of causing injury to a patient, so that appropriate disciplinary measures may be taken.

(4) As used in this subsection (a), "knowledge" means familiarity because of direct involvement or observation of the incident.

(5) This subsection (a) shall not be construed to modify or negate the physician-patient privilege, the psychologist-client privilege or the social worker-client privilege as codified by Kansas statutes.

(b) If a reportable incident is reported to a state agency which licenses health care providers, the agency may investigate the report or may refer the report to a review or executive committee to which the report could have been made under subsection (a) for investigation by such committee.

(c) When a report is made under this section, the person making the report shall not be required to report the reportable incident pursuant to K.S.A. 65-28,122 or 65-4216, and amendments to such sections. When a report made under this section is investigated pursuant to the procedure set forth under this section, the person or entity to which the report is made shall not be required to report the reportable incident pursuant to K.S.A. 65-28,121, 65-28,122 or 65-4216, and amendments to such sections.

(d) Each review and executive committee referred to in subsection (a) shall submit to the secretary of health and environment, on a form promulgated by such agency, at least once every three months, a report summarizing the reports received pursuant to subsections (a)(2) and (a)(3) of this section. The report shall include the number of reportable incidents reported, whether an investigation was conducted and any action taken.

(e) If a state agency that licenses health care providers determines that a review or executive committee referred to in subsection (a) is not fulfilling its duties under this section, the agency, upon notice and an opportunity to be heard, may require all reports pursuant to this section to be made directly to the agency.

(f) The provisions of this section shall not apply to a health care provider acting solely as a consultant or providing review at the request of any person or party.

HISTORY: L. 1986, ch. 229, § 4; L. 1987, ch. 176, § 10; L. 1988, ch. 236, § 3; July 1.

65-4924. Reports relating to impaired providers; procedures.

(a) If a report to a state licensing agency pursuant to subsection (a)(1) or (2) of K.S.A. 65-4923 or any other report or complaint filed with such agency relates to a health care provider's inability to practice the provider's profession with reasonable skill and safety due to physical or mental disabilities, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol, the agency may refer the matter to an impaired provider committee of the appropriate state or county professional society or organization.

(b) The state licensing agency shall have the authority to enter into an agreement with the impaired provider committee of the appropriate state or county professional society or organization to undertake those functions and responsibilities specified in the agreement and to provide for payment therefor from moneys appropriated to the agency for that purpose. Such functions and responsibilities may include any or all of the following:

(1) Contracting with providers of treatment programs;

(2) receiving and evaluating reports of suspected impairment from any source;

(3) intervening in cases of verified impairment;

(4) referring impaired providers to treatment programs;

(5) monitoring the treatment and rehabilitation of impaired health care providers;

(6) providing posttreatment monitoring and support of rehabilitated impaired health care providers; and

(7) performing such other activities as agreed upon by the licensing agency and the impaired provider committee.

(c) The impaired provider committee shall develop procedures in consultation with the licensing agency for:

(1) Periodic reporting of statistical information regarding impaired provider program activity;

(2) periodic disclosure and joint review of such information as the licensing agency considers appropriate regarding reports received, contacts or investigations made and the disposition of each report;

(3) immediate reporting to the licensing agency of the name and results of any contact or investigation regarding any impaired provider who is believed to constitute an imminent danger to the public or to self;

(4) reporting to the licensing agency, in a timely fashion, any impaired provider who refuses to cooperate with the committee or refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment, and who in the opinion of the committee exhibits professional incompetence; and

(5) informing each participant of the impaired provider committee of the procedures, the responsibilities of participants and the possible consequences of noncompliance.

(d) If the licensing agency has reasonable cause to believe that a health care provider is impaired, the licensing agency may cause an evaluation of such health care provider to be conducted by the impaired provider committee or its designee for the purpose of determining if there is an impairment. The impaired provider committee or its designee shall report the findings of its evaluation to the licensing agency.

(e) An impaired health care provider may submit a written request to the licensing agency for a restriction of the provider's license. The agency may grant such request for restriction and shall have authority to attach conditions to the

licensure of the provider to practice within specified limitations. Removal of a voluntary restriction on licensure to practice shall be subject to the statutory procedure for reinstatement of license.

(f) A report to the impaired provider committee shall be deemed to be a report to the licensing agency for the purposes of any mandated reporting of provider impairment otherwise provided for by the law of this state.

(g) An impaired provider who is participating in, or has successfully completed, a treatment program pursuant to this section shall not be excluded from any medical care facility staff solely because of such participation. However, the medical care facility may consider any impairment in determining the extent of privileges granted to a health care provider.

(h) Notwithstanding any other provision of law, a state or county professional society or organization and the members thereof shall not be liable to any person for any acts, omissions or recommendations made in good faith while acting within the scope of the responsibilities imposed pursuant to this section.

HISTORY: L. 1986, ch. 229, § 5; July 1.

65-4925. Reports, records and proceedings confidential and privileged; licensing agency disciplinary proceedings.

(a) The reports and records made pursuant to K.S.A. 65-4923 or 65-4924, and amendments thereto, shall be confidential and privileged, including:

(1) Reports and records of executive or review committees of medical care facilities or of a professional society or organization;

(2) reports and records of the chief of the medical staff, chief administrative officer or risk manager of a medical care facility;

(3) reports and records of any state licensing agency or impaired provider committee of a professional society or organization; and

(4) reports made pursuant to this act to or by a medical care facility risk manager, any committee, the board of directors, administrative officer or any consultant.

Such reports and records 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 any civil or administrative action other than a disciplinary proceeding by the appropriate state licensing agency.

(b) No person in attendance at any meeting of an executive or review committee of a medical care facility or of a professional society or organization while such committee is engaged in the duties imposed by K.S.A. 65-4923 shall be compelled to testify in any civil, criminal or administrative action, other than a disciplinary proceeding by the appropriate licensing agency, as to any committee discussions or proceedings.

(c) No person in attendance at any meeting of an impaired provider committee shall be required to testify, nor shall the testimony of such person be admitted into evidence, in any civil, criminal or administrative action, other than a disciplinary proceeding by the appropriate state licensing agency, as to any committee discussions or proceedings.

(d) Any person or committee performing any duty pursuant to this act shall be designated a peer review committee or officer pursuant to K.S.A. 65-4915 and amendments thereto.

(e) 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.

HISTORY: L. 1986, ch. 229, § 6; L. 1987, ch. 176, § 11; L. 1997, ch. 149, § 2; May 1.

65-4926. Immunity from civil liability for report or investigation, limits. Any person or entity which, in good faith, reports or provides information or investigates any health care provider as authorized by K.S.A. 65-4923 or 65-4924 shall not be liable in a civil action for damages or other relief arising from the reporting, providing of information or investigation except upon clear and convincing evidence that the report or information was completely false, or that the investigation was based on false information, and that the falsity was actually known to the person making the report, providing the information or conducting the investigation at the time thereof.

HISTORY: L. 1986, ch. 229, § 7; July 1.

65-4927. Failure to report; remedies; immunity from civil liability.

(a) No person or entity shall be subject to liability in a civil action for failure to report as required by K.S.A. 65-4923 or 65-4924.

(b) The license of a person or entity required to report under subsection (a) of K.S.A. 65-4923 may be revoked, suspended or limited, or the licensee subjected to public or private censure, by the appropriate state licensing agency if the licensee is found, pursuant to the Kansas administrative procedure act, to have willfully and knowingly failed to make any report as required by K.S.A. 65-4923 or 65-4924.

(c) Willful and knowing failure to make a report required by K.S.A. 65-4923 or 65-4924 is a class C misdemeanor.

(d) In no event shall a medical care facility or a professional society or organization be liable in damages for the alleged failure to properly investigate or act upon any report made pursuant to K.S.A. 65-4923.

HISTORY: L. 1986, ch. 229, § 8; July 1.

65-4928. Employer retribution for reporting; prohibition; remedy.

(a) No employer shall discharge or otherwise discriminate against any employee for making any report pursuant to K.S.A. 65-4923 or 65-4924.

(b) Any employer who violates the provisions of subsection (a) shall be liable to the aggrieved employee for damages for any wages or other benefits lost due to the discharge or discrimination plus a civil penalty in an amount not exceeding the amount of such damages. Such damages and civil penalty shall be recoverable in an individual action brought by the aggrieved employee. If the aggrieved employee substantially prevails on any of the allegations contained in the pleadings in an action allowed by this section, the court, in its discretion, may allow the employee reasonable attorney fees as part of the costs.

HISTORY: L. 1986, ch. 229, § 9; July 1.

65-4929. Purpose of risk management programs; status of entities conducting programs; antitrust immunity.

(a) The legislature of the state of Kansas recognizes the importance and necessity of providing and regulating certain aspects of health care delivery in order to protect the public's general health, safety and welfare. Implementation of risk management plans and reporting systems as required by K.S.A. 65-4922, 65-4923 and 65-4924 and peer review pursuant to K.S.A. 65-4915 and amendments thereto effectuate this policy.

(b) Health care providers and review, executive or impaired provider committees performing their duties under K.S.A. 65-4922, 65-4923 and 65-4924 and peer review pursuant to K.S.A. 65-4915 and amendments thereto for the purposes expressed in subsection (a) and 65-4915 and amendments thereto shall be considered to be state officers engaged in a discretionary function and all immunity of the state shall be extended to such health care providers and committees, including that from the federal and state antitrust laws.

(c) Nothing in this section shall be construed to require health care providers or review, executive or impaired provider committees to be subject to or comply with any other law relating to or regulating state agencies, officers or employees.

HISTORY: L. 1986, ch. 229, § 10; July 1.

65-4930. Act supplemental to existing law. The provisions of K.S.A. 65-4921 through 65-4929 shall be supplemental to K.S.A. 65-28,121, 65-28,122, 65-4216 and 65-4909, and amendments to such sections, and shall not be construed to repeal or modify those sections.

HISTORY: L. 1986, ch. 229, § 11; L. 1988, ch. 236, § 4; July 1.

65-4941. Do not resuscitate orders or directives; definitions. As used in this act:

(a) "Cardiopulmonary resuscitation" means chest compressions, assisted ventilations, intubation, defibrillation, administration of cardiotonic medications or other medical procedure which is intended to restart breathing or heart functioning;

(b) "do not resuscitate" directive or "DNR directive" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of this act;

(c) "do not resuscitate order" or "DNR order" means instruction by the physician who is responsible for the care of the patient while admitted to a medical care facility licensed pursuant to K.S.A. 65-429, and amendments thereto, or an adult care home licensed pursuant to K.S.A. 39-928, and amendments thereto;
(d) "health care provider" means a health care provider as that term is defined by K.S.A. 65-4915, and amendments thereto;

(e) "DNR identifier" means a medallion or bracelet designed to be worn by a patient which has been inscribed to identify the patient and contains the letters "DNR" or the statement "do not resuscitate" when such DNR identifier is distributed by an entity certified by the emergency medical services board;
(f) "physician" means a person licensed to practice medicine and surgery by the state board of healing arts; and

(g) "declarant" means any person who has executed a "do not resuscitate" directive in accordance with the provisions of this act.

HISTORY: L. 1994, ch. 143, § 1; April 14.

65-4942. Same; form. A "do not resuscitate" directive shall be in substantially the following form:

PRE-HOSPITAL DNR REQUEST FORM

An advanced request to Limit the Scope of Emergency Medical Care I, _____, request limited emergency care as herein (name) described.

I understand DNR means that if my heart stops beating or if I stop breathing, no medical procedure to restart breathing or heart functioning will be instituted.

I understand this decision will not prevent me from obtaining other emergency medical care by pre-hospital care providers or medical care directed by a physician prior to my death.

I understand I may revoke this directive at any time.

I give permission for this information to be given to the pre-hospital care providers, doctors, nurses or other health care personnel as necessary to implement this directive.

I hereby agree to the "Do Not Resuscitate" (DNR) directive.

_____ _____
Signature Date

_____ _____
Witness Date

I AFFIRM THIS DIRECTIVE IS THE EXPRESSED WISH OF THE PATIENT, IS MEDICALLY APPROPRIATE, AND IS DOCUMENTED IN THE PATIENT'S PERMANENT MEDICAL RECORD.

In the event of an acute cardiac or respiratory arrest, no cardiopulmonary resuscitation will be initiated.

_____ _____
Attending Physician's Signature* Date

_____ _____
Address Facility or Agency Name

*Signature of physician not required if the above-named is a member of a church or religion which, in lieu of medical care and treatment, provides treatment by spiritual means through prayer alone and care consistent therewith in accordance with the tenets and practices of such church or religion.

REVOCATION PROVISION

I hereby revoke the above declaration.

_____ _____
Signature Date

HISTORY: L. 1994, ch. 143, § 2; April 14.

65-4943. Same; requirements of form. A "do not resuscitate" directive shall be:

(a) In writing;

(b) signed by the person making the declaration, or by another person in the declarant's presence and by the declarant's expressed direction;

(c) dated; and

(d) signed in the presence of a witness who is at least 18 years of age and who shall not be the person who signed the declaration on behalf of and at the direction of the person making the declaration, related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care.

HISTORY: L. 1994, ch. 143, § 3; April 14.

65-4944. Same; immunity from liability. No health care provider who in good faith causes or participates in the withholding or withdrawing of cardiopulmonary resuscitation pursuant to a "do not resuscitate" order or directive or the presence of a DNR identifier shall be subject to any civil liability nor shall such health care provider be guilty of a crime or an act of unprofessional conduct.

HISTORY: L. 1994, ch. 143, § 4; April 14.

65-4945. Same; existing documents, compliance with act. Any document or other method of establishing a "do not resuscitate" order or directive which has been adopted by a medical care facility, an adult care home, or an emergency medical service prior to the effective date of this act shall be considered in substantial compliance with the definition of a "do not resuscitate" order or directive under this act.

HISTORY: L. 1994, ch. 143, § 5; April 14.

65-4946. Same; DNR identifier; duties of emergency medical services board; rules and regulations. The emergency medical services board shall certify pursuant to rules and regulations entities which distribute DNR identifiers. Such entities may be certified when a DNR identifier is distributed only pursuant to a properly executed "do not resuscitate" directive and when such entity maintains a toll free, staffed telephone line that may be called at any time to verify the identity of the patient.

HISTORY: L. 1994, ch. 143, § 6; April 14.

65-4947. Same; validity of DNR order during transport of patient. A "do not resuscitate" order established while the patient is admitted to a medical care facility licensed pursuant to K.S.A. 65-429, and amendments thereto, or an adult care home licensed pursuant to K.S.A. 39-928, and amendments thereto, shall remain valid during transport of the patient between such medical care facility and an adult care home or between such adult care home and a medical care facility unless rescinded by the physician who is responsible for the care of the patient.

HISTORY: L. 1994, ch. 143, § 7; April 14.

65-4948. Same; rules and regulations. The board may adopt rules and regulations necessary to implement the provisions of this act.

HISTORY: L. 1994, ch. 143, § 8; April 14.

65-4955. Health care provider cooperation act; legislative findings; protection of public.

(a) This act shall be known and may be cited as the health care provider cooperation act.

(b) The legislature finds as follows:

(1) Technological and scientific developments in health care have enhanced the prospects for further improvement in the quality of care provided to Kansas citizens;

(2) the costs of improved technology and improved scientific methods for the provision of health care are significant factors in the escalating cost of health care;

(3) cooperative agreements among health care providers concerning the provision of services can foster further improvements in the quality of health care for Kansas citizens, moderate increases in costs, avoid duplication of resources and improve access to needed services in rural areas of Kansas; and

(4) because cooperative agreements may require health care providers to collaborate on the provision of services, thereby raising the issue of anti-trust effects, regulatory oversight of cooperative agreements is necessary to ensure that the benefits of agreements outweigh any disadvantages attributable to any reduction in competition resulting from such agreements.

(c) Cooperative agreements approved pursuant to this act articulate and implement the policy of the state to improve and protect the quality and availability of health care to Kansas citizens. Continued active supervision by the state over all aspects of such agreements, and the standards and requirements established by this act, will provide protection to the public offsetting the loss of protection otherwise provided by competition.

HISTORY: L. 1994, ch. 153, § 1; April 14.

65-4956. Same; definitions. As used in this act:

(a) "Cooperative agreement" means an agreement among two or more health care providers for the sharing, allocation or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic or laboratory facilities or procedures or other services traditionally offered by health care providers.

(b) "Health care provider" means health care provider as defined under K.S.A. 65-4921 and amendments thereto; licensed pharmacist; or licensed optometrist.

(c) "Hospital" has the same meaning as defined under K.S.A. 65-425 and amendments thereto.

(d) "Secretary" means the secretary of health and environment.

HISTORY: L. 1994, ch. 153, § 2; April 14.

65-4957. Same; cooperative agreements; application for certificate of public advantage; application fees; issuance of certificate of public advantage, when; evaluation of cooperative agreement; amendment of approved agreement.

(a) A health care provider may negotiate and enter into cooperative agreements with other health care providers in the state if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

(b) Parties to a cooperative agreement may apply to the secretary for a certificate of public advantage approving and governing that cooperative agreement. The application shall include an executed copy of the cooperative agreement and shall describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. The application shall be accompanied by an application fee fixed by the secretary by rules and regulations in an amount necessary to defray all or part of the costs of the agency in the determination of whether to grant or deny a certificate of public advantage under the health care provider cooperation act.

(c) The secretary shall review the application in accordance with the standards set forth in subsections (e) and (f) of this section, and shall hold a public hearing in accordance with rules and regulations adopted by the secretary. The secretary shall approve or deny the application within 90 days of the date of filing of the application and that decision shall be in writing and set forth the basis for the decision.

(d) The secretary shall issue a certificate of public advantage for a cooperative agreement if the secretary determines the applicants have demonstrated that the benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(e) In evaluating the potential benefits of a cooperative agreement, the secretary shall consider whether one or more of the following benefits may result from the cooperative agreement:

(1) Enhancement of the quality of health care provided to Kansas citizens;

(2) preservation of health care facilities or providers, or both, in geographical proximity to the communities traditionally served by those facilities or providers, or both;

(3) increased cost efficiency of services provided by the health care providers involved;

(4) improvements in the utilization of health care resources and equipment; and

(5) avoidance of duplication of resources.

(f) The secretary's evaluation of any disadvantages attributable to a reduction in competition likely to result from the agreement shall include, but not be limited to, the following factors:

(1) The extent of any adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents or other health care payers to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

(2) the extent of any reduction in competition among health care providers or other persons furnishing goods or services to, or in competition with, health care providers that may result directly or indirectly from the cooperative agreement;

(3) the extent of any adverse impact on patients in the quality, availability and cost of health care services; and

(4) the availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition which may result from the agreement.

(g) A cooperative agreement approved pursuant to this act may be amended only after the amendment is approved by the secretary in the same manner as required for initial approval of the cooperative agreement.

HISTORY: L. 1994, ch. 153, § 3; April 14.

65-4958. Same; annual review of approved cooperative agreement; proceedings to terminate certificate of public advantage. Any cooperative agreement approved pursuant to this act shall thereafter be reviewed annually by the secretary. If the secretary determines at any time that a cooperative agreement no longer meets the requirements of this act, the secretary may initiate proceedings to terminate the certificate of public advantage in accordance with the Kansas administrative procedure act.

HISTORY: L. 1994, ch. 153, § 4; April 14.

65-4959. Same; file of cooperative agreements for which certificates of public advantage are in effect; notice of termination. The secretary shall maintain on file all cooperative agreements for which certificates of public advantage are in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the secretary within 30 days after termination.

HISTORY: L. 1994, ch. 153, § 5; April 14.

65-4960. Same; cooperative agreement for which certificate of public advantage issued is lawful agreement; negotiating and entering into cooperative agreement is lawful conduct; application of act; effect of provisions of cooperative agreement.

(a) A cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. If the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the secretary, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this act shall apply to any cooperative agreement, or to the actions of persons negotiating or executing a cooperative agreement, not submitted and approved in accordance with the provisions of this act.

(b) The provisions of this act shall apply to any agreement among health care providers by which ownership or control over substantially all of the stock, assets or activities of one or more health care providers is placed under the control of another health care provider.

(c) The provisions of this act shall not apply to:

(1) Any cooperative agreement entered into by health care providers prior to the effective date of this act; or

(2) any authorized activity of a rural health network under K.S.A. 65-468 et seq., and amendments thereto.

(d) The rights and responsibilities of the parties to a cooperative agreement shall be determined in accordance with the provisions of the cooperative agreement.

HISTORY: L. 1994, ch. 153, § 6; April 14.

65-4961. Same; advisory committee of health care providers created. There is hereby created a committee of not to exceed five health care providers to be appointed as follows: One member by the governor; one member by the speaker of the house of representatives; one member by the minority leader of the house of representatives; one member by the president of the senate; and one member by the minority leader of the senate. The members of the committee shall serve at the pleasure of their appointing authority. The committee shall advise the secretary on matters concerning the administration of this act and make recommendations to the secretary concerning applications for the issuance of certificates of public advantage and the termination of such certificates. The committee shall meet on the call of the secretary. Committee members shall not be paid compensation, subsistence allowances, mileage or other expenses as otherwise may be authorized by law for attending meetings, or subcommittee meetings, of the committee.

HISTORY: L. 1994, ch. 153, § 7; April 14.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 50. CREDENTIALING

65-5001. Credentialing health care personnel; definitions. As used in this act unless the context requires otherwise, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Credentialing" or "credentialed" means the formal recognition of professional or technical competence through the process of registration, licensure or other statutory regulation.

(b) "Certification" means the process by which a nongovernmental agency or association or the federal government grants recognition to an individual who has met certain predetermined qualifications specified by the nongovernmental agency or association or the federal government.

(c) "Registration" means the process by which the state identifies and lists on an official roster those persons who meet predetermined qualifications and who will be the only persons permitted to use a designated title.

(d) "Licensure" means a method of regulation by which the state grants permission to persons who meet predetermined qualifications to engage in an occupation or profession, and that to engage in such occupation or profession without a license is unlawful.

(e) "Health care personnel" means those persons whose principal functions, customarily performed for remuneration, are to render services, directly or indirectly, to individuals for the purpose of:

(1) Preventing physical, mental or emotional illness;

(2) detecting, diagnosing and treating illness;

(3) facilitating recovery from illness; or

(4) providing rehabilitative or continuing care following illness; and who are qualified by training, education or experience to do so.

(f) "Provider of health care" means an individual:

(1) Who is a direct provider of health care (including but not limited to a person licensed to practice medicine and surgery, licensed dentist, registered professional nurse, licensed practical nurse, licensed podiatrist, or physician's assistant) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including medical care facilities, long-term care facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by state law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

(2) who holds a fiduciary position with, or has a fiduciary interest in, any entity described in subsection (f)(3)(B) or subsection (f)(3)(D) other than an entity described in either such subsection which is also an entity described in section 501(c)(3) of the internal revenue code of 1954, as amended and supplemented, and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals or the production of drugs or articles described in subsection (f)(3)(C);

(3) who receives, either directly or through a spouse, more than 1/5 of such person's gross annual income from any one or combination of the following:

(A) Fees or other compensation for research into or instruction in the provision of health care;

(B) entities engaged in the provision of health care or in such research or instruction;

(C) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care; or

(D) entities engaged in producing drugs or such other articles;

(4) who is a member of the immediate family of an individual described in subsection (f)(1), (f)(2) or (f)(3); or

(5) who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits. An individual shall not be considered a provider of health care solely because the individual is a member of the governing board of an entity described in subsection (f)(3)(B) or subsection (f)(3)(D).

(g) "Consumer of health care" means an individual who is not a provider of health care.

(h) "Secretary" means the secretary of health and environment.

HISTORY: L. 1980, ch. 181, § 1; L. 1986, ch. 246, § 1; L. 1987, ch. 232, § 2; L. 1988, ch. 246, § 22; July 1.

65-5002. Same; credentialing applications; fees.

(a) Health care personnel seeking to be credentialed by the state shall submit a credentialing application to the secretary upon forms approved by the secretary. The application shall be accompanied by an application fee of $ 1,000. The secretary shall not accept a credentialing application unless such application is accompanied by the application fee and is signed by 100 or more Kansas resident proponents of credentialing the health care occupation or profession seeking to be credentialed. All credentialing applications accepted by the secretary shall be referred to the technical committee for review and recommendation in accordance with the provisions of this act and rules and regulations adopted by the secretary. The application fee established under this subsection (a) shall apply to every group of health care personnel which submits a credentialing application to the secretary on and after the effective date of this act and to every group of health care personnel which has not filed both a notice of intention and a fully answered application before the effective date of this act.

(b) The secretary shall remit all moneys received from fees under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

HISTORY: L. 1980, ch. 181, § 2; L. 1986, ch. 246, § 2; L. 1987, ch. 232, § 3; L. 2001, ch. 5, § 260; July 1.

65-5003. Same; appointment of technical committee; hearings; evidence; criteria; findings; recommendations and report.

(a) A technical committee shall be appointed by the secretary to examine and investigate each credentialing application referred by the secretary. Seven persons shall be appointed to each technical committee and such persons shall be appointed for a term of one year. Within 120 days after the expiration of such term, the secretary shall appoint a successor to fill such vacancy. The chairperson of the technical committee shall be designated by the secretary. Three members of the technical committee shall be health care personnel currently credentialed under the laws of this state. Four members of the technical committee shall be consumers of health care who are not also providers of health care. No member of the technical committee shall have a direct economic or personal interest in the credentialing or noncredentialing of health care personnel whose application for credentialing will be reviewed by the technical committee. If a member of the technical committee has a direct economic or personal interest in the credentialing or noncredentialing of health care personnel whose application for credentialing will be reviewed by the technical committee or otherwise has a conflict of interest concerning the credentialing or noncredentialing of health care personnel whose application for credentialing will be reviewed by the technical committee, the secretary shall replace such member on the technical committee by appointing a new member to the technical committee. The new member shall serve for the remainder of the term of the original member. A vacancy on the technical committee shall be filled by appointment within 120 days after such vacancy by the secretary for the remainder of the unexpired term of the vacant position.

(b) Each technical committee, as soon as possible after appointment of the members thereof, shall organize and review any credentialing application assigned to such committee by the secretary. The technical committee shall conduct fact-finding hearings and shall otherwise investigate the credentialing application.

(c) The technical committee shall attempt to obtain evidence and testimony from persons in support of the application and from persons opposed to the application, but evidence and testimony shall not be limited only to such persons. All interested persons shall have an opportunity to give evidence and testimony subject to such reasonable conditions as may be established by the technical committee in the conduct of the hearing and subject to applicable rules and regulations established under this act. A notice of all meetings of the technical committee shall be published in the Kansas register at least 30 days prior to the day of the meeting. The notice shall state the time and place of the meeting.

(d) The technical committee shall make findings in an objective, unbiased manner based on the criteria established in K.S.A. 65-5006 and amendments thereto. Credentialing applicants shall have the burden of bringing forth evidence upon which findings may be made and shall have the burden of proving by clear and convincing evidence that the health care provider occupation or profession should be credentialed by the state. The evidence required to sustain this burden of proof shall be more than hypothetical examples or testimonials. The technical committee shall detail its findings in a report and shall file the report with the secretary. The technical committee shall complete hearings and shall file a report for any applicant group of health care personnel that has begun the process.

(e) If the technical committee determines after consideration of the evidence and testimony that all the criteria established by law or by rules and regulations for credentialing have not been met and that credentialing is not appropriate, the technical committee shall recommend that an application for credentialing be denied. If the technical committee determines after consideration of the evidence and testimony that clear and convincing evidence has been presented that an occupational or professional group of health care personnel has met all the criteria established by law or by rules and regulations for credentialing and that credentialing by the state is appropriate, the technical committee shall recommend the application for credentialing be approved. If the technical committee recommends that the application for credentialing be approved, there shall be included in the committee's report a recommendation of the level or levels of credentialing, and such recommendation shall be based upon a finding by the technical committee, stated in the report, that all criteria established by law or by rules and regulations for the recommended level or levels of credentialing have been met. This recommendation shall be based on the criteria established in K.S.A. 65-5007 and amendments thereto.

HISTORY: L. 1980, ch. 181, § 3; L. 1986, ch. 246, § 3; L. 1987, ch. 232, § 4; July 1.

65-5005. Same; review of reports by secretary; recommendations of secretary; final report to legislature.

(a) Within 120 days after receiving the report and recommendations of the technical committee relating to a credentialing application, the secretary shall prepare a final report for the legislature. In preparing the final report, the secretary shall apply the criteria established by K.S.A. 65-5006 and 65-5007 and amendments to these sections. The final report shall be submitted to the speaker of the house of representatives, to the president of the senate and to the chairpersons of the committees on public health and welfare for consideration by their respective committees. The secretary shall include the report of the technical committee in the final report prepared for submission to the legislature. The secretary need not be bound by the recommendations of a technical committee.

(b) If the secretary determines after consideration of the report of the technical committee and the evidence and testimony presented to the technical committee that all criteria established by law or by rules and regulations for credentialing have not been met and that credentialing is not appropriate, the secretary shall recommend that no legislative action be taken on a credentialing application. If the secretary determines that clear and convincing evidence which was more than hypothetical examples or testimonials was presented to the technical committee that the applicant occupational or professional group of health care personnel should be credentialed by the state, that the applicant occupational or professional group of health care personnel has met all the criteria established by law or by rules and regulations for credentialing and that credentialing by the state is appropriate, the secretary shall recommend that the occupational or professional group of health care personnel be credentialed. If the secretary recommends that an occupational or professional group of health care personnel be credentialed, the secretary shall recommend:

> (1) The level or levels of credentialing, and such recommendation shall be based upon a finding by the secretary, stated in the report, that all criteria established by law or by rules and regulations concerning the recommended level or levels of credentialing have been met;
>
> (2) an agency to be responsible for the credentialing process and the level or levels of credentialing; and
>
> (3) such matters as the secretary deems appropriate for possible inclusion in legislation relating to the recommendation for credentialing.

(c) No group of health care personnel shall be credentialed except by an act of the legislature. The final report of the secretary and the report and recommendations of the technical committee shall constitute recommendations to the

legislature and shall not be binding upon the legislature. The legislature may dispose of such recommendations and reports as it deems appropriate.

HISTORY: L. 1980, ch. 181, § 5; L. 1986, ch. 246, § 5; L. 1987, ch. 232, § 5; July 1.

65-5006. Same; credentialing criteria.

(a) The technical committee appointed pursuant to K.S.A. 65-5003 and amendments thereto and the secretary shall apply the following criteria to each credentialing application:

(1) The unregulated practice of the occupation or profession can harm or endanger the health, safety or welfare of the public and the potential for such harm is recognizable and not remote;

(2) the practice of the occupation or profession requires an identifiable body of knowledge or proficiency in procedures, or both, acquired through a formal period of advanced study or training, and the public needs and will benefit by assurances of initial and continuing occupational or professional ability;

(3) if the practice of the occupation or profession is performed, for the most part, under the direction of other health care personnel or inpatient facilities providing health care services, such arrangement is not adequate to protect the public from persons performing noncredentialed functions and procedures;
(4) the public is not effectively protected from harm by certification of members of the occupation or profession or by means other than credentialing;

(5) the effect of credentialing of the occupation or profession on the cost of health care to the public is minimal;

(6) the effect of credentialing of the occupation or profession on the availability of health care personnel providing services provided by such occupation or profession is minimal;

(7) the scope of practice of the occupation or profession is identifiable;

(8) the effect of credentialing of the occupation or profession on the scope of practice of other health care personnel, whether or not credentialed under state law, is minimal; and

(9) nationally recognized standards of education or training exist for the practice of the occupation or profession and are identifiable.

(b) Reports of the technical committee, and the secretary shall include specific findings on the criteria set forth in subsection (a). No report of the technical committee or the secretary shall recommend credentialing of any occupational or professional group of health care personnel unless all the criteria set forth in subsection (a) have been met.

HISTORY: L. 1980, ch. 181, § 6; L. 1986, ch. 246, § 6; L. 1987, ch. 232, § 6; July 1.

65-5007. Same; criteria applicable to levels of credentialing regulation.

(a) All recommendations of the technical committee and the secretary which relate to the level or levels of credentialing regulation of a particular group of health care personnel shall be consistent with the policy that the least regulatory means of assuring the protection of the public is preferred and shall be based on alternatives which include, from least regulatory to most regulatory, the following:

(1) Statutory regulation, other than registration or licensure, by the creation or extension of statutory causes of civil action, the creation or extension of criminal prohibitions or the creation or extension of injunctive remedies is the appropriate level when this level will adequately protect the public's health, safety or welfare.

(2) Registration is the appropriate level when statutory regulation under paragraph (a)(1) is not adequate to protect the public's health, safety or welfare and when registration will adequately protect the public health, safety or welfare by identifying practitioners who possess certain minimum occupational or professional skills so that members of the public may have a substantial basis for relying on the services of such practitioners.

(3) Licensure is the appropriate level when statutory regulation under paragraph (a)(1) and registration under paragraph (a)(2) is not adequate to protect the public's health, safety or welfare and when the occupational or professional groups of health care personnel to be licensed perform functions not ordinarily performed by persons in other occupations or professions.

(b) Reports of the technical committee and the secretary shall include specific findings on the criteria set forth in subsection (a). No report of the technical committee or the secretary shall recommend the level or levels of credentialing of any occupational or professional group of health care personnel unless all the criteria set forth in subsection (a) for the recommended level or levels of credentialing have been met.

HISTORY: L. 1980, ch. 181, § 7; L. 1986, ch. 246, § 7; L. 1987, ch. 232, § 7; July 1.

65-5008. Same; periodic review of credentialing status of health care personnel. The secretary shall periodically schedule for review the credentialing status of health care personnel who are credentialed pursuant to existing laws. The procedures to be followed, the criteria to be applied and the reports to be submitted for credentialing applications filed pursuant to K.S.A. 65-5002 and amendments thereto shall apply to credentialing reviews conducted pursuant to this section.

HISTORY: L. 1980, ch. 181, § 8; L. 1987, ch. 232, § 8; July 1.

65-5009. Same; records; duties of secretary; rules and regulations; compensation of members of technical committee.

(a) The secretary shall provide all necessary professional and clerical services to the technical committee. Records of all official actions and minutes of all business coming before the technical committee shall be kept. The secretary shall be the custodian of all records, documents and other property of the technical committee.

(b) The secretary shall adopt rules and regulations necessary to implement the provisions of this act including, but not limited to, rules and regulations establishing the policies and procedures to be followed by the technical committee in the consideration of credentialing applications under this act.

(c) Members of the technical committee appointed pursuant to K.S.A. 65-5003 and amendments thereto shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto when in attendance at a meeting of the technical committee authorized by the secretary.

HISTORY: L. 1980, ch. 181, § 9; L. 1986, ch. 246, § 8; L. 1987, ch. 232, § 9; July 1.

65-5010. Same; title of act. This act shall be known and may be cited as the Kansas act on credentialing.

HISTORY: L. 1980, ch. 181, § 10; July 1.

65-5011. Application of act to certain credentialing applications. Except as otherwise provided in this act, the review of an application for credentialing commenced prior to the effective date of this act shall be governed by the provisions of this act which apply to that part of the review of such application which was not completed prior to the effective date of this act. The secretary shall authorize an original application for credentialing filed prior to the effective date of this act, to be amended to address the standards and criteria established under this act. Nothing in this section shall be construed to require the filing of a new application with the secretary.

HISTORY: L. 1986, ch. 246, § 9; April 24.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 54. OCCUPATIONAL THERAPY

65-5401. Citation of act. K.S.A. 65-5401 to 65-5417, inclusive, shall be known and may be cited as the occupational therapy practice act.

HISTORY: L. 1986, ch. 323, § 1; July 1.

65-5402. Definitions. As used in K.S.A. 65-5401 to 65-5417, inclusive, and K.S.A. 65-5418 to 65-5420, inclusive, and amendments thereto:

(a) "Board" means the state board of healing arts.

(b) "Practice of occupational therapy" means the therapeutic use of purposeful and meaningful occupations (goal-directed activities) to evaluate and treat, pursuant to the referral, supervision, order or direction of a physician, a licensed podiatrist, a licensed dentist, a licensed physician assistant, or an advanced registeres nurse practitioner working pursuant to the order or direction of a person llicensed to practice medicine and surgery, a licensed chiropractor, or a licensed optometrist, individuals who have a disease or disorder, impairment, activity limitation or participation restriction that interferes with their ability to function independently in daily life roles and to promote health and wellness. Occupational therapy intervention may include:

(1) Remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological or neurological cognitive processes;

(2) adaptation of tasks, process, or the environment or the teaching of compensatory techniques in order to enhance performance;

(3) disability prevention methods and techniques that facilitate the development or safe application of performance skills; and

(4) health promotion strategies and practices that enhance performance abilities.

(c) "Occupational therapy services" include, but are not limited to:

(1) Evaluating, developing, improving, sustaining, or restoring skills in activities of daily living (ADL), work or productive activities, including instrumental activities of daily living (IADL) and play and leisure activities;

(2) evaluating, developing, remediating, or restoring sensorimotor, cognitive or psychosocial components of performance;

(3) designing, fabricating, applying, or training in the use of assistive technology or orthotic devices and training in the use of prosthetic devices;

(4) adapting environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;

(5) applying physical agent modalities as an adjunct to or in preparation for engagement in occupations;

(6) evaluating and providing intervention in collaboration with the client, family, caregiver or others;

(7) educating the client, family, caregiver or others in carrying out appropriate nonskilled interventions; and

(8) consulting with groups, programs, organizations or communities to provide population-based services.

(d) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this act.

(e) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist.

(f) "Person" means any individual, partnership, unincorporated organization or corporation.

(g) "Physician" means a person licensed to practice medicine and surgery.

(h) "Occupational therapy aide," "occupational therapy tech" or "occupational therapy paraprofessional" means a person who provides supportive services to occupational therapists and occupational therapy assistants in accordance with K.S.A. 65-5419, and amendments thereto.

HISTORY: L. 1986, ch. 323, § 2; L. 2002, ch. 203, § 4; Apr. 1, 2003.

65-5403. Administration of act by state board of healing arts. The board, in the manner hereinafter provided, shall administer the provisions of this act.

HISTORY: L. 1986, ch. 323, § 3; July 1.

65-5406. Application for licensure; requirements.

(a) An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

(1) Education: The applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board.

(2) Experience: The applicant shall submit to the board evidence of having successfully completed a period of supervised field work at a minimum recognized by the board.

(3) Examination: The applicant shall pass an examination as provided for in K.S.A. 65-5407 and amendments thereto.

(4) Fees: The applicants shall pay to the board all applicable fees established under K.S.A. 65-5409 and amendments thereto.

(b) The board shall adopt rules and regulations establishing the criteria which an educational program in occupational therapy shall satisfy to be recognized by the board under paragraph (1) of subsection (a). The board may send a questionnaire developed by the board to any school or other entity conducting an educational program in occupational therapy for which the board does not have sufficient information to determine whether the program should be recognized by the board and whether the program meets the rules and regulations adopted under this section. The questionnaire providing the necessary information shall be completed and returned to the board in order for the program to be considered for recognition. The board may contract with investigative agencies, commissions or consultants to assist the

board in obtaining information about an educational program in occupational therapy. In entering such contracts the authority to recognize an educational program in occupational therapy shall remain solely with the board.

HISTORY: L. 1986, ch. 323, § 6; L. 1988, ch. 243, § 12; L. 2002, ch. 203, § 6; Apr. 1, 2003.

65-5408. Waiver of examination and other requirements; when waived; temporary license.

(a) The board may waive the examination, education or experience requirements and grant licensure to any applicant who presents proof of current licensure or registration as an occupational therapist or occupational therapy assistant in another state, the District of Columbia or territory of the United States which requires standards for licensure or registration determined by the board to be equivalent to or exceed the requirements for licensure under this act.

(b) At the time of making an application under this section, the applicant shall pay to the board the application fee as required under K.S.A. 65-5409 and amendments thereto.

(c) The board may issue a temporary license to an applicant for licensure as an occupational therapist or as an occupational therapy assistant who applies for temporary licensure on a form provided by the board, who meets the requirements for licensure or who meets all the requirements for licensure except examination and who pays to the board the temporary license fee as required under K.S.A. 65-5409 and amendments thereto. Such temporary license shall expire one year from the date of issue or on the date that the board approves the application for licensure, whichever occurs first. No more than one such temporary license shall be permitted to any one person.

HISTORY: L. 1986, ch. 323, § 8; L. 1987, ch. 253, § 2; L. 1991, ch. 192, § 5; L. 1997, ch. 26, § 1; L. 2002, ch. 203, § 8; Apr. 1, 2003.

65-5409. Fees.

(a) The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:

Application fee, not more than	$ 80
Temporary license fee, not more than	40
License renewal fee, not more than	80
License late renewal fee, not more than	80
License reinstatement fee, not more than	80
Certified copy of license, not more than	40
Written verification of license, not more than	25

(b) The board shall charge and collect in advance fees for any examination administered by the board under the occupational therapy practice act as fixed by the board by rules and regulations in an amount equal to the cost to the board of the examination. If the examination is not administered by the board, the board may require that fees paid for any examination under the occupational therapy practice act be paid directly to the examination service by the person taking the examination.

HISTORY: L. 1986, ch. 323, § 9; L. 1987, ch. 253, § 3; L. 1989, ch. 202, § 2; L. 1997, ch. 94, § 4; L. 2002, ch. 203, § 9; Apr. 1, 2003.

65-5410. Denial, revocation or suspension of license or refusal to renew license; unprofessional conduct; procedure; reinstatement.

(a) The board may deny, refuse to renew, suspend or revoke a license where the licensee or applicant for licensure has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Unprofessional conduct includes:

(1) Obtaining a license by means of fraud, misrepresentation or concealment of material facts;

(2) being guilty of unprofessional conduct as defined by rules and regulations adopted by the board;

(3) being convicted of a felony if the acts for which such person was convicted are found by the board to have a direct bearing on whether such person should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant;

(4) violating any lawful order or rule and regulation of the board; and

(5) violating any provision of this act.

(b) Such denial, refusal to renew, suspension or revocation of a license may be ordered by the board after notice and hearing on the matter in accordance with the provisions of the Kansas administrative procedure act. Upon the end of the period of time established by the board for the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and may hold a hearing to consider such reinstatement.

HISTORY: L. 1986, ch. 323, § 10; L. 2002, ch. 203, § 10; Apr. 1, 2003.

65-5414. Representation as occupational therapist or occupational therapy assistant; prohibitions; misdemeanor.

(a) It shall be unlawful for any person who is not licensed under this act as an occupational therapist or an occupational therapy assistant or whose license has been suspended or revoked to use, in connection with such person's name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist licensed," "occupational therapy assistant," "licensed occupational therapy assistant," or the letters, "O.T.," " L.O.T.," "O.T.L.," "O.T.A." or " L.O.T.A." or any other words, letters, abbreviations or insignia indicating or implying that such person is an occupational therapist or an occupational therapy assistant or who in any way, orally, in writing, in print or by sign, directly or by implication, represents oneself as an occupational therapist or an occupational therapy assistant.

(b) Any violation of this section shall constitute a class C misdemeanor.

HISTORY: L. 1986, ch. 323, § 14; L. 2002, ch. 203, § 12; Apr. 1, 2003.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 55. RESPIRATORY THERAPY

65-5501. Citation of act. K.S.A. 65-5501 to 65-5517, inclusive, shall be known and may be cited as the respiratory therapy practice act.

HISTORY: L. 1986, ch. 322, § 1; July 1.

65-5502. Definitions. As used in K.S.A. 65-5501 to 65-5517, inclusive and amendments thereto:

(a) "Board" means the state board of healing arts.

(b) "Respiratory therapy" is a health care profession whose therapists practice under the supervision of a qualified medical director and with the prescription of a licensed physician providing therapy, management, rehabilitation, respiratory assessment and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated other systems functions. The duties which may be performed by a respiratory therapist include:

(1) Direct and indirect respiratory therapy services that are safe, aseptic, preventative and restorative to the patient.

(2) Direct and indirect respiratory therapy services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory therapy procedures to implement a treatment, disease prevention or pulmonary rehabilitative regimen prescribed by a physician.

(3) Administration of medical gases, exclusive of general anesthesia, aerosols, humidification and environmental control systems.

(4) Transcription and implementation of written or verbal orders of a physician pertaining to the practice of respiratory therapy.

(5) Implementation of respiratory therapy protocols as defined by the medical staff of an institution or a qualified medical director or other written protocol, changes in treatment pursuant to the written or verbal orders of a physician or the initiation of emergency procedures as authorized by written protocols.

(c) "Respiratory therapist" means a person who is licensed to practice respiratory therapy as defined in this act.

(d) "Person" means any individual, partnership, unincorporated organization or corporation.

(e) "Physician" means a person who is licensed by the board to practice medicine and surgery.

(f) "Qualified medical director" means the medical director of any inpatient or outpatient respiratory therapy service, department or home care agency. The medical director shall be a physician who has interest and knowledge in the diagnosis and treatment of respiratory problems. This physician shall be responsible for the quality, safety and appropriateness of the respiratory services provided and require that respiratory therapy be ordered by a physician who has medical responsibility for the patient. The medical director shall be readily accessible to the respiratory therapy practitioner.

HISTORY: L. 1986, ch. 322, § 2; L. 1999, ch. 87, § 7; Mar. 1, 2000.

65-5503. Administration of act by state board of healing arts. The board, as hereinafter provided, shall administer the provisions of this act.

HISTORY: L. 1986, ch. 322, § 3; L. 1999, ch. 87, § 8; Mar. 1, 2000.

65-5506. Application for licensure; requirements; rules and regulations criteria for educational programs.

(a) An applicant applying for licensure as a respiratory therapist shall file a written application on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

(1) Education: The applicant shall present evidence satisfactory to the board of having successfully completed an educational program in respiratory therapy approved by the board.

(2) Examination: The applicant shall pass an examination as provided for in K.S.A. 65-5507 and amendments thereto.

(3) Fees: The applicants shall pay to the board all applicable fees established under K.S.A. 65-5509 and amendments thereto.

(b) The board shall adopt rules and regulations establishing the criteria for an educational program in respiratory therapy to obtain successful recognition by the board under paragraph (1) of subsection (a). The board may send a questionnaire developed by the board to any school or other entity conducting an educational program in respiratory therapy for which the board does not have sufficient information to determine whether the program should be recognized by the board and whether the program meets the rules and regulations adopted under this section. The questionnaire providing the necessary information shall be completed and returned to the board in order for the program to be considered for recognition. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about an educational program in respiratory therapy. In entering such contracts the authority to recognize an educational program in respiratory therapy shall remain solely with the board.

HISTORY: L. 1986, ch. 322, § 6; L. 1988, ch. 243, § 13; L. 1999, ch. 87, § 11; Mar. 1, 2000.

65-5508. Waiver of examination and other requirements; when waived; special permits; temporary license.

(a) The board may waive the examination, education or experience requirements and grant licensure to any applicant who presents proof of current licensure or registration as a respiratory therapist in another state, the District of Columbia or territory of the United States which requires standards for licensure or registration determined by the board to be equivalent to the requirements for licensure under this act.

(b) At the time of making an application under this section, the applicant shall pay to the board the application fee as required under K.S.A. 65-5509 and amendments thereto.

(c) The board may issue a special permit to a student enrolled in an approved school of respiratory therapy who applies for such special permit on a form provided by the board and who pays to the board the special permit fee as required under K.S.A. 65-5509 and amendments thereto. The special permit shall authorize a student who is enrolled in an approved school of respiratory therapy and who holds such special permit to practice respiratory therapy under the supervision of a licensed respiratory therapist. Such special permit shall expire on the date that the student graduates from an approved school of respiratory therapy or otherwise ceases to be enrolled in an approved school of respiratory therapy.

(d) The board may issue a temporary license to an applicant for licensure as a respiratory therapist who applies for temporary licensure on a form provided by the board, who meets the requirements for licensure or who meets all of the requirements for licensure except examination and who pays to the board the temporary license fee as required under K.S.A. 65-5509 and amendments thereto. Such temporary licensure shall expire one year from the date of issue or on the date that the board approves the application for licensure, whichever occurs first. No more than one such temporary license shall be permitted to any one person.

(e) A person registered to practice respiratory therapy on February 29, 2000, shall be deemed to be licensed to practice respiratory therapy under this act, and such person shall not be required to file an original application for licensure under this act. Any application for registration filed but which has not been granted prior to March 1, 2000, shall be processed as an application for licensure under this act.

HISTORY: L. 1986, ch. 322, § 8; L. 1987, ch. 253, § 5; L. 1991, ch. 192, § 6; L. 1997, ch. 26, § 2; L. 1999, ch. 87, § 13; Mar. 1, 2000.

65-5509. Fees.

(a) The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:

Application fee, not more than	$ 80
Temporary license fee, not more than	40
Special permit fee, not more than	80
License renewal fee, not more than	80
License late renewal fee, not more than	80
License reinstatement fee, not more than	80
Certified copy of license, not more than	40
Written verification of license, not more than	25

(b) The board shall charge and collect in advance fees for any examination administered by the board under the respiratory therapy practice act as fixed by the board by rules and regulations in an amount equal to the cost to the board of the examination. If the examination is not administered by the board, the board may require that fees paid for any examination under the respiratory therapy practice act be paid directly to the examination service by the person taking the examination.

HISTORY: L. 1986, ch. 322, § 9; L. 1987, ch. 253, § 6; L. 1989, ch. 202, § 1; L. 1997, ch. 94, § 5; L. 1999, ch. 87, § 14; Mar. 1, 2000.

65-5510. Denial, revocation or suspension of license or refusal to renew license; unprofessional conduct; procedure; reinstatement.

(a) The board may deny, refuse to renew, suspend or revoke a license where the licensee or applicant for licensure has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Unprofessional conduct includes:

(1) Obtaining a license by means of fraud, misrepresentation or concealment of material facts;

(2) being guilty of unprofessional conduct as defined by rules and regulations adopted by the board;

(3) being convicted of a felony if the acts for which such person was convicted are found by the board to have a direct bearing on whether such person should be entrusted to serve the public in the capacity of a respiratory therapist;

(4) violating any lawful order or rule and regulation of the board; and

(5) violating any provision of this act.

(b) Such denial, refusal to renew, suspension or revocation of a license may be ordered by the board after notice and hearing on the matter in accordance with the provisions of the Kansas administrative procedure act. Upon the end of the period of time established by the board for the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and may hold a hearing to consider such reinstatement. An application for reinstatement shall be accompanied by the licensing reinstatement fee established under K.S.A. 65-5509 and amendments thereto.

HISTORY: L. 1986, ch. 322, § 10; L. 1999, ch. 87, § 15; Mar. 1, 2000.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 56. CONFIDENTIAL COMMUNICATIONS AND INFORMATION TREATMENT FACILITY PATIENTS

65-5601. Definitions. As used in K.S.A. 65-5601 to 65-5605, inclusive:

(a) "Patient" means a person who consults or is examined or interviewed by treatment personnel.

(b) "Treatment personnel" means any employee of a treatment facility who receives a confidential communication from a patient while engaged in the diagnosis or treatment of a mental, alcoholic, drug dependency or emotional condition, if such communication was not intended to be disclosed to third persons.

(c) "Ancillary personnel" means any employee of a treatment facility who is not included in the definition of treatment personnel.

(d) "Treatment facility" means a community mental health center, community service provider, psychiatric hospital and state institution for the mentally retarded.

(e) "Head of the treatment facility" means the administrative director of a treatment facility or the designee of the administrative director.

(f) "Community mental health center" means a mental health clinic or community mental health center licensed under K.S.A. 75-3307b and amendments thereto.

(g) "Psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Topeka state hospital and hospitals licensed under K.S.A. 75-3307b and amendments thereto.

(h) "State institution for the mentally retarded" means Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

(i) "Community service provider" means:

(1) A community facility for the mentally retarded organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto;

(2) community service provider as provided in the developmental disabilities reform act; or

(3) a nonprofit corporation which provides services for the mentally retarded pursuant to a contract with a mental retardation governing board.

HISTORY: L. 1986, ch. 212, § 1; L. 1995, ch. 234, § 18; L. 1996, ch. 167, § 60; Apr. 18.

65-5602. Privilege of patient of treatment facility to prevent disclosure of treatment and of confidential communications; extent of privilege; persons who may claim privilege; persons to which confidential communications extend.

(a) A patient of a treatment facility has a privilege to prevent treatment personnel or ancillary personnel from disclosing that the patient has been or is currently receiving treatment or from disclosing any confidential communications made for the purposes of diagnosis or treatment of the patient's mental, alcoholic, drug dependency or emotional condition. The privilege extends to individual, family or group therapy under the direction of the treatment personnel and includes members of the patient's family. The privilege may be claimed by the patient, by the patient's guardian or conservator or by the personal representative of a deceased patient. The treatment personnel shall claim the privilege on behalf of the patient unless the patient has made a written waiver of the privilege and provided the treatment personnel with a copy of such waiver or unless one of the exceptions provided by K.S.A. 65-5603 is applicable.

(b) Confidential communications shall extend to those persons present to further the interests of the patient in the consultation, examination or interview; ancillary personnel; persons who are participating in the diagnosis and treatment under the direction of the treatment personnel, including members of the patient's family; and any other persons who the patient reasonably believes needs the communication to assist in the patient's diagnosis or treatment.

HISTORY: L. 1986, ch. 212, § 2; July 1.

65-5603. Exceptions to privilege.

(a) The privilege established by K.S.A. 65-5602 and amendments thereto shall not extend to:

(1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

(2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;

(3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;

(4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;

(5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;

(6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;

(7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209 and amendments thereto;

(8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;
(10) any information to the state protection and advocacy system which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility; or

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;

(13) any communication and information by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient,

patient or former patient for purposes of promoting continuity of care by and between treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient;

(14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study; or

(15) any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner's designee, requests such information.

(b) The treatment personnel shall not disclose any information subject to subsection (a)(3) unless a judge has entered an order finding that the patient has made such patient's condition an issue of the patient's claim or defense. The order shall indicate the parties to whom otherwise confidential information must be disclosed.

HISTORY: L. 1986, ch. 212, § 3; L. 1987, ch. 254, § 1; L. 1988, ch. 305, § 1; L. 1990, ch. 92, § 34; L. 1996, ch. 167, § 61; L. 2003, ch. 66, § 3; July 1.

65-5604. Interpretation of act; rules of discovery not to take precedence over act. This act shall be interpreted to encourage treatment in a confidential setting and the rules of discovery shall not take precedence over the provisions of this act.

HISTORY: L. 1986, ch. 212, § 4; July 1.

65-5605. Violations; misdemeanor. Any treatment personnel or ancillary personnel willfully violating the patient's confidentiality as defined by this act shall be guilty of a class C misdemeanor.

HISTORY: L. 1986, ch. 212, § 5; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 58. PROFESSIONAL COUNSELORS

65-5801. Citation of act. K.S.A. 65-5801 through 65-5816 shall be known and may be cited as the professional counselors licensure act.

HISTORY: L. 1987, ch. 315, § 1; L. 1996, ch. 153, § 1; Jan. 1, 1997.

65-5802. Definitions. As used in the professional counselors licensure act:

(a) "Board" means the behavioral sciences regulatory board created by K.S.A. 74-7501 and amendments thereto.

(b) "Practice of professional counseling" means assisting an individual or group for a fee, monetary or otherwise, through counseling, assessment, consultation and referral and includes the diagnosis and treatment of mental disorders as authorized under the professional counselors licensure act.

(c) "Professional counseling" means to assist an individual or group to develop understanding of personal strengths and weaknesses, to restructure concepts and feelings, to define goals and to plan actions as these are related to personal, social, educational and career development and adjustment.

(d) "Assessment" means selecting, administering, scoring and interpreting instruments designed to describe an individual's aptitudes, abilities, achievements, interests and personal characteristics.

(e) "Consultation" means the application of principles, methods and techniques of the practice of counseling to assist in solving current or potential problems of individuals or groups in relation to a third party.

(f) "Referral" means the evaluation of information to identify problems and to determine the advisability of referral to other practitioners.

(g) "Licensed professional counselor" means a person who is licensed under this act and who engages in the practice of professional counseling except that on and after January 1, 2002, such person shall engage in the practice of professional counseling only under the direction of a licensed clinical professional counselor, a licensed psychologist, a person licensed to practice medicine and surgery or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of mental disorders.

(h) "Licensed clinical professional counselor" means a person who engages in the independent practice of professional counseling including the diagnosis and treatment of mental disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations and who is licensed under this act.

HISTORY: L. 1987, ch. 315, § 2; L. 1996, ch. 153, § 2; L. 1999, ch. 117, § 1; July 1, 2000.

65-5803. Licensure required prior to certain acts and representations; violations misdemeanor.

(a) No person shall engage in the practice of professional counseling or represent that such person is a licensed professional counselor, licensed counselor or professional counselor without having first obtained a license as a professional counselor under the professional counselors licensure act.

(b) On and after the effective date of this act, no person shall engage in the practice of professional counseling as a clinical professional counselor or represent that such person is a licensed clinical professional counselor without first having obtained a license as a clinical professional counselor under the professional counselors licensure act.

(c) Violation of this section is a class B misdemeanor.

HISTORY: L. 1987, ch. 315, § 3; L. 1996, ch. 153, § 3; L. 1999, ch. 117, § 2; July 1, 2000.

65-5810. Confidential communications; exceptions.

(a) The confidential relations and communications between a licensed professional counselor and such counselor's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(b) The confidential relations and communications between a licensed clinical professional counselor and such counselor's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed professional counselor or licensed clinical professional counselor from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of the client. There is no privilege under this section for information which is required to be reported to a public official.

HISTORY: L. 1987, ch. 315, § 10; L. 1996, ch. 153, § 10; L. 1999, ch. 117, § 9; July 1, 2000.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 60. ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) AND HEPATITIS B; OTHER INFECTIOUS DISEASE
ACQUIRED IMMUNE DEFICIENCY SYNDROME

65-6001. Definitions. As used in K.S.A. 65-6001 to 65-6007, inclusive, and K.S.A. 65-6008, 65-6009 and 65-6010, and amendments thereto, unless the context clearly requires otherwise:

(a) "AIDS" means the disease acquired immune deficiency syndrome.

(b) "HIV" means the human immunodeficiency virus.

(c) "Laboratory confirmation of HIV infection" means positive test results from a confirmation test approved by the secretary.

(d) "Secretary" means the secretary of health and environment.

(e) "Physician" means any person licensed to practice medicine and surgery.

(f) "Laboratory director" means the person responsible for the professional, administrative, organizational and educational duties of a laboratory.

(g) "HIV infection" means the presence of HIV in the body.

(h) "Racial/ethnic group" shall be designated as either white, black, Hispanic, Asian/Pacific islander or American Indian/Alaskan Native.

(i) "Corrections officer" means an employee of the department of corrections as defined in subsections (f) and (g) of K.S.A. 75-5202, and amendments thereto.

(j) "Emergency services employee" means an attendant or first responder as defined under K.S.A. 65-6112, and amendments thereto, or a firefighter.

(k) "Law enforcement employee" means:

(1) Any police officer or law enforcement officer as defined under K.S.A. 74-5602, and amendments thereto;

(2) any person in the service of a city police department or county sheriff's office who performs law enforcement duties without pay and is considered a reserve officer;

(3) any person employed by a city or county who is in charge of a jail or section of jail, including jail guards and those who conduct searches of persons taken into custody; or

(4) any person employed by a city, county or the state of Kansas who works as a scientist or technician in a forensic laboratory.

(l) "Employing agency or entity" means the agency or entity employing a corrections officer, emergency services employee, law enforcement employee or jailer.

(m) "Infectious disease" means AIDS.

(n) "Infectious disease tests" means tests approved by the secretary for detection of infectious diseases.

(o) "Juvenile correctional facility staff" means an employee of the juvenile justice authority working in a juvenile correctional facility as defined in K.S.A. 38-1602, and amendments thereto.

HISTORY: L. 1988, ch. 232, § 1; L. 1990, ch. 234, § 1; L. 1996, ch. 215, § 1; L. 1998, ch. 187, § 12; L. 1999, ch. 109, § 1; July 1.

65-6002. Reporting to secretary of health and environment information concerning AIDS or HIV infection; information reported, when; persons reporting; immunity from liability; confidentiality of information; disclosure; use of information to discriminate prohibited.

(a) Whenever any physician has information indicating that a person is suffering from or has died from AIDS, such knowledge or information shall be reported immediately to the secretary, together with the name and address of the person who has AIDS. Any physician or administrator of a medical care facility or such administrator's designee who is in receipt of a report indicating laboratory confirmation of HIV infection resulting from the examination of any specimen provided to a laboratory by such physician or administrator or designee shall report all such information to the secretary. Reports shall be provided within 30 days of testing and shall include the name and address of the person tested, the type of test or tests performed, the date of performance of the test or tests, the results of the test or tests, the sex, date of birth, county of residence and racial/ethnic group of the person tested.

(b) Whenever any laboratory director has information on laboratory confirmation of HIV infection, this information shall be reported to the secretary. Reports shall be provided within 30 days of testing and shall include the type of test or tests, the results of the test or tests, dates of performance of the test or tests, the name of the physician or facility requesting the test or tests, and any identifying information about the person tested as the laboratory director has access to, such as the name and address of the person tested, the sex, date of birth, county of residence and racial/ethnic group, exposure category and pregnancy status of the person tested.

(c) Any physician, administrator of a medical care facility or such administrator's designee or laboratory director who reports the information required to be reported under subsection (a) or (b) in good faith and without malice to the secretary shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such report. Any such physician, administrator or designee or laboratory director shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(d) Information required to be reported under subsection (a) or (b) and information obtained through laboratory tests conducted by the department of health and environment relating to HIV or AIDS and persons suffering therefrom or infected therewith shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the disclosure necessary under subsection (a) or (b) or under subsection (a) of K.S.A. 65-6003 and amendments thereto or the usual reporting of laboratory test results to persons specifically designated by the secretary as authorized to obtain such information, except such information may be disclosed:

> (1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;
>
> (2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;
>
> (3) if the disclosure is necessary, and only to the extent necessary, as specified by rules and regulations of the secretary, to protect the public health;
>
> (4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat AIDS or HIV infection, except that any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or
>
> (5) if the information to be disclosed is required in a court proceeding involving a minor and the information is disclosed in camera.

(e) Information regarding cases of AIDS or HIV infection reported in accordance with this section shall be used only as authorized under this act. Such information shall not be used in any form or manner which would lead to the discrimination against any individual or group with regard to employment, to provision of medical care or acceptance

into any facilities or institutions for medical care, housing, education, transportation, or for the provision of any other goods or services.

HISTORY: L. 1988, ch. 232, § 2; L. 1990, ch. 234, § 2; L. 1997, ch. 8, § 14; L. 1999, ch. 109, § 2; L. 2001, ch. 58, § 1; July 1.

65-6003. Investigation of cases of AIDS or HIV infection; rules and regulations; protection of public health; disclosure of information; confidentiality; agreements with local boards of health authorized.

(a) The secretary shall investigate cases of persons who have HIV infection or AIDS and monitor such cases during their continuance. The secretary may adopt and enforce rules and regulations for the prevention and control of HIV infection or AIDS as may be necessary to protect the public health. The secretary shall adopt rules and regulations for maintaining confidentiality of information under this act which at a minimum are as strict as the centers for disease control and prevention guidelines.

(b) Any information relating to persons who have HIV infection or AIDS which is required to be disclosed or communicated under subsection (a) shall be confidential and shall not be disclosed or made public beyond the disclosure necessary under subsection (a) or under subsection (a) of K.S.A. 65-6002 and amendments thereto to persons specifically designated by the secretary as authorized to obtain such information, except as otherwise permitted by subsection (d) of K.S.A. 65-6002 and amendments thereto.

(c) The secretary may enter into agreements with any county or joint board of health to perform duties required to be performed by the secretary under subsection (a) as specified by such agreement. The confidentiality requirements of subsection (b) shall apply to any duties performed pursuant to such an agreement.

HISTORY: L. 1988, ch. 232, § 3; L. 1999, ch. 109, § 3; July 1.

65-6004. Physician authorized to disclose to certain persons information about patient who has infectious disease or who has had laboratory confirmation of a positive reaction to an infectious disease test; confidentiality of information; immunity in judicial proceedings.

(a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has an infectious disease or has had laboratory confirmation of a positive reaction to an infectious disease test may disclose such information to other health care providers, emergency services employees, corrections officers or law enforcement employees who have been or will be placed in contact with body fluids of such patient. The information shall be confidential and shall not be disclosed by such health care providers, emergency services employees, corrections officers or law enforcement employees except as may be necessary in providing treatment for such patient.

(b) Notwithstanding any other law to the contrary, a physician who has reason to believe that the spouse or partner of a person who has had laboratory confirmation of HIV infection or who has AIDS may have been exposed to HIV and is unaware of such exposure may inform the spouse or partner of the risk of exposure. The information shall be confidential and shall not be disclosed by such spouse or partner to other persons except to the spouse or partner who has had laboratory confirmation of HIV infection or who has AIDS.

(c) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to HIV.
(d) Any physician who discloses or fails to disclose information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

HISTORY: L. 1988, ch. 232, § 4; L. 1990, ch. 234, § 3; L. 1993, ch. 221, § 1; L. 1996, ch. 215, § 2; L. 1999, ch. 109, § 4; July 1.

65-6005. Unlawful acts; penalties. Except as otherwise provided in this section, any person violating, refusing or neglecting to obey any provision of K.S.A. 65-6001 through 65-6004, and amendments thereto, or of the rules and regulations adopted by the secretary for the prevention and control of HIV infection or AIDS shall be guilty of a class C misdemeanor. Any person who discloses information which is made confidential and prohibited from disclosure under K.S.A. 65-6002 through 65-6004, and amendments thereto, shall be guilty of a misdemeanor punishable by a fine of not less than $ 500 nor more than $ 1,000 and by imprisonment in the county jail for not more than six months.

HISTORY: L. 1988, ch. 232, § 5; L. 1999, ch. 109, § 5; July 1.

65-6007. Establishment and maintenance of sites for testing for HIV. The secretary shall establish and maintain test sites throughout the state where testing for HIV may be undertaken including anonymous testing. The secretary shall establish test sites throughout the state so that an anonymous test site is available within 100 miles of any resident of the state.

HISTORY: L. 1988, ch. 232, § 7; L. 1999, ch. 109, § 6; July 1.

65-6011. Report to legislature. On or before January 8, 2001, and annually thereafter, the secretary of health and environment shall report to the legislature concerning the impact of the changes made to K.S.A. 65-6001 through 65-6007, and amendments thereto.

HISTORY: L. 1999, ch. 109, § 7; L. 2001, ch. 58, § 2; July 1.

65-6015. Definitions. As used in K.S.A. 65-6015 through 65-6017, and amendments thereto:

(a) "Body fluid" means blood, amniotic fluid, pericardial fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen or vaginal secretions, or any body fluid visibly contaminated with blood.

(b) "Corrections employee" means an employee of the juvenile justice authority or the department of corrections or an employee of a contractor who is under contract to provide services in a correctional institution.

(c) "Offender" means a person in the legal custody of the commissioner of juvenile justice or the secretary of corrections.

(d) "Physician" means any person licensed to practice medicine and surgery.

(e) "Infectious disease" means any disease communicable from one person to another through contact with bodily fluids.

HISTORY: L. 1993, ch. 221, § 2; L. 2001, ch. 102, § 1; July 1.

65-6016. Physician authorized to disclose infectious diseases to certain corrections employees; confidentiality; immunity in judicial proceedings.

(a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has an infectious disease or has had a positive reaction to an infectious disease test may disclose such information to corrections employees who have been or will be placed in contact with body fluid of such patient. The information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient. Any other disclosure of such information by a corrections employee is a class C misdemeanor.

(b) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to an infectious disease.

(c) Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

HISTORY: L. 1993, ch. 221, § 3; L. 2001, ch. 102, § 2; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 61. EMERGENCY MEDICAL SERVICES

65-6101. Bureau of emergency medical services, position of director and emergency medical services council abolished; powers, duties and functions transferred.

(a) The bureau of emergency medical services established pursuant to K.S.A. 74-2127, and amendments thereto, is hereby abolished and all of the powers, duties and functions of such bureau are transferred to and conferred and imposed upon the emergency medical services board established pursuant to K.S.A. 65-6102. Except as provided by this act, all powers, duties and functions of the university of Kansas relating to emergency medical services are transferred to and conferred and imposed upon the emergency medical services board established pursuant to K.S.A. 65-6102.

(b) The position of the director of the bureau of emergency medical services appointed pursuant to K.S.A. 74-2127, and amendments thereto, is hereby abolished and all of the powers, duties and functions of the director of emergency medical services are transferred to and conferred and imposed upon the emergency medical services board or the administrator thereof as provided by this act. The director shall continue to carry out the duties of that position until an administrator is appointed and qualified pursuant to this act.

(c) The emergency medical services council established under K.S.A. 65-4316, and amendments thereto, is hereby abolished and all of the powers, duties and functions of the council are transferred to and conferred and imposed upon the emergency medical services board.

HISTORY: L. 1988, ch. 261, § 1; April 14.

65-6104. Emergency medical services board and administrator successor to certain powers, duties and functions; orders and directives, rules and regulations continued.

(a) Except as provided in this act, the emergency medical services board established by K.S.A. 65-6102 shall be the successor in every way to the powers, duties and functions of the bureau of emergency medical services established by K.S.A. 74-2127, and amendments thereto, in which the same were vested prior to the effective date of this act.

(b) Except as provided in this act, the administrator of the emergency medical services board appointed pursuant to K.S.A. 65-6103 shall be the successor in every way to the powers, duties and functions of the director of the bureau of emergency medical services established by K.S.A. 74-2127, and amendments thereto, in which the same were vested prior to the effective date of this act.

(c) Whenever the bureau of emergency medical services or emergency medical services council or words of like effect are referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the emergency medical services board established by K.S.A. 65-6102. Whenever the director of the bureau of emergency medical services or words of like effect are referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the emergency medical services board.

(d) All orders and directives of the emergency medical services council which relate to emergency medical services and which were adopted under K.S.A. 65-4314 to 65-4331, inclusive, and amendments thereto, in existence immediately

prior to the effective date of this act shall continue to be effective and shall be deemed to be the orders or directives of the emergency medical services board, until revised, amended, repealed or nullified pursuant to law.

All rules and regulations of the emergency medical services council which relate to emergency medical services and which were adopted under K.S.A. 65-4314 to 65-4331, inclusive, and amendments thereto, in existence immediately prior to the effective date of this act shall continue to be effective and shall be deemed to be the rules and regulations of the emergency medical services board, until revised, amended, repealed or nullified pursuant to law.

HISTORY: L. 1988, ch. 261, § 4; April 14.

65-6110. Rules and regulations; act not applicable to certain rescue vehicles.

(a) The board shall adopt any rules and regulations necessary for the regulation of ambulance services. Such rules and regulations shall include:

(1) A classification of the different types of ambulance services;

(2) requirements as to equipment necessary for ambulances and rescue vehicles;

(3) qualifications and training of attendants, instructor-coordinators and training officers;

(4) requirements for the licensure and renewal of licensure for ambulances and rescue vehicles;

(5) records and equipment to be maintained by operators, instructor-coordinators, training officers, providers of training and attendants; and

(6) such other matters as the board deems necessary to implement and administer the provisions of this act.

(b) The provisions of this act shall not apply to rescue vehicles operated by a fire department.

HISTORY: L. 1988, ch. 261, § 10; L. 1990, ch. 235, § 1; L. 1993, ch. 71, § 1; L. 1998, ch. 133, § 2; July 1.

65-6111. Powers and duties of emergency medical services board. The emergency medical services board shall:

(a) Adopt any rules and regulations necessary to carry out the provisions of this act;

(b) review and approve the allocation and expenditure of moneys appropriated for emergency medical services;

(c) conduct hearings for all regulatory matters concerning ambulance services, attendants, instructor-coordinators, training officers and providers of training;

(d) submit a budget to the legislature for the operation of the board;

(e) develop a state plan for the delivery of emergency medical services;

(f) enter into contracts as may be necessary to carry out the duties and functions of the board under this act;

(g) review and approve all requests for state and federal funding involving emergency medical services projects in the state or delegate such duties to the administrator;

(h) approve all training programs for attendants, instructor-coordinators and training officers and prescribe application fees by rules and regulations;

(i) approve methods of examination for certification of attendants, training officers and instructor-coordinators and prescribe examination fees by rules and regulations;

(j) appoint a medical consultant for the board. Such person shall be a person licensed to practice medicine and surgery and shall be active in the field of emergency medical services; and

(k) approve providers of training by prescribing standards and requirements by rules and regulations and withdraw or modify such approval in accordance with the Kansas administrative procedures act and the rules and regulations of the board.

HISTORY: L. 1988, ch. 261, § 11; L. 1993, ch. 71, § 2; L. 1998, ch. 133, § 3; July 1.

65-6112. Definitions. As used in this act:

(a) "Administrator" means the administrator of the emergency medical services board.

(b) "Ambulance" means any privately or publicly owned motor vehicle, airplane or helicopter designed, constructed, prepared and equipped for use in transporting and providing emergency care for individuals who are ill or injured.

(c) "Ambulance service" means any organization operated for the purpose of transporting sick or injured persons to or from a place where medical care is furnished, whether or not such persons may be in need of emergency or medical care in transit.

(d) "Attendant" means a first responder, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-defibrillator or a mobile intensive care technician certified pursuant to this act.

(e) "Board" means the emergency medical services board established pursuant to K.S.A. 65-6102, and amendments thereto.

(f) "Emergency medical service" means the effective and coordinated delivery of such care as may be required by an emergency which includes the care and transportation of individuals by ambulance services and the performance of authorized emergency care by a physician, professional nurse, a licensed physician assistant or attendant.

(g) "Emergency medical technician" means a person who holds an emergency medical technician certificate issued pursuant to this act.

(h) "Emergency medical technician-defibrillator" means a person who holds an emergency medical technician defibrillator certificate issued pursuant to this act.

(i) "Emergency medical technician-intermediate" means a person who holds an emergency medical technician intermediate certificate issued pursuant to this act.

(j) "First responder" means a person who holds a first responder certificate issued pursuant to this act.

(k) "Hospital" means a hospital as defined by K.S.A. 65-425, and amendments thereto.

(l) "Instructor-coordinator" means a person who is certified under this act to teach initial courses of certification of instruction and continuing education classes.

(m) "Medical adviser" means a physician.

(n) "Medical protocols" mean written guidelines which authorize attendants to perform certain medical procedures prior to contacting a physician, or professional nurse authorized by a physician. These protocols shall be developed and approved by a county medical society or, if there is no county medical society, the medical staff of a hospital to which the ambulance service primarily transports patients.

(o) "Mobile intensive care technician" means a person who holds a mobile intensive care technician certificate issued pursuant to this act.

(p) "Municipality" means any city, county, township, fire district or ambulance service district.

(q) "Nonemergency transportation" means the care and transport of a sick or injured person under a foreseen combination of circumstances calling for continuing care of such person. As used in this subsection, transportation includes performance of the authorized level of services of the attendant whether within or outside the vehicle as part of such transportation services.

(r) "Operator" means a person or municipality who has a permit to operate an ambulance service in the state of Kansas.

(s) "Person" means an individual, a partnership, an association, a joint-stock company or a corporation.

(t) "Physician" means a person licensed by the state board of healing arts to practice medicine and surgery.

(u) "Physician assistant" means a person who is licensed under the physician assistant licensure act and who is acting under the direction of a responsible physician.

(v) "Professional nurse" means a licensed professional nurse as defined by K.S.A. 65-1113, and amendments thereto.

(w) "Provider of training" means a corporation, partnership, accredited postsecondary education institution, ambulance service, fire department, hospital or municipality that conducts training programs that include, but are not limited to, initial courses of instruction and continuing education for attendants, instructor-coordinators or training officers.

(x) "Responsible physician" means responsible physician as such term is defined under K.S.A. 65-28a02 and amendments thereto.

(y) "Training officer" means a person who is certified pursuant to this act to teach initial courses of instruction for first responders and continuing education as prescribed by the board.

HISTORY: L. 1988, ch. 261, § 12; L. 1990, ch. 235, § 2; L. 1991, ch. 203, § 1; L. 1993, ch. 71, § 3; L. 1994, ch. 154, § 1; L. 1998, ch. 133, § 4; L. 2000, ch. 162, § 23; L. 2001, ch. 31, § 4; July 1.

65-6113. Establishment, operation and maintenance of emergency medical service; tax levies; protest petition, election; reimbursement of certain taxing districts by counties.

(a) The governing body of any municipality may establish, operate and maintain an emergency medical service or ambulance service as provided in this act as a municipal function and may contract with any person, other municipality or board of a county hospital for the purpose of furnishing emergency medical services or ambulance services within or without the boundaries of the municipality upon such terms and conditions and for such compensation as may be agreed upon which shall be payable from the general fund of such municipality or from a special fund for which a tax is levied under the provisions of this act.

(b) The governing body of the municipality may make an annual tax levy of not to exceed three mills upon all of the taxable tangible property within such municipality for the establishment, operation and maintenance of an emergency medical service or ambulance service under this act and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto.

(c) No tax shall be levied under the provisions of subsection (b) until the governing body of the municipality adopts an ordinance or resolution authorizing the levy of such tax. Such ordinance or resolution shall be published once each week for three consecutive weeks in the official newspaper of the municipality. If within 60 days following the last publication

of such ordinance or resolution, a petition in opposition to the levy of such tax, signed by a number of the qualified electors of such municipality equal to not less than 5% of the electors of such municipality who voted for the office of secretary of state at the last general election, is filed with the county election officer of the county in which such municipality is located, the question of whether the levy shall be made shall be submitted to the electors of the municipality at the next primary or general election within such municipality, or if such primary or general election does not take place within 60 days after the date the petition was filed, the question may be submitted at a special election called and held therefor. If no petition has been filed and the time prescribed for filing the petition expires prior to August 1 in any year, or if the petition was filed and a majority of the electors voting on the question of levying the tax vote in favor thereof at an election held prior to August 1 in any year, the governing body of the municipality may levy in that year and in each succeeding year in the amount specified in the ordinance or resolution, but not exceeding three mills. If no petition has been filed and the time prescribed for filing the petition expires after September 30 in any year, or if the petition was filed and a majority of the electors voting on the question of levying the tax vote in favor thereof at an election held after September 30 in any year, the governing body of the municipality may levy in the next succeeding year and in each succeeding year thereafter the amount specified in the ordinance or resolution, but not exceeding three mills.

(d) In the case of a county, the board of county commissioners shall not provide ambulance service under the provisions of this act in any part of the county which receives ambulance service, but the county shall reimburse any taxing district which on the effective date of this act provides ambulance services to such district with its proportionate share of the county general fund or special tax levy fund budgeted for ambulance services within the county. Such reimbursement shall be based on the amount that the assessed tangible taxable valuation of the taxing district bears to the total taxable tangible valuation of the county, but in no event shall such taxing district receive from the county more than the district's cost of furnishing such ambulance services. Any taxing district establishing ambulance service in any part of a county under the provisions of this act on or after the effective date of this act shall not be entitled to receive reimbursement pursuant to this subsection until a final order of the emergency medical services board ordering such reimbursement is issued following the furnishing of notice and an opportunity for a hearing to the interested parties. No order for reimbursement shall be issued unless the emergency medical service board finds that such establishment shall enhance or improve ambulance service provided to the residents of such taxing district as determined in accordance with criteria established by rules and regulations adopted by the board.

HISTORY: L. 1988, ch. 261, § 13; L. 1990, ch. 66, § 45; May 31.

65-6116. Powers of governing board of municipality. In addition to other powers set forth in this act, the governing body of any municipality operating an emergency medical service or ambulance service shall have the power:

(a) To acquire by gift, bequest, purchase or lease from public or private sources, and to plan, construct, operate and maintain the services, equipment and facilities which are incidental or necessary to the establishment, operation and maintenance of an emergency medical service or ambulance service;

(b) to enter into contracts including, but not limited to, the power to enter into contracts for the construction, operation, management, maintenance and supervision of emergency medical services or ambulance services with any person or governmental entity;

(c) to make application for and to receive any contributions, moneys or properties from the state or federal government or any agency thereof or from any other public or private source;

(d) to contract or otherwise agree to combine or coordinate its activities, facilities and personnel with those of any person or governmental entity for the purpose of furnishing the emergency medical services or ambulance services within or without the municipality;

(e) to establish and collect any charges to be made for emergency medical services or ambulance services within or without the municipality and to provide for an audit of the records of the emergency medical services operation or ambulance services; and

(f) to perform all other necessary and incidental functions necessary to accomplish the purposes of this act.

HISTORY: L. 1988, ch. 261, § 16; April 14.

65-6117. Standards for operation, facilities, equipment and qualification and training of personnel. If the governing body of a municipality establishes an emergency medical service or ambulance service as provided in this act, it shall establish a minimum set of standards for the operation of such service, for its facilities and equipment, and for the qualifications and training of personnel.

HISTORY: L. 1988, ch. 261, § 17; April 14.

65-6119. Mobile intensive care technicians; authorized activities. Notwithstanding any other provision of law, mobile intensive care technicians may:

(a) Perform all the authorized activities identified in K.S.A. 65-6121, and amendments thereto;

(b) perform cardiopulmonary resuscitation and defibrillation;

(c) when voice contact or a telemetered electrocardiogram is monitored by a physician, physician's assistant where authorized by a physician or licensed professional nurse where authorized by a physician and direct communication is maintained, and upon order of such person may administer such medications or procedures as may be deemed necessary by a person identified in subsection (c);

(d) perform, during an emergency, those activities specified in subsection (c) before contacting a person identified in subsection (c) when specifically authorized to perform such activities by medical protocols; and

(e) perform, during nonemergency transportation, those activities specified in this section when specifically authorized to perform such activities by medical protocols.

HISTORY: L. 1988, ch. 261, § 19; L. 1991, ch. 203, § 2; L. 1994, ch. 154, § 2; L. 1998, ch. 133, § 5; July 1.

65-6120. Emergency medical technician-intermediate; authorized activities. Notwithstanding any other provision of law to the contrary, an emergency medical technician-intermediate may:

(a) Perform any of the activities identified by K.S.A. 65-6121, and amendments thereto;

(b) when approved by medical protocols and where voice contact by radio or telephone is monitored by a physician, physician's assistant where authorized by a physician or licensed professional nurse where authorized by a physician, and direct communication is maintained, upon order of such person, may perform veni-puncture for the purpose of blood sampling collection and initiation and maintenance of intravenous infusion of saline solutions, dextrose and water solutions or ringers lactate IV solutions, endotracheal intubation and administration of nebulized albuterol;

(c) perform, during an emergency, those activities specified in subsection (b) before contacting the persons identified in subsection (b) when specifically authorized to perform such activities by medical protocols; or

(d) perform, during nonemergency transportation, those activities specified in this section when specifically authorized to perform such activities by medical protocols.

HISTORY: L. 1988, ch. 261, § 20; L. 1991, ch. 203, § 3; L. 1994, ch. 154, § 3; L. 1998, ch. 133, § 6; July 1.

65-6121. Emergency medical technician; authorized activities. Notwithstanding any other provision of law to the contrary, an emergency medical technician may perform any of the following activities:

(a) Patient assessment and vital signs;

(b) airway maintenance including the use of:

(1) Oropharyngeal and nasopharyngeal airways;

(2) esophageal obturator airways with or without gastric suction device;

(3) multi-lumen airway; and

(4) oxygen demand valves.

(c) Oxygen therapy;

(d) oropharyngeal suctioning;

(e) cardiopulmonary resuscitation procedures;

(f) control accessible bleeding;

(g) apply pneumatic anti-shock garment;

(h) manage outpatient medical emergencies;

(i) extricate patients and utilize lifting and moving techniques;

(j) manage musculoskeletal and soft tissue injuries including dressing and bandaging wounds or the splinting of fractures, dislocations, sprains or strains;

(k) use of backboards to immobilize the spine;

(l) administer syrup of ipecac, activated charcoal and glucose;

(m) monitor peripheral intravenous line delivering intravenous fluids during interfacility transport with the following restrictions:

(1) The physician approves the transfer by an emergency medical technician;

(2) no medications or nutrients have been added to the intravenous fluids; and

(3) the emergency medical technician may monitor, maintain and shut off the flow of intravenous fluid;

(n) use automated external defibrillators;

(o) administer epinephrine auto-injectors provided that:

(1) The emergency medical technician successfully completes a course of instruction approved by the board in the administration of epinephrine; and

(2) the emergency medical technician serves with an ambulance service or a first response organization that provides emergency medical services; and

(3) the emergency medical technician is acting pursuant to medical protocols;

(p) perform, during nonemergency transportation, those activities specified in this section when specifically authorized to perform such activities by medical protocols; or

(q) when authorized by medical protocol, assist the patient in the administration of the following medications which have been prescribed for that patient: Auto-injection epinephrine, sublingual nitroglycerin and inhalers for asthma and emphysema.

HISTORY: L. 1988, ch. 261, § 21; L. 1990, ch. 235, § 3; L. 1991, ch. 203, § 4; L. 1994, ch. 154, § 4; L. 1998, ch. 133, § 7; L. 2002, ch. 203, § 2; July 1.

65-6123. Emergency medical technician-defibrillator; authorized activities. Notwithstanding any other provision of law to the contrary, an emergency medical technician-defibrillator may:

(a) Perform any of the activities identified in K.S.A. 65-6121, and amendments thereto;

(b) when approved by medical protocols and where voice contact by radio or telephone is monitored by a physician, physician's assistant where authorized by a physician or licensed professional nurse where authorized by a physician, and direct communication is maintained, upon order of such person, may perform electrocardiographic monitoring and defibrillation;

(c) perform, during an emergency, those activities specified in subsection (b) before contacting the persons identified in subsection (b) when specifically authorized to perform such activities by medical protocols; or

(d) perform, during nonemergency transportation, those activities specified in this section when specifically authorized to perform such activities by medical protocols.

HISTORY: L. 1988, ch. 261, § 23; L. 1991, ch. 203, § 6; L. 1994, ch. 154, § 5; L. 1998, ch. 133, § 8; July 1.

65-6124. Limitations on liability.

(a) No physician, physician's assistant or licensed professional nurse, who gives emergency instructions to a mobile intensive care technician, emergency medical technician-defibrillator or emergency medical technician-intermediate during an emergency, shall be liable for any civil damages as a result of issuing the instructions, except such damages which may result from gross negligence in giving such instructions.
(b) No mobile intensive care technician, emergency medical technician-defibrillator or emergency medical technician-intermediate who renders emergency care during an emergency pursuant to instructions given by a physician, the responsible physician for a physician's assistant or licensed professional nurse shall be liable for civil damages as a result of implementing such instructions, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of such mobile intensive care technician, emergency medical technician-defibrillator or emergency medical technician-intermediate rendering such emergency care.

(c) No first responder who renders emergency care during an emergency shall be liable for civil damages as a result of rendering such emergency care, except for such damages which may result from gross negligence or from willful or wanton acts or omissions on the part of the first responder rendering such emergency care.

(d) No person certified as an instructor-coordinator and no training officer shall be liable for any civil damages which may result from such instructor-coordinator's or training officer's course of instruction, except such damages which may result from gross negligence or by willful or wanton acts or omissions on the part of the instructor-coordinator or training officer.

(e) No medical adviser who reviews, approves and monitors the activities of attendants shall be liable for any civil damages as a result of such review, approval or monitoring, except such damages which may result from gross negligence in such review, approval or monitoring.

HISTORY: L. 1988, ch. 261, § 24; L. 1989, ch. 205, § 1; L. 1993, ch. 71, § 4; L. 1998, ch. 133, § 9; July 1.

65-6125. Unlawful to operate ambulance service without a permit. It shall be unlawful for any person or municipality to operate an ambulance service within this state without obtaining a permit pursuant to this act.

HISTORY: L. 1988, ch. 261, § 25; April 14.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 63. SOCIAL WORKERS

65-6301. Purpose. Since the profession of social work profoundly affects the lives of the people of this state, it is the purpose of this act to protect the public by setting standards of qualification, training and experience for those who seek to engage in the practice of social work and by promoting high standards of professional performance for those engaged in the profession of social work.

HISTORY: L. 1974, ch. 372, § 1; July 1.

65-6302. Definitions. As used in this act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section:

(a) "Board" means the behavioral sciences regulatory board created by K.S.A. 74-7501.

(b) "Social work practice" means the professional activity of helping individuals, groups or communities enhance or restore their capacity for physical, social and economic functioning and the professional application of social work values, principles and techniques in areas such as psychotherapy, social service administration, social planning, social work consultation and social work research to one or more of the following ends: Helping people obtain tangible services; counseling with individuals, families and groups; helping communities or groups provide or improve social and health services; and participating in relevant social action. The practice of social work requires knowledge of human development and behavior; of social, economic and cultural institutions and forces; and of the interaction of all these factors. Social work practice includes the teaching of practicum courses in social work and includes the diagnosis and treatment of mental disorders as authorized under K.S.A. 65-6306 and 65-6319, and amendments thereto.

(c) "Psychotherapy" means the use of psychological and social methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation to acquire greater human realization of psychosocial potential and adaptation; to modify internal and external conditions which affect individuals, groups or communities in respect to behavior, emotions and thinking, in respect to their intra-personal and inter-personal processes. Forms of psychotherapy include but are not restricted to individual psychotherapy, conjoint marital therapy, family therapy and group psychotherapy.

HISTORY: L. 1974, ch. 372, § 2; L. 1980, ch. 242, § 15; L. 1982, ch. 371, § 1; L. 1999, ch. 117, § 11; July 1, 2000.

65-6303. Prohibited acts; penalty.

(a) No person shall engage in the practice of social work for compensation or hold forth as performing the services of a social worker unless such person is licensed in accordance with the provisions of this act, nor may any person participate in the delivery of social work service unless under the supervision of a person who is licensed under this act. Temporary licenses to practice may be issued by the board in accordance with K.S.A. 65-6309 and amendments thereto.

(b) Nothing in this act shall be construed to prevent qualified persons from doing work within the standards and ethics of their respective professions and callings provided they do not hold themselves out to the public by any title or description of services as being engaged in the practice of social work.

(c) Nothing in this act shall be construed to permit the practice of psychotherapy by anyone who does not have a baccalaureate degree in social work or a related field except that those practicing psychotherapy without a baccalaureate degree in social work or a related field prior to July 1, 1974, shall not be prohibited from so practicing after the effective date of this act.

(d) Any violation of this section shall constitute a class B misdemeanor.

HISTORY: L. 1974, ch. 372, § 3; L. 1980, ch. 242, § 16; L. 1986, ch. 340, § 1; L. 1989, ch. 276, § 2; July 1.

65-6306. Qualifications for licensure; baccalaureate social worker; master social worker; specialist clinical social worker; practice of licensed specialist clinical social worker; approval of colleges or universities, criteria.

(a) The board shall issue a license as a baccalaureate social worker to an applicant who:

(1) Has a baccalaureate degree from an accredited college or university, including completion of a social work program recognized and approved by the board, pursuant to rules and regulations adopted by the board;

(2) has passed an examination approved by the board for this purpose; and

(3) has satisfied the board that the applicant is a person who merits the public trust.

(b) The board shall issue a license as a master social worker to an applicant who:

(1) Has a master's degree from an accredited college or university, including completion of a social work program recognized and approved by the board, pursuant to rules and regulations adopted by the board;

(2) has passed an examination approved by the board for this purpose; and

(3) has satisfied the board that the applicant is a person who merits the public trust.

(c) The board shall issue a license in one of the social work specialties to an applicant who:

(1) Has a master's or doctor's degree from an accredited graduate school of social work, including completion of a social work program recognized and approved by the board, pursuant to rules and regulations adopted by the board;

(2) has had two years of full-time post-master's or post-doctor's degree experience under the supervision of a licensed social worker in the area of the specialty in which such applicant seeks to be licensed;

(3) has passed an examination approved by the board for this purpose; and

(4) has satisfied the board that the applicant is a person who merits the public trust.

(d) (1) The board shall issue a license as a specialist clinical social worker to an applicant who:

(A) Has met the requirements of subsection (c);

(B) has completed 15 credit hours as part of or in addition to the requirements under subsection (c) supporting diagnosis or treatment of mental disorders with use of the American psychiatric association's diagnostic and statistical manual, through identifiable study of the following content areas: Psychopathology, diagnostic assessment, interdisciplinary referral and collaboration, treatment approaches and professional ethics;

(C) has completed a graduate level supervised clinical practicum of supervised professional experience including psychotherapy and assessment, integrating diagnosis and treatment of mental

disorders with use of the American psychiatric association's diagnostic and statistical manual, with not less than 350 hours of direct client contact or additional postgraduate supervised experience as determined by the board;

(D) has completed as part of or in addition to the requirements of subsection (c) not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 4,000 hours of supervised professional experience including at least 1,500 hours of direct client contact conducting psychotherapy and assessments with individuals, couples, families or groups and not less than 150 hours of clinical supervision, including not less than 75 hours of person-to-person individual supervision, integrating diagnosis and treatment of mental disorders with use of the American psychiatric association's diagnostic and statistical manual;

(E) for persons earning a degree under subsection (c) prior to July 1, 2003, in lieu of the education and training requirements under parts (B) and (C) of this subsection, has completed the education requirements for licensure as a specialist clinical social worker in effect on the day immediately preceding the effective date of this act;

(F) for persons who apply for and are eligible for a temporary license to practice as a specialist clinical social worker on the day immediately preceding the effective date of this act, in lieu of the education and training requirements under parts (B), (C) and (D) of this subsection, has completed the education and training requirements for licensure as a specialist clinical social worker in effect on the day immediately preceding the effective date of this act;

(G) has passed an examination approved by the board; and

(H) has paid the application fee.

(2) A licensed specialist clinical social worker may engage in the social work practice and is authorized to diagnose and treat mental disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations. When a client has symptoms of a mental disorder, a licensed specialist clinical social worker shall consult with the client's primary care physician or psychiatrist to determine if there may be a medical condition or medication that may be causing or contributing to the client's symptoms of a mental disorder. A client may request in writing that such consultation be waived and such request shall be made a part of the client's record. A licensed specialist clinical social worker may continue to evaluate and treat the client until such time that the medical consultation is obtained or waived.

(3) Notwithstanding any other provision of this subsection, a licensed master social worker who has provided to the board an acceptable clinical supervision plan for licensure as a specialist clinical social worker prior to the effective date of this act shall be licensed as a specialist clinical social worker under this act upon completion of the requirements in effect for licensure as a specialist clinical social worker at the time the acceptable training plan is submitted to the board.

(4) A person licensed as a specialist clinical social worker on the day immediately preceding the effective date of this act shall be deemed to be a licensed specialist clinical social worker under this act. Such person shall not be required to file an original application for licensure as a specialist clinical social worker under this act.

(e) The board shall adopt rules and regulations establishing the criteria which a social work program of a college or university shall satisfy to be recognized and approved by the board under this section. The board may send a questionnaire developed by the board to any college or university conducting a social work program for which the board does not have sufficient information to determine whether the program should be recognized and approved by the board and whether the program meets the rules and regulations adopted under this section. The questionnaire providing the necessary information shall be completed and returned to the board in order for the program to be considered for recognition and approval. The board may contract with investigative agencies, commissions or consultants to assist the

board in obtaining information about a social work program of a college or university. In entering such contracts the authority to recognize and approve a social work program of a college or university shall remain solely with the board.

HISTORY: L. 1974, ch. 372, § 6; L. 1980, ch. 242, § 17; L. 1981, ch. 352, § 1; L. 1988, ch. 243, § 17; L. 1989, ch. 276, § 3; L. 1994, ch. 164, § 2; L. 1999, ch. 117, § 12; July 1, 2000.

65-6307. Use of title by licensee; designation thereof by board; penalty for violation.

(a) Any person who possesses a valid, unsuspended and unrevoked license issued under the provisions of this act shall have the right to practice and use the title and the abbreviations prescribed by the board for use by persons holding the license held by such person. The board shall establish a title and prescribe abbreviations for use by persons holding each class or type of license issued under the provisions of this act. No other person shall assume such titles, use such abbreviations, or any work or letter, signs, figures or devices to indicate that the person using the same is licensed as such under the provisions of this act.

(b) Any violation of this section shall constitute a class C misdemeanor.

HISTORY: L. 1974, ch. 372, § 7; L. 1980, ch. 242, § 18; July 1.

65-6308. Limitations on private practice of social work; penalties.

(a) No person may engage in the private, independent clinical practice of social work unless such person:

(1) Is licensed under this act as a specialist clinical social worker or specialist social worker; and

(2) has had two years' supervised experience approved by the board, pursuant to rules and regulations adopted by the board, as a licensed social worker in the specialty to be offered in private practice subsequent thereto.

(b) Any violation of this section shall constitute a class B misdemeanor.

HISTORY: L. 1974, ch. 372, § 8; L. 1986, ch. 340, § 2; L. 1999, ch. 117, § 13; July 1, 2000.

65-6309. Licensure of clinical level social worker licensed in another jurisdiction; exemption from examination; temporary licensure; explanation required for license denial.

(a) Except as provided in subsections (b) and (c), an applicant shall be exempted from the requirement for any examination provided for herein if:

(1) The applicant proves to the board that the applicant is licensed or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this act as determined by the board; and

(2) pursuant to the laws of any such state or territory, the applicant has taken and passed an examination similar to that for which exemption is sought, as determined by the board.

(b) The board may issue a license to an individual who is currently licensed to practice social work at the clinical level in another jurisdiction if the board determines that:

(1) The standards for licensure to practice social work at the clinical level in the other jurisdiction are substantially equivalent to the requirements of this state for licensure at the clinical level; or

(2) the applicant demonstrates on forms provided by the board compliance with the following standards as adopted by the board:

(A) Continuous licensure to practice social work at the clinical level during the five years immediately preceding the application with at least the minimum professional experience as established by rules and regulations of the board;

(B) the absence of disciplinary actions of a serious nature brought by a licensing board or agency; and

(C) a masters or doctoral degree in social work from a regionally accredited university or college and from an accredited graduate social work program recognized and approved by the board pursuant to rules and regulations adopted by the board.

(c) Applicants for licensure as a clinical specialist social worker shall additionally demonstrate competence to diagnose and treat mental disorders through meeting the following requirements:

(1) Passing a national clinical examination approved by the board or, in the absence of the national examination, continuous licensure to practice as a clinical social worker during the 10 years immediately preceding the application; and

(2) three years of clinical practice with demonstrated experience in diagnosing or treating mental disorders.

(d) An applicant for a license under this section shall pay an application fee established by the board under K.S.A. 65-6314 and amendments thereto.

(e) Upon application, the board shall issue temporary licenses to persons who have met all qualifications for licensure under provisions of this act, except passage of the required examination, who must wait for completion of the next examination, who have paid the required fee and who have submitted documentation as required by the board under the following provisions:

(1) The temporary license shall expire upon receipt and recording of the person's examination score by the board if such person fails the examination or upon the date the board issues or denies the person a license to practice social work if such person passes the examination;

(2) such persons shall take the next license examination subsequent to the date of issuance of the temporary license unless there are extenuating circumstances approved by the board;

(3) no person may be granted a temporary license more than once; and

(4) no person may work under a temporary license except under the supervision of a licensed social worker. Nothing in this subsection shall affect any temporary permit to practice issued under this subsection prior to the effective date of this act and in effect on the effective date of this act. Such temporary permit shall be subject to the provisions of this subsection in effect at the time of its issuance and shall continue to be effective until the date of expiration of the permit as provided under this subsection at the time of issuance of such temporary permit.

(f) Any individual employed by a hospital and working in the area of hospital social services to patients of such hospital on July 1, 1974, is exempt from the provisions of this act.

(g) If an applicant is denied licensure, the board shall provide the applicant with a written explanation of the denial within 10 days after the decision of the board, excluding Saturdays, Sundays and legal holidays.

HISTORY: L. 1974, ch. 372, § 9; L. 1980, ch. 242, § 19; L. 1986, ch. 340, § 3; L. 1989, ch. 276, § 4; L. 1990, ch. 237, § 1; L. 2003, ch. 129, § 3; July 1.

65-6310. Unlawful acts; penalties. Conviction of any of the following shall constitute a class B misdemeanor:

(a) Obtaining or attempting to obtain a license or certificate or renewal thereof by bribery or fraudulent representation;

(b) Knowingly making a false statement in connection with any application under this act;

(c) Knowingly making a false statement on any form promulgated by the board in accordance with the provisions of this act or the rules and regulations promulgated thereunder.

HISTORY: L. 1974, ch. 372, § 10; L. 1980, ch. 242, § 20; July 1.

65-6311. Grounds for suspension, limitation, revocation or refusal to issue or renew license; procedure.

(a) The board may suspend, limit, revoke or refuse to issue or renew a license of any social worker upon proof that the social worker:

(1) Has been convicted of a felony and, after investigation, the board finds that the licensee has not been sufficiently rehabilitated to merit the public trust;

(2) has been found guilty of fraud or deceit in connection with services rendered as a social worker or in establishing needed qualifications under this act;

(3) has knowingly aided or abetted a person, not a licensed social worker, in representing such person as a licensed social worker in this state;

(4) has been found guilty of unprofessional conduct as defined by rules established by the board;

(5) has been found to have engaged in diagnosis as authorized under K.S.A. 65-6319 and amendments thereto, even though not authorized to engage in such diagnosis under K.S.A. 65-6319 and amendments thereto;

(6) has been found guilty of negligence or wrongful actions in the performance of duties; or

(7) has had a license to practice social work revoked, suspended or limited, or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(b) Proceedings to consider the suspension, revocation or refusal to renew a license shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

HISTORY: L. 1974, ch. 372, § 11; L. 1980, ch. 242, § 21; L. 1984, ch. 313, § 145; L. 1988, ch. 304, § 4; L. 1994, ch. 164, § 3; July 1.

65-6313. Licenses; effective date and expiration date; renewal; continuing education; reinstatement; duplicate.

(a) All licenses issued shall be effective upon the date issued and shall expire at the end of 24 months from the date of issuance.

(b) Except as otherwise provided in K.S.A. 65-6311 and amendments thereto, a license may be renewed by the payment of the renewal fee set forth in K.S.A. 65-6314 and amendments thereto and the execution and submission of a signed statement, on a form to be provided by the board, attesting that the applicant's license has been neither revoked nor currently suspended and that applicant has met the requirements for continuing education established by the board including not less than three continuing education hours of professional ethics. An applicant for renewal of a license as a master social worker or a specialist clinical social worker, as part of such continuing education, shall complete not less than six continuing education hours relating to diagnosis and treatment of mental disorders.

(c) The application for renewal shall be made on or before the date of the expiration of the license or on or before the date of the termination of the period of suspension.

(d) If the application for renewal, including payment of the required renewal fee, is not made on or before the date of the expiration of the license, the license is void, and no license shall be reinstated except upon payment of the required renewal fee established under K.S.A. 65-6314 and amendments thereto, plus a penalty equal to the renewal fee, and proof satisfactory to the board of the completion of 60 hours of continuing education within two years prior to application for reinstatement. Upon receipt of such payment and proof, the board shall reinstate the license. A license shall be reinstated under this subsection, upon receipt of such payment and proof, at any time after the expiration of such license.

(e) In case of a lost or destroyed license, and upon satisfactory proof of the loss or destruction thereof, the board may issue a duplicate license and shall charge a fee as set forth in K.S.A. 65-6314 and amendments thereto for such duplicate license.

HISTORY: L. 1974, ch. 372, § 13; L. 1978, ch. 374, § 1; L. 1980, ch. 242, § 23; L. 1982, ch. 372, § 2; L. 1986, ch. 340, § 4; L. 1990, ch. 237, § 2; L. 1999, ch. 117, § 14; July 1, 2000.

65-6315. Confidential information and communications; exceptions.

(a) No licensed social work associate or licensed baccalaureate social worker, secretary, stenographer or clerk of a licensed social work associate or licensed baccalaureate social worker or anyone who participates in delivery of social work services or anyone working under supervision of a licensed social worker may disclose any information such person may have acquired from persons consulting such person in the person's professional capacity or be compelled to disclose such information except:

(1) With the written consent of the client, or in the case of death or disability, of the personal representative of the client, other person authorized to sue or the beneficiary of an insurance policy on the client's life, health or physical condition;

(2) when the person is a child under the age of 18 years and the information acquired by the licensed social worker indicated that the child was the victim or subject of a crime, the licensed social worker may be required to testify fully in relation thereto upon any examination, trial or other proceeding in which the commission of such a crime is a subject of inquiry;

(3) when the person waives the privilege by bringing charges against the licensed social worker but only to the extent that such information is relevant under the circumstances.

(b) The confidential relations and communications between a licensed master social worker's or a licensed specialist clinical social worker's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed social worker from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of the client. There is no privilege under this section for information which is required to be reported to a public official.

HISTORY: L. 1974, ch. 372, § 15; L. 1986, ch. 340, § 5; L. 1999, ch. 117, § 15; July 1, 2000.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 64. MARRIAGE AND FAMILY THERAPISTS

65-6401. Citation of act. K.S.A. 65-6401 through 65-6412, and amendments thereto, shall be known and may be cited as the marriage and family therapists licensure act.

HISTORY: L. 1991, ch. 114, § 1; L. 1996, ch. 153, § 16; Jan. 1, 1997.

65-6402. Definitions. As used in the marriage and family therapists licensure act:

(a) "Board" means the behavioral sciences regulatory board created under K.S.A. 74-7501 and amendments thereto.

(b) "Marriage and family therapy" means the assessment and treatment of cognitive, affective or behavioral problems within the context of marital and family systems and includes the diagnosis and treatment of mental disorders as authorized under the marriage and family therapists licensure act.

(c) "Licensed marriage and family therapist" means a person who engages in the practice of marriage and family therapy and who is licensed under this act except that on and after January 1, 2002, such person shall engage in the practice of marriage and family therapy only under the direction of a licensed clinical marriage and family therapist, a licensed psychologist, a person licensed to practice medicine and surgery or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of mental disorders.

(d) "Licensed clinical marriage and family therapist" means a person who engages in the independent practice of marriage and family therapy including the diagnosis and treatment of mental disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations and is licensed under this act.

HISTORY: L. 1991, ch. 114, § 2; L. 1996, ch. 153, § 17; L. 1999, ch. 117, § 18; July 1, 2000.

65-6403. Prohibited acts and representations; misdemeanor.

(a) No person shall engage in the practice of marriage and family therapy or represent that such person is a licensed marriage and family therapist or a marriage and family therapist without having first obtained a license as a marriage and family therapist under the marriage and family therapist licensure act.

(b) On and after the effective date of this act, no person shall engage in the practice of marriage and family therapy as a clinical marriage and family therapist or represent that such person is a licensed clinical marriage and family therapist or is a clinical marriage and family therapist without having first obtained a license as a clinical marriage and family therapist under the marriage and family therapist licensure act.

(c) Violation of this section is a class B misdemeanor.

HISTORY: L. 1991, ch. 114, § 3; L. 1996, ch. 153, § 18; L. 1999, ch. 117, § 19; July 1, 2000.

65-6409. Construction of act. Nothing in the marriage and family therapists licensure act shall be construed:

(a) To prevent marriage and family therapy practice by students or interns or individuals preparing for the practice of marriage and family therapy to practice under qualified supervision of a professional, recognized and approved by the board, in an educational institution or agency so long as they are designated by titles such as "student," "trainee," "intern" or other titles clearly indicating training status;

(b) to authorize the practice of psychology, medicine and surgery, professional counseling, masters level psychology or licensed social work;

(c) to apply to the activities and services of a rabbi, priest, minister, clergy person or organized ministry of any religious denomination or sect, including a Christian-Science practitioner, unless such person or individual who is a part of the organized ministry is a licensed marriage and family therapist; or

(d) to apply to the activities and services of qualified members of other professional groups including, but not limited to, attorneys, physicians, psychologists, masters level psychologists, professional counselors, registered nurses or social workers performing services consistent with the laws of this state, their training and the code of ethics of their profession, so long as they do not represent themselves as being a marriage and family therapist; or

(e) to prevent qualified persons from doing work within the standards and ethics of their respective professions and callings provided they do not hold themselves out to the public by any title or description of services as being a marriage and family therapist.

HISTORY: L. 1991, ch. 114, § 9; L. 1996, ch. 153, § 24; Jan. 1, 1997.

65-6410. Confidential information and communications; exceptions.

(a) A person licensed under the marriage and family therapists licensure act and employees and professional associates of the person shall not be required to disclose any information that the person, employee or associate may have acquired in rendering marriage and family therapy services, unless:

(1) Disclosure is required by other state laws;

(2) failure to disclose the information presents a clear and present danger to the health or safety of an individual;

(3) the person, employee or associate is a party defendant to a civil, criminal or disciplinary action arising from the therapy, in which case a waiver of the privilege accorded by this section is limited to that action;

(4) the client is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in that person's behalf; or

(5) a client agrees to a waiver of the privilege accorded by this section, and in circumstances where more than one person in a family is receiving therapy, each such family member agrees to the waiver. Absent a waiver from each family member, a marriage and family therapist shall not disclose information received from a family member.

(b) Nothing in this section or in this act shall be construed to prohibit any person licensed under the marriage and family therapist licensure act from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

HISTORY: L. 1991, ch. 114, § 10; L. 1996, ch. 153, § 25; L. 1999, ch. 117, § 23; July 1, 2000.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 67. ABORTION

65-6701. Definitions. As used in this act:

(a) "Abortion" means the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include:

(1) The use of any drug or device that inhibits or prevents ovulation, fertilization or the implantation of an embryo; or

(2) disposition of the product of in vitro fertilization prior to implantation.

(b) "Counselor" means a person who is:

(1) Licensed to practice medicine and surgery;

(2) licensed to practice psychology;

(3) licensed to practice professional or practical nursing;

(4) registered to practice professional counseling;

(5) licensed as a social worker;

(6) the holder of a master's or doctor's degree from an accredited graduate school of social work;

(7) registered to practice marriage and family therapy;

(8) a licensed physician assistant; or

(9) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(c) "Department" means the department of health and environment.

(d) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(e) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(f) "Minor" means a person less than 18 years of age.

(g) "Physician" means a person licensed to practice medicine and surgery in this state.

(h) "Pregnant" or "pregnancy" means that female reproductive condition of having a fetus in the mother's body.

(i) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, registered professional counselor, registered nurse or physician.

(j) "Unemancipated minor" means any minor who has never been:

(1) Married; or

(2) freed, by court order or otherwise, from the care, custody and control of the minor's parents.

(k) "Viable" means that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means.

HISTORY: L. 1992, ch. 183, § 1; L. 1997, ch. 190, § 26; L. 2000, ch. 162, § 25; Feb. 1, 2001.

65-6702. Drugs or devices for birth control or fertilization lawful; political subdivisions prohibited from limiting abortion.

(a) The use of any drug or device that inhibits or prevents ovulation, fertilization or implantation of an embryo and disposition of the product of in vitro fertilization prior to implantation are lawful in this state and neither the state nor any political subdivision of the state shall prohibit the use of any such drug or device or the disposition of such product.

(b) No political subdivision of the state shall regulate or restrict abortion.

HISTORY: L. 1992, ch. 183, § 2; July 1.

65-6703. Abortion prohibited when fetus viable, exceptions; determination of age of fetus; determination of viability; reports; retention of medical records; viable, defined; criminal penalties.

(a) No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine that:

(1) The abortion is necessary to preserve the life of the pregnant woman; or

(2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the fetus according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination.

(2) If the physician determines the gestational age of the fetus is 22 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the fetus is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the fetus and shall enter such findings and determinations of viability in the medical record of the woman.

(3) If the physician determines the gestational age of a fetus is 22 or more weeks, and determines that the fetus is not viable and performs an abortion on the woman, the physician shall report such determinations and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician shall report such determinations and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of a fetus is 22 or more weeks, and determines that the fetus is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445 and amendments thereto or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, the reasons for such determinations and the basis for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445 and amendments thereto.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection (b) for not less than five years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection (b) for not less than five years.

(c) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.
(d) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

(e) As used in this section, "viable" means that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.

(f) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

(g) Upon a first conviction of a violation of this section, a person shall be guilty of a class A nonperson misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, nonperson felony.

HISTORY: L. 1992, ch. 183, § 3; L. 1993, ch. 291, § 240; L. 1998, ch. 142, § 15; July 1.

65-6704. Abortion upon minor; required information and counseling.

(a) Before the performance of an abortion upon a minor, a counselor shall provide pregnancy information and counseling in a manner that can be understood by the minor and allows opportunity for the minor's questions to be addressed. A parent or guardian, or a person 21 or more years of age who is not associated with the abortion provider and who has a personal interest in the minor's well-being, shall accompany the minor and be involved in the minor's decision-making process regarding whether to have an abortion. Such information and counseling shall include:

(1) The alternatives available to the minor, including abortion, adoption and other alternatives to abortion;

(2) an explanation that the minor may change a decision to have an abortion at any time before the abortion is performed or may decide to have an abortion at any time while an abortion may be legally performed;

(3) make available to the minor information on agencies available to assist the minor and agencies from which birth control information is available;

(4) discussion of the possibility of involving the minor's parent or parents, other adult family members or guardian in the minor's decision-making; and

(5) information regarding the provisions of K.S.A. 65-6705 and the minor's rights under such provisions.

(b) After the performance of an abortion on a minor, a counselor shall provide counseling to assist the minor in adjusting to any post-abortion problems that the minor may have.

(c) After the counselor provides information and counseling to a minor as required by this section, the counselor shall have the minor sign and date a statement setting forth the requirements of subsections (a) and (b) and declaring that the minor has received information and counseling in accordance with those requirements.

(d) The counselor shall also sign and date the statement and shall include the counselor's business address and business telephone number. The counselor shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if the counselor is not the attending physician, transmit the statement to the minor's attending physician. Such medical record shall be maintained as otherwise provided by law.

(e) The provision by a counselor of written materials which contain information and counseling meeting the requirements of subsections (a) and (b) and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this section.

(f) The requirements of subsection (a) shall not apply when, in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion. A physician who does not comply with the requirements of this section by reason of this exception shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

HISTORY: L. 1992, ch. 183, § 4; July 1.

65-6705. Same; notice to certain persons required before performance of abortion; waiver of notice; court proceedings; penalties.

(a) Before a person performs an abortion upon an unemancipated minor, the person or the person's agent must give actual notice of the intent to perform such abortion to one of the minor's parents or the minor's legal guardian or must have written documentation that such notice has been given unless, after receiving counseling as provided by subsection (a) of K.S.A. 65-6704, the minor objects to such notice being given. If the minor so objects, the minor may petition, on her own behalf or by an adult of her choice, the district court of any county of this state for a waiver of the notice requirement of this subsection. If the minor so desires, the counselor who counseled the minor as required by K.S.A. 65-6704 shall notify the court and the court shall ensure that the minor or the adult petitioning on the minor's behalf is given assistance in preparing and filing the application.

(b) The minor may participate in proceedings in the court on the minor's own behalf or through the adult petitioning on the minor's behalf. The court shall provide a court-appointed counsel to represent the minor at no cost to the minor.

(c) Court proceedings under this section shall be anonymous and the court shall ensure that the minor's identity is kept confidential. The court shall order that a confidential record of the evidence in the proceeding be maintained. All persons shall be excluded from hearings under this section except the minor, her attorney and such other persons whose presence is specifically requested by the applicant or her attorney.

(d) Notice shall be waived if the court finds by a preponderance of the evidence that either:

(1) The minor is mature and well-informed enough to make the abortion decision on her own; or

(2) notification of a person specified in subsection (a) would not be in the best interest of the minor.

(e) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision as follows:

(1) Granting the minor's application for waiver of notice pursuant to this section, if the court finds that the minor is mature and well-enough informed to make the abortion decision without notice to a person specified in subsection (a);

(2) granting the minor's application for waiver if the court finds that the minor is immature but that notification of a person specified in subsection (a) would not be in the minor's best interest; or

(3) denying the application if the court finds that the minor is immature and that waiver of notification of a person specified in subsection (a) would not be in the minor's best interest.

(f) The court shall give proceedings under this section such precedence over other pending matters as necessary to ensure that the court may reach a decision promptly. The court shall issue a written order which shall be issued immediately to the minor, or her attorney or other individual designated by the minor to receive the order. If the court fails to rule within 48 hours, excluding Saturdays and Sundays, of the time of the filing of the minor's application, the application shall be deemed granted.

(g) An expedited anonymous appeal shall be available to any minor. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of the notice to appeal.

(h) The supreme court shall promulgate any rules it finds are necessary to ensure that proceedings under this act are handled in an expeditious and anonymous manner.

(i) No fees shall be required of any minor who avails herself of the procedures provided by this section.

(j) (1) No notice shall be required under this section if:

(A) The pregnant minor declares that the father of the fetus is one of the persons to whom notice may be given under this section;

(B) in the best medical judgment of the attending physician based on the facts of the case, an emergency exists that threatens the health, safety or well-being of the minor as to require an abortion; or

(C) the person or persons who are entitled to notice have signed a written, notarized waiver of notice which is placed in the minor's medical record.

(2) A physician who does not comply with the provisions of this section by reason of the exception of subsection (j)(1)(A) must inform the minor that the physician is required by law to report the sexual abuse to the department of social and rehabilitation services. A physician who does not comply with the requirements of this section by reason of the exception of subsection (j)(1)(B) shall state in the medical record of the abortion the medical indications on which the physician's judgment was based.

(k) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this section, is guilty of a class A person misdemeanor.

(l) Except as necessary for the conduct of a proceeding pursuant to this section, it is a class B person misdemeanor for any individual or entity to willfully or knowingly: (1) Disclose the identity of a minor petitioning the court pursuant to this section or to disclose any court record relating to such proceeding; or (2) permit or encourage disclosure of such minor's identity or such record.

HISTORY: L. 1992, ch. 183, § 5; L. 1993, ch. 291, § 241; July 1.

65-6707. Same; severability clause. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

HISTORY: L. 1992, ch. 183, § 8; July 1.

65-6708. Woman's-right-to-know act; citation. K.S.A. 65-6701 and K.S.A. 65-6708 to 65-6715, inclusive, and amendments thereto shall be known and may be cited as the woman's-right-to-know act.

HISTORY: L. 1997, ch. 190, § 25; July 1.

65-6709. Same; abortion, informed consent required; certain information required to be in writing; meeting with physician; copy of certain printed materials to be given women, when; certification in writing of receipt of information; payment not required until waiting period has expired. No abortion shall be performed or induced without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(a) At least 24 hours before the abortion the physician who is to perform the abortion or the referring physician has informed the woman in writing of:

(1) The name of the physician who will perform the abortion;

(2) a description of the proposed abortion method;

(3) a description of risks related to the proposed abortion method, including risks to the woman's reproductive health and alternatives to the abortion that a reasonable patient would consider material to the decision of whether or not to undergo the abortion;

(4) the probable gestational age of the fetus at the time the abortion is to be performed and that Kansas law requires the following: "No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician not financially associated with the physician performing or inducing the abortion and both physicians determine that:

(1) The abortion is necessary to preserve the life of the pregnant woman; or

(2) the fetus is affected by a severe or life-threatening deformity or abnormality."[*] If the child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child;

(5) the probable anatomical and physiological characteristics of the fetus at the time the abortion is to be performed;

(6) the medical risks associated with carrying a fetus to term; and

(7) any need for anti-Rh immune globulin therapy, if she is Rh negative, the likely consequences of refusing such therapy and the cost of the therapy.

(b) At least 24 hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman in writing that:

(1) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials given to her and described in K.S.A. 65-6710 and amendments thereto;

(2) the printed materials in K.S.A. 65-6710 and amendments thereto describe the fetus and list agencies which offer alternatives to abortion with a special section listing adoption services;

(3) the father of the fetus is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion except that in the case of rape this information may be omitted; and

(4) the woman is free to withhold or withdraw her consent to the abortion at any time prior to invasion of the uterus without affecting her right to future care or treatment and without the loss of any state or federally-funded benefits to which she might otherwise be entitled.

(c) Prior to the abortion procedure, prior to physical preparation for the abortion and prior to the administration of medication for the abortion, the woman shall meet privately with the physician who is to perform the abortion and such person's staff to ensure that she has an adequate opportunity to ask questions of and obtain information from the physician concerning the abortion.

(d) At least 24 hours before the abortion, the woman is given a copy of the printed materials described in K.S.A. 65-6710 and amendments thereto. If the woman asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

(e) The woman certifies in writing on a form provided by the department, prior to the abortion, that the information required to be provided under subsections (a), (b) and (d) has been provided and that she has met with the physician who is to perform the abortion on an individual basis as provided under subsection (c). All physicians who perform abortions shall report the total number of certifications received monthly to the department. The department shall make the number of certifications received available on an annual basis.

(f) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by subsection (e) of this section.

(g) The woman is not required to pay any amount for the abortion procedure until the 24-hour waiting period has expired.

HISTORY: L. 1997, ch. 190, § 27; July 1.

65-6710. Same; printed materials to be published and distributed by the department of health and environment; materials to be available at no cost.

(a) The department shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible printed materials:

(1) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including but not limited to, adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer and the telephone numbers and addresses of the agencies; and inform the woman about available medical assistance benefits for prenatal care, childbirth and neonatal care and about the support obligations of the father of a child who is born alive. The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude or discourage the use of any agency or service described in this section. The materials shall also contain a toll-free 24-hour a day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages. Kansas law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care. The materials shall include the following statement: "Many public and private agencies exist to provide counseling and information on available services. You are strongly urged to seek their assistance to obtain guidance during your pregnancy. In addition, you are encouraged to seek information on abortion services, alternatives to abortion, including adoption, and resources

available to post-partum mothers. The law requires that your physician or the physician's agent provide the enclosed information."

(2) Materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of a fetus at two-week gestational increments, and any relevant information on the possibility of the fetus' survival. Any such pictures or drawings shall contain the dimensions of the fetus and shall be realistic. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the fetus at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure and the medical risks associated with carrying a fetus to term.

(3) A certification form to be used by physicians or their agents under subsection (e) of K.S.A. 65-6709 and amendments thereto, which will list all the items of information which are to be given to women by physicians or their agents under the woman's-right-to-know act.

(b) The materials required under this section shall be printed in a typeface large enough to be clearly legible. The materials shall be made available in both English and Spanish language versions.

(c) The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

HISTORY: L. 1997, ch. 190, § 28; July 1.

65-6711. Same; information where medical emergency compels performances of an abortion. Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of a major bodily function.

HISTORY: L. 1997, ch. 190, § 29; July 1.

65-6712. Same; failure to provide informed consent and printed materials under act is unprofessional conduct. Any physician who intentionally, knowingly or recklessly fails to provide in accordance with K.S.A. 65-6709 and amendments thereto the printed materials described in K.S.A. 65-6710 and amendments thereto, whether or not an abortion is actually performed on the woman, is guilty of unprofessional conduct as defined in K.S.A. 65-2837 and amendments thereto.

HISTORY: L. 1997, ch. 190, § 30; L. 1998, ch. 142, § 16; July 1.

65-6713. Same; physician who complies with act not civilly liable to patient for failure to obtain informed consent to the abortion. Any physician who complies with the provisions of this act shall not be held civilly liable to a patient for failure to obtain informed consent to the abortion.

HISTORY: L. 1997, ch. 190, § 31; July 1.

65-6714. Same; severability clause. The provisions of this act are declared to be severable, and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of the woman's-right-to-know act.

HISTORY: L. 1997, ch. 190, § 32; July 1.

65-6715. Same; act does not create or recognize a right to abortion or make lawful an abortion that is currently unlawful.

(a) Nothing in the woman's-right-to-know act shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of the woman's-right-to-know act to make lawful an abortion that is currently unlawful.

HISTORY: L. 1997, ch. 190, § 33; July 1.

CHAPTER 65. PUBLIC HEALTH
ARTICLE 68. HEALTH CARE DATA

65-6801. Health care database; legislative intent; use of information.

(a) The legislature recognizes the urgent need to provide health care consumers, third-party payors, providers and health care planners with information regarding the trends in use and cost of health care services in this state for improved decision-making. This is to be accomplished by compiling a uniform set of data and establishing mechanisms through which the data will be disseminated.

(b) It is the intent of the legislature to require that the information necessary for a review and comparison of utilization patterns, cost, quality and quantity of health care services be supplied to the health care database by all providers of health care services and third-party payors to the extent required by K.S.A. 65-6805 and amendments thereto and this section and amendments thereto. The Kansas Health Policy Authority shall specify by rule and regulation the types of information which shall be submitted and the method of submission.

(c) The information is to be compiled and made available in a form prescribed by the Kansas Health Policy Authority to improve the decision-making processes regarding access, identified needs, patterns of medical care, price and use of health care services.

HISTORY: L. 1993, ch. 174, § 1; L. 1994, ch. 90, § 2; L. 2000, ch. 131, § 2; May 18.

65-6802. Same; request for and use of data by department of health services administration of university of Kansas.

(a) The department of health services administration of the university of Kansas and any institute or center established in association with the department is hereby authorized to request data for the purposes of conducting research, policy analysis and preparation of reports describing the performance of the health care delivery system from public, private and quasi-public entities.

(b) The department of health services administration of the university of Kansas may request data for purposes of conducting research, policy analysis and preparation of reports describing the performance of the health care delivery system from any quasi-public or private entity which has such data as deemed necessary by the department.

HISTORY: L. 1993, ch. 174, § 2; July 1.

65-6804. Same; duties of secretary of health and environment; contract for data collection; system of fees; rules and regulations; data confidential; penalties for violations.

(a) The Kansas Health Policy Authority shall administer the health care database. In administering the health care database, the Authority shall receive health care data from those entities identified in K.S.A. 65-6805 and amendments thereto and provide for the dissemination of such data.

(b) The Kansas Health Policy Authority may contract with an organization experienced in health care data collection to collect the data from the health care facilities as described in subsection (h) of K.S.A. 65-425 and amendments thereto, build and maintain the database. The Kansas Health Policy Authority may accept data submitted by associations or related organizations on behalf of health care providers by entering into binding agreements negotiated with such associations or related organizations to obtain data required pursuant to this section.

(c) The Kansas Health Policy Authority shall adopt rules and regulations governing the acquisition, compilation and dissemination of all data collected pursuant to this act. The rules and regulations shall provide at a minimum that:

(1) Measures have been taken to provide system security for all data and information acquired under this act;

(2) data will be collected in the most efficient and cost-effective manner for both the department and providers of data;

(3) procedures will be developed to assure the confidentiality of patient records;

(4) users may be charged for data preparation or information that is beyond the routine data disseminated and that the Authority shall establish by the adoption of such rules and regulations a system of fees for such data preparation or dissemination; and

(5) the Kansas Health Policy Authority will ensure that the health care database will be kept current, accurate and accessible as prescribed by rules and regulations.

(d) Data and other information collected pursuant to this act shall not be disclosed by the Kansas Health Policy Authority or made public in any manner which would identify individuals. A violation of this subsection (d) is a class C misdemeanor.

(e) In addition to such criminal penalty under subsection (d), any individual whose identity is revealed in violation of subsection (d) may bring a civil action against the responsible person or persons for any damages to such individual caused by such violation.

HISTORY: L. 1993, ch. 174, § 4; L. 1994, ch. 90, § 3; L. 1995, ch. 260, § 9; L. 2000, ch. 131, § 3; May 18.

65-6805. Same; medical, health care and other entities to file health care data; exception. 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 the mentally retarded; community mental retardation facilities 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 as prescribed by the Authority. 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.

HISTORY: L. 1993, ch. 174, § 5; L. 1994, ch. 90, § 4; July 1.

65-6806. Same; availability of data. The Kansas Health Policy Authority shall make the data available to interested parties on the basis prescribed by the Authority and as directed by rules and regulations of the Authority.

HISTORY: L. 1993, ch. 174, § 6; July 1.

65-6807. Same; annual report by secretary of health and environment. The Kansas Health Policy Authority shall on or before February 1 each year make a report to the governor and the legislature as to health care data activity, including examples of policy analyses conducted and purposes for which the data was disseminated and utilized, and as to the progress made in compiling and making available the information specified under K.S.A. 65-6801 and amendments thereto.

HISTORY: L. 1993, ch. 174, § 7; L. 1995, ch. 137, § 1; July 1.

65-6809. Health care database fee fund; fees credited; authorized uses; interest earnings credited; administration.

(a) There is hereby established in the state treasury the health care database fee fund. The Kansas Health Policy Authority shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys collected or received by the Authority from the following sources:

(1) Fees collected under K.S.A. 65-6804, and amendments thereto;

(2) moneys received by the Authority in the form of gifts, donations or grants;

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

(4) any other moneys provided by law.

Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the health care database fee fund.

(b) Moneys deposited in the health care database fee fund shall be expended to supplement maintenance costs of the database, provide technical assistance and training in the proper use of health care data and provide funding for dissemination of information from the database to the public.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the health care database fee fund interest earnings based on:

(1) The average daily balance of moneys in the health care database fee fund for the preceding month; and

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

(d) All expenditures from the health care database fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the Kansas Health Policy Authority or the Authority's designee for the purposes set forth in this section.

HISTORY: L. 1994, ch. 90, § 1; L. 1996, ch. 253, § 21; L. 2001, ch. 5, § 270; July 1.

CHAPTER 74. STATE BOARDS, COMMISSIONS AND AUTHORITIES
ARTICLE 32. HIGHER EDUCATION COORDINATION; STATE BOARD OF REGENTS
NURSING SERVICE SCHOLARSHIP PROGRAM

74-3291. Citation of act. This act shall be known and may be cited as the nursing service scholarship program.

HISTORY: L. 1989, ch. 223, § 1; L. 2001, ch. 151, § 10; July 1.

74-3292. Definitions. As used in this act:

(a) "Committee" means the nursing service scholarship review committee established under K.S.A. 74-3299 and amendments thereto.
(b) "Executive officer" means the chief executive officer of the state board of regents appointed under K.S.A. 74-3203a and amendments thereto.

(c) "Rural area" means any county of this state other than Douglas, Johnson, Sedgwick, Shawnee and Wyandotte counties.

(d) "School of nursing" means a school within the state of Kansas which is approved by the state board of nursing to grant an associate degree or a baccalaureate degree in professional nursing or a certificate of completion in practical nursing.

(e) "Sponsor" means any adult care home licensed under the adult care home licensure act, any medical care facility licensed under K.S.A. 65-425 et seq. and amendments thereto, any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, any home health agency licensed under K.S.A. 65-5101 et seq. and amendments thereto, any local health department as defined in K.S.A. 65-241, and amendments thereto, and any state agency which employs licensed practical nurses or licensed professional nurses.

HISTORY: L. 1989, ch. 223, § 2; L. 1994, ch. 65, § 1; L. 2001, ch. 151, § 11; July 1.

74-3293. Establishment of program; categories and limitation on number of scholarships; determination of recipients; duration and amount of awards.

(a) There is hereby established the nursing service scholarship program. A scholarship may be awarded under the nursing service scholarship program to any qualified nursing student enrolled in or admitted to a school of nursing in a course of instruction leading to licensure as a licensed professional nurse or licensed practical nurse. The number of new scholarships awarded under the nursing service scholarship program in each year shall not exceed 250. Of this number, except as otherwise provided in this section, 100 scholarships shall be awarded to nursing students whose sponsors are located in rural areas and who are enrolled in a course of instruction leading to licensure as a registered professional nurse, 50 scholarships shall be awarded to nursing students enrolled in a course of instruction leading to licensure as a licensed practical nurse and the remaining 100 scholarships shall be awarded to any nursing students who have a sponsor and who are enrolled in a course of instruction leading to licensure as a registered professional nurse. If all scholarships authorized to be awarded under this section to nursing students whose sponsors are located in rural areas have not been awarded by a date established by the state board of regents, the scholarships which have not been awarded by that date may be awarded to nursing students who have a sponsor and who are otherwise qualified to be awarded a scholarship under the nursing service scholarship program. The determination of the individuals qualified for such scholarships shall be made by the executive officer after seeking advice from the committee. Within each scholarship category prescribed by this subsection, scholarships shall be awarded on a priority basis to qualified applicants who have the greatest financial need for such scholarships. To the extent practicable and consistent with the other provisions of this section, consideration shall be given to minority applicants.

(b) Scholarships awarded under the nursing service scholarship program shall be awarded for the length of the course of instruction leading to licensure as a licensed professional nurse or licensure as a licensed practical nurse which the student is enrolled in or admitted to unless otherwise terminated before the expiration of such period of time. Such scholarships shall provide to a nursing student

(1) if the nursing student is enrolled in a school of nursing operated by a state educational institution, an amount not to exceed 70% of the cost of attendance for an academic year at the school of nursing in which the nursing student is enrolled or

(2) if the nursing student is enrolled in a school of nursing not operated by a state educational institution, the lesser of

(A) an amount not to exceed 70% of the cost of attendance for a year at the school of nursing in which the nursing student is enrolled or

(B) an amount not to exceed 70% of the average amount of the cost of attendance for a year at the schools of nursing operated by the state educational institutions. The amount of each scholarship shall be established annually by the executive officer and shall be financed equally by the sponsor of the nursing student and by the state of Kansas except that if the sponsor is located in a rural area or is a health care facility which has less than 100 beds, the total amount of the scholarship financed by such sponsor shall not exceed $ 1,000 and the balance of such amount shall be paid by the state of Kansas.

HISTORY: L. 1989, ch. 223, § 3; L. 1990, ch. 277, § 1; L. 1992, ch. 87, § 1; L. 2001, ch. 151, § 12; July 1.

74-3294. Scholarship applications; agreements; service obligations, failure to satisfy; sponsorships.

(a) An applicant for a scholarship under the nursing service scholarship program shall provide to the executive officer, on forms supplied by the executive officer, the following information:

(1) The name and address of the applicant;

(2) the name and address of the school of nursing in which the applicant is enrolled or to which the applicant has been admitted;

(3) the name and address of the sponsor of the applicant and a verified copy of the agreement entered into by the applicant and the sponsor in accordance with the provisions of the nursing service scholarship program; and

(4) any additional information which may be required by the executive officer.

(b) As a condition to awarding a scholarship under the nursing service scholarship program, the executive officer and the applicant for a scholarship shall enter into an agreement which shall require that the scholarship recipient:

(1) Complete the required course of instruction and attain licensure with the Kansas state board of nursing as a licensed professional nurse or a licensed practical nurse;

(2) engage in the full-time practice of nursing, or the equivalent to full-time practice, in the employment of the sponsor in accordance with the agreement entered into by the scholarship recipient and the sponsor and continue such full-time practice, or the equivalent to full-time practice, for the total amount of time required under the agreement, which shall be for a period of not less than the length of the course of instruction for which scholarship assistance was provided, or engage in the part-time practice of nursing in the employment of the sponsor in accordance with the agreement entered into by the scholarship recipient and the sponsor and continue such part-time practice for the total amount of time required under the agreement, which shall be for a period of time that is equivalent to full time, as determined by the state board of regents, multiplied by the length of the course of instruction for which scholarship assistance was provided;

(3) commence the full-time practice of nursing, or the equivalent to full-time practice, or the part-time practice of nursing, within six months after registration in accordance with the agreement entered into by the scholarship recipient and the sponsor, continue such practice for the total amount of time required under the agreement, and comply with such other terms and conditions as may be specified by such agreement;

(4) maintain records and make reports to the executive officer as may be required by the executive officer to document the satisfaction of the obligations under the nursing service scholarship program and under agreements entered into with the sponsor; and

(5) upon failure to satisfy an agreement to engage in the full-time practice of nursing, or the equivalent to full-time practice, or the part-time practice of nursing, for the required period of time under any such agreement, repay to the state and to the sponsor amounts as provided in K.S.A. 74-3295, and amendments thereto.

(c) Upon the awarding of a scholarship under the nursing service scholarship program, the sponsor shall pay to the executive officer the amount of such scholarship to be financed by the sponsor. Each such amount shall be deposited in the nursing service scholarship program fund in accordance with K.S.A. 74-3298, and amendments thereto.

(d) The sponsorship by a scholarship recipient may be transferred from one sponsor to another upon the agreement of the original sponsor, the scholarship recipient and the sponsor to which the sponsorship is to be transferred. The terms, conditions and obligations of the transferred agreement shall be substantially similar to the terms, conditions and obligations of the original agreement. No sponsorship shall be transferred unless the agreement transferring such sponsorship provides for service in a rural area and is approved by the executive officer as consistent with the provisions of the nursing service scholarship program and as consistent with any rules and regulations relating thereto adopted by the state board of regents in accordance with the provisions of K.S.A. 74-3297, and amendments thereto.

HISTORY: L. 1989, ch. 223, § 4; L. 1992, ch. 87, § 2; L. 2001, ch. 151, § 13; July 1.

74-3295. Service obligation; repayment upon failure to satisfy, interest rate.

(a) Except as provided in K.S.A. 74-3296, and amendments thereto, upon the failure of any person to satisfy the obligation under any agreement entered into pursuant to the nursing service scholarship program, such person shall pay to the executive officer an amount equal to the total amount of money received by such person pursuant to such agreement which was financed by the state of Kansas plus accrued interest at a rate which is equivalent to the interest rate applicable to loans made under the federal PLUS program at the time such person first entered into an agreement plus five percentage points and shall pay to the sponsor an amount equal to the total amount of money received by such person pursuant to such agreement which was financed by the sponsor plus accrued interest at a rate which is equivalent to the interest rate applicable to loans made under the federal PLUS program at the time such person first entered into an agreement plus five percentage points. Installment payments of any such amounts may be made in accordance with the provisions of agreements entered into by the scholarship recipient and the sponsor or if no such provisions exist in such agreements, in accordance with rules and regulations of the state board of regents, except that such installment payments shall commence six months after the date of the action or circumstances that cause the failure of the person to satisfy the obligations of such agreements, as determined by the executive officer based upon the circumstances of each individual case. Amounts paid under this section to the executive officer shall be deposited in the nursing service scholarship repayment fund in accordance with K.S.A. 74-3298, and amendments thereto.

(b) The state board of regents is authorized to turn any repayment account arising under the nursing service scholarship program over to a designated loan servicer or collection agency, the state not being involved other than to receive payments from the loan servicer or collection agency at the interest rate prescribed under this section.

HISTORY: L. 1989, ch. 223, § 5; L. 1992, ch. 87, § 3; L. 1993, ch. 184, § 4; L. 2001, ch. 151, § 14; July 1.

74-3296. Same; postponement, reasons for; when satisfied.

(a) Except as otherwise specified in the agreement with the sponsor, an obligation under any agreement entered into under the nursing student scholarship program shall be postponed:

(1) During any required period of active military service;

(2) during any period of service as a part of volunteers in service to America (VISTA);

(3) during any period of service in the peace corps;

(4) during any period of service commitment to the United States public health service;

(5) during any period of religious missionary work conducted by an organization exempt from tax under section 501(c)(3) of the federal internal revenue code as in effect on December 31, 2000;

(6) during any period of time the person obligated is unable because of temporary medical disability to practice nursing;

(7) during any period of time the person obligated is enrolled and actively engaged on a full-time basis in a course of study leading to a degree in the field of nursing which is higher than that attained formerly by the person obligated;

(8) during any period of time the person obligated is on job-protected leave under the federal family and medical leave act of 1993; or

(9) during any period of time the state board of regents determines that the person obligated is unable because of special circumstances to practice nursing.

Except for clauses (6), (8) and (9), an obligation under any agreement entered into as provided in the nursing service scholarship program shall not be postponed more than five years from the time the obligation was to have been commenced under any such agreement. An obligation under any agreement entered into as provided in the nursing service scholarship program shall be postponed under clause (6) during the period of time the medical disability exists. An obligation under any agreement entered into as provided in the nursing service scholarship program shall be postponed under clause (8) during the period of time the person obligated remains on FMLA leave. An obligation under any agreement entered into as provided in the nursing service scholarship program shall be postponed under clause (9) during the period of time the state board of regents determines that the special circumstances exist. The state board of regents shall adopt rules and regulations prescribing criteria or guidelines for determination of the existence of special circumstances causing an inability to satisfy an obligation under any agreement entered into as provided in the nursing service scholarship program, and shall determine the documentation required to prove the existence of such circumstances. Except for clauses (1), (6), (8) and (9), an obligation under any agreement entered into as provided in the nursing service scholarship program shall not be postponed unless the postponement is approved by the sponsor or is otherwise provided for in the agreement with the sponsor.

(b) An obligation under any agreement entered into as provided in the nursing service scholarship program shall be satisfied:

(1) If the obligation has been completed in accordance with the agreement;

(2) if the person obligated dies;

(3) if, because of permanent physical disability, the person obligated is unable to satisfy the obligation;

(4) if the person obligated fails to satisfy the requirements for graduation from the school of nursing after making the best effort possible to do so;

(5) if the person obligated fails to satisfy all requirements for a permanent license to practice nursing in Kansas or has been denied a license after applying for a license and making the best effort possible to obtain such license;

(6) if, because of bankruptcy, loss of licensure or certification or other failure in the operations of the sponsor, the sponsor cannot or will not employ the person obligated; or

(7) if the sponsor releases the person obligated from employment with the sponsor and the person obligated otherwise completes the terms, conditions and obligations of the agreement by engaging in the practice of nursing in Kansas.

HISTORY: L. 1989, ch. 223, § 6; L. 1994, ch. 65, § 2; L. 2001, ch. 151, § 15; July 1.

74-3297. Sponsorship agreements; terms, conditions, obligations; rules and regulations. The state board of regents, after consultation with the committee, may adopt rules and regulations establishing minimum terms, conditions

and obligations which shall be incorporated into the provisions of any agreement entered into between a sponsor and the recipient of a scholarship under the nursing service scholarship program. The terms, conditions and obligations shall be consistent with the provisions of law relating to the nursing service scholarship program. The terms, conditions and obligations so established shall include, but not be limited to, the terms of eligibility for financial assistance under the nursing service scholarship program, the amount of financial assistance to be offered, the length of employment with the sponsor required as a condition to the receipt of such financial assistance, the circumstances under which the employment obligation may be discharged or forgiven, the amount of money required to be repaid because of failure to satisfy the obligations under an agreement and the method of repayment and such other additional provisions as may be necessary to carry out the provisions of the nursing service scholarship program. The state board of regents, after consultation with the committee, shall adopt rules and regulations as necessary to administer the nursing service scholarship program.

HISTORY: L. 1989, ch. 223, § 7; L. 2001, ch. 151, § 16; July 1.

74-3298. Nursing service scholarship program fund, creation, expenditures; repayment fund, creation, expenditures.

(a) There is hereby created in the state treasury the nursing service scholarship program fund. The executive officer shall remit all moneys received from sponsors, which are paid under K.S.A. 74-3294, and amendments thereto, pursuant to scholarship awards, or from a school of nursing, which are paid because of nonattendance or discontinued attendance by scholarship recipients, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the nursing service scholarship program fund. All expenditures from the nursing service scholarship program fund shall be for scholarships awarded under the nursing service scholarship program or refunds to sponsors and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive officer or by a person designated by the executive officer.

(b) The nursing student scholarship discontinued attendance fund is hereby abolished. On the effective date of this act, the director of accounts and reports shall transfer all moneys remaining in the nursing student scholarship discontinued attendance fund to the nursing service scholarship program fund.

(c) There is hereby created in the state treasury the nursing service scholarship repayment fund. The executive officer shall remit all moneys received for amounts paid under K.S.A. 74-3295, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the nursing service scholarship repayment fund. All expenditures from the nursing service scholarship repayment fund shall be for scholarships awarded under the nursing service scholarship program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive officer or by a person designated by the executive officer.

HISTORY: L. 1989, ch. 223, § 8; L. 1993, ch. 184, § 5; L. 2001, ch. 151, § 17; L. 2002, ch. 164, § 5; July 1.

74-3299. Nursing service scholarship review committee; composition and appointment; terms; organization; powers and duties; meetings; expenses and allowances.

(a) There is hereby created the nursing service scholarship review committee which shall consist of the following members appointed by the governor: One member representing Kansas hospitals; one member representing Kansas adult care homes; one member representing Kansas registered nurses; one member representing nursing education programs other than at a state educational institution; and the chief executive officer of a state educational institution which has a school of nursing.

(b) The members of the nursing service scholarship review committee appointed by the governor shall be appointed for three-year terms and shall serve until their successors are appointed and qualified. Upon the vacancy of a position appointed by the governor, the governor shall appoint a person of like qualifications to fill such position. If a vacancy

occurs prior to the expiration of a term, the governor shall appoint a person of like qualifications to fill such position for the unexpired term.

(c) The nursing service scholarship review committee shall elect annually from among its members a chairperson. The committee shall meet on the call of the chairperson or upon the request of a majority of the members of the committee. A majority of the members of the committee shall constitute a quorum.

(d) The nursing service scholarship review committee shall provide oversight of the nursing service scholarship program and shall be advisory to the executive officer and the state board of regents in the administration of such program. The committee shall exercise such other powers and duties as may be specified by law.

(e) The executive officer and other office staff of the state board of regents shall provide staff assistance to the nursing service scholarship review committee.

(f) The members of the nursing service scholarship review committee who are not state officers or employees and who are attending meetings of such committee, or attending a subcommittee meeting thereof authorized by such committee, shall be eligible for amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto. Amounts paid under this subsection (f) shall be from appropriations to the state board of regents upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive officer or a person designated by the executive officer.

HISTORY: L. 1989, ch. 223, § 9; L. 2001, ch. 151, § 18; July 1.

CHAPTER 74. STATE BOARDS, COMMISSIONS AND AUTHORITIES
ARTICLE 53. REGULATION OF PSYCHOLOGISTS

74-5301. Citation of act. This act shall be known and may be cited as the licensure of psychologists act of the state of Kansas.

HISTORY: L. 1967, ch. 432, § 1; L. 1986, ch. 299, § 13; June 1.

74-5302. Definitions. For the purpose of this act the following definitions shall apply:

(a) "Practice of psychology" means the application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of behavior adjustment, group relations and behavior modification, by persons trained in psychology. The application of such principles includes, but is not restricted to, counseling and the use of psychological remedial measures with persons, in groups or individually, having adjustment or emotional problems in the areas of work, family, school and personal relationships; measuring and testing personality, intelligence, aptitudes, public opinion, attitudes and skills; the teaching of such subject matter; and the conducting of research on problems relating to human behavior, except that in all cases involving the care of the sick and ill as defined by the laws of this state, the primary responsibility devolves upon those licensed under the Kansas healing arts act. The practice of psychology includes the diagnosis and treatment of mental disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations. If a licensed psychologist cannot make an independent diagnosis of a mental disorder, such psychologist shall consult with the client's primary care physician or psychiatrist to determine if there may be a medical condition or medication that may be causing or contributing to the client's symptoms of a mental disorder. A client may request in writing that such consultation be waived and such request shall be made a part of the client's record. A licensed psychologist may continue to evaluate and treat the client until such time that the medical consultation is obtained or waived.

(b) "Represents oneself to be a psychologist" means that a person engages in the practice of psychology for a fee, monetary or otherwise, or holds oneself out to the public by any title or description of services incorporating the word "psychologic," "psychological," "psychologist" or "psychology" and under such title or

description offers to render or renders services to individuals, corporations or the public for a fee, monetary or otherwise.

(c) "Board" means the behavioral sciences regulatory board created by K.S.A. 74-7501 and amendments thereto.

(d) "License" means a license as a psychologist issued by the board.

(e) "Licensed psychologist" means a person licensed by the board under the provisions of this act.

HISTORY: L. 1967, ch. 432, § 2; L. 1980, ch. 242, § 11; L. 1986, ch. 299, § 14; L. 1999, ch. 117, § 25; July 1, 2000.

74-5322. List of licensed psychologists. Upon November 1 of each year, or within 20 days thereafter, the board shall publish and cause to be mailed to each psychologist licensed under this act in Kansas, a list of duly licensed psychologists in this state. The annual listing will be contingent upon the payment of all fees due, including the renewal fee.

HISTORY: L. 1967, ch. 432, § 22; L. 1986, ch. 299, § 24; June 1.

74-5323. Privileged communications; exceptions.

(a) The confidential relations and communications between a licensed psychologist and the psychologist's client are placed on the same basis as provided by law for those between an attorney and the attorney's client. Except as provided in subsection (b), nothing in this act shall be construed to require such privileged communications to be disclosed.

(b) Nothing in this section or in this act shall be construed to prohibit any licensed psychologist from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of a client. There is no privilege under this section for information which is required to be reported to a public official.

HISTORY: L. 1967, ch. 432, § 23; L. 1986, ch. 299, § 25; L. 1999, ch. 117, § 28; July 1, 2000.

74-5324. Grounds for suspension, limitation, revocation or refusal to issue or renew license. The board may suspend, limit, revoke or refuse to issue or renew a license of any psychologist upon proof that the psychologist:

(a) Has been convicted of a felony involving moral turpitude; or

(b) has been guilty of fraud or deceit in connection with services rendered as a psychologist or in establishing qualifications under this act; or

(c) has aided or abetted a person, not a licensed psychologist, in representing such person as a psychologist in this state; or

(d) has been guilty of unprofessional conduct as defined by rules and regulations established by the board; or

(e) has been guilty of negligence or wrongful actions in the performance of duties; or

(f) has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement or

(g) has had a registration, license or certificate as a psychologist revoked, suspended or limited, or has had other disciplinary action taken, or an application for registration, license or certificate denied, by the proper

regulatory authority of another state, territory, District of Columbia or another country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

HISTORY: L. 1967, ch. 432, § 24; L. 1986, ch. 299, § 26; L. 1986, ch. 234, § 6; L. 1988, ch. 304, § 1; July 1.

74-5325. Suspension for incapacity; hearing. After a hearing in accordance with the provisions of the Kansas administrative procedure act, the board may suspend the license of any psychologist for a period not to exceed one year on evidence that the psychologist is incapable of performing duties in the best interest of the public. If at the end of one year of continuous suspension, evidence is presented that the incapacity remains, the suspension may be continued for a period of one year.

HISTORY: L. 1967, ch. 432, § 25; L. 1986, ch. 299, § 27; L. 1988, ch. 356, § 292; July 1, 1989.

74-5344. Construction of act. Nothing contained in the licensure of psychologists act of the state of Kansas shall be construed:

(a) To prevent qualified members of other professional groups such as, but not limited to, ministers, Christian Science practitioners, social workers and sociologists from doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions so long as they do not hold themselves out to the public by any title or description of services incorporating the words "psychologic," "psychological," "psychologist" or "psychology";

(b) in any way to restrict any person from carrying on any of the aforesaid activities in the free expression or exchange of ideas concerning the practice of psychology, the application of its principles, the teaching of such subject matter and the conducting of research on problems relating to human behavior if such person does not represent such person or such person's services in any manner prohibited by such act;

(c) to limit the practice of psychology of a licensed masters level psychologist or a person who holds a temporary license to practice as a licensed masters level psychologist insofar as such practice is a part of the duties of any such person's salaried position, and insofar as such practice is performed solely on behalf of such person's employer or insofar as such person is engaged in public speaking with or without remuneration;

(d) to limit the practice of psychology or services of a student, intern or resident in psychology pursuing a degree in psychology in a school, college, university or other institution, with educational standards consistent with those of the state universities of Kansas if such practice or services are supervised as a part of such person's degree program. Nothing contained in this section shall be construed as permitting such persons to offer their services as psychologists to any other person and to accept remuneration for such psychological services other than as specifically excepted herein, unless they have been licensed under the provisions of the licensure of psychologists act of the state of Kansas, registered under the provisions of K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto or granted a temporary license under the provisions of K.S.A. 74-5367 and amendments thereto;

(e) to prevent the employment, by a person, association, partnership or a corporation furnishing psychological services for remuneration, of persons not licensed as psychologists under the provisions of such act to practice psychology if such persons work under the supervision of a psychologist or psychologists licensed under the provisions of such act and if such persons are not in any manner held out to the public as psychologists licensed under the provisions of the licensure of psychologists act of the state of Kansas, as registered under the provisions of K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto or as holding a temporary license under the provisions of K.S.A. 74-5367 and amendments thereto;

(f) to restrict the use of tools, tests, instruments or techniques usually denominated "psychological" so long as the user does not represent oneself to be a licensed psychologist or a licensed masters level psychologist;

(g) to permit persons licensed as psychologists to engage in the practice of medicine as defined in the laws of this state, nor to require such licensed psychologists to comply with the Kansas healing arts act;

(h) to restrict the use of the term "social psychologist" by any person who has received a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a school or college as defined in the licensure of psychologists act of the state of Kansas, and who has passed comprehensive examination in the field of social psychology as a part of the requirements for the doctoral degree or has had equivalent specialized training in social psychology;

(i) to restrict the practice of psychology by a person who is certified as a school psychologist by the state department of education so long as such practice is conducted as a part of the duties of employment by a unified school district or as part of an independent evaluation conducted in accordance with K.S.A. 72-963 and amendments thereto, including the use of the term "school psychologist" by such person in conjunction with such practice; or

(j) to restrict the use of the term psychologist or the practice of psychology by psychologists not licensed under the licensure of psychologists act of the state of Kansas in institutions for the mentally retarded, in a juvenile correctional facility, as defined in K.S.A. 38-1602, and amendments thereto, or in institutions within the department of corrections insofar as such term is used or such practice of psychology is performed solely in conjunction with such person's employment by any such institution or juvenile correctional facility.

HISTORY: L. 1967, ch. 432, § 44; L. 1980, ch. 242, § 28; L. 1986, ch. 299, § 40; L. 1987, ch. 306, § 12; L. 1988, ch. 304, § 10; L. 1997, ch. 142, § 8; L. 1997, ch. 142, § 9; L. 1999, ch. 108, § 6; L. 2003, ch. 72, § 4; July 1.

74-5361. Definitions. As used in this act:

(a) "Practice of psychology" shall have the meaning ascribed thereto in K.S.A. 74-5302 and amendments thereto.

(b) "Board" means the behavioral sciences regulatory board created by K.S.A. 74-7501 and amendments thereto.

(c) "Licensed masters level psychologist" means a person licensed by the board under the provisions of this act.

(d) "Licensed clinical psychotherapist" means a person licensed by the board under this act who engages in the independent practice of masters level psychology including the diagnosis and treatment of mental disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations.

(e) "Masters level psychology" means the practice of psychology pursuant to the restrictions set out in K.S.A. 74-5362 and amendments thereto and includes the diagnosis and treatment of mental disorders as authorized under K.S.A. 74-5361 et seq.

HISTORY: L. 1987, ch. 306, § 1; L. 1996, ch. 153, § 31; L. 1997, ch. 142, § 3; L. 1999, ch. 117, § 29; July 1, 2000.

74-5362. Practice of licensed masters level psychologist; direction of certain persons; use of title.

(a) Any person who is licensed under the provisions of this act as a licensed masters level psychologist shall have the right to practice psychology only insofar as such practice is part of the duties of such person's paid position and is performed solely on behalf of the employer, so long as such practice is under the direction of a licensed clinical psychotherapist, a licensed psychologist, a person licensed to practice medicine and surgery or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of mental disorders. When a client has symptoms of a mental disorder, a licensed masters level psychologist shall consult

with the client's primary care physician or psychiatrist to determine if there may be a medical condition or medication that may be causing or contributing to the client's symptoms of a mental disorder. A client may request in writing that such consultation be waived and such request shall be made a part of the client's record. A licensed masters level psychologist may continue to evaluate and treat the client until such time that the medical consultation is obtained or waived.

(b) A licensed masters level psychologist may use the title licensed masters level psychologist and the abbreviation LMLP but may not use the title licensed psychologist or psychologist. A licensed clinical psychotherapist may use the title licensed clinical psychotherapist and the abbreviation LCP but may not use the title licensed psychologist or psychologist.

HISTORY: L. 1987, ch. 306, § 2; L. 1988, ch. 304, § 6; L. 1996, ch. 153, § 32; L. 1997, ch. 142, § 1; L. 1999, ch. 117, § 30; July 1, 2000.

74-5369. Grounds for denial, suspension, limitation, revocation or nonrenewal of license; procedure; judicial review. An application for licensure under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto, may be denied or a license granted under this act may be suspended, limited, revoked or not renewed by the board upon proof that the applicant or licensee:

(a) Has been convicted of a felony involving moral turpitude;

(b) has been found guilty of fraud or deceit in connection with the rendering of professional services or in establishing such person's qualifications under this act;

(c) has aided or abetted a person not licensed as a psychologist, licensed under this act or an uncertified assistant, to hold oneself out as a psychologist in this state;

(d) has been guilty of unprofessional conduct as defined by rules and regulations of the board;

(e) has been guilty of neglect or wrongful duties in the performance of duties; or

(f) has had a registration, license or certificate as a masters level psychologist revoked, suspended or limited, or has had other disciplinary action taken, or an application for a registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia or another country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

Administrative proceedings under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto shall be in accordance with the act for judicial review and civil enforcement of agency actions.

HISTORY: L. 1987, ch. 306, § 9; L. 1988, ch. 304, § 2; L. 1996, ch. 153, § 38; L. 1999, ch. 117, § 34; July 1, 2000.

74-5371. Prohibited acts and representations; misdemeanor.

(a) No person shall engage in the practice of masters level psychology or represent oneself as a licensed masters level psychologist or use the abbreviation LMLP or use any word, letter, signs, figures or devices to indicate that such person using the same is a licensed masters level psychologist unless such person holds a valid license as a licensed masters level psychologist.

(b) No person shall engage in the independent practice of masters level psychology or represent oneself as a licensed clinical psychotherapist or use the abbreviation LCP or use any word, letter, signs, figures or devices to indicate that such person using the same is a licensed clinical psychotherapist unless such person holds a valid license as a licensed clinical psychotherapist.

(c) A violation of this section is a class C misdemeanor.

HISTORY: L. 1987, ch. 306, § 11; L. 1988, ch. 304, § 8; L. 1996, ch. 153, § 39; L. 1999, ch. 117, § 35; July 1, 2000.

74-5372. Confidential communications; exceptions.

(a) The confidential relations and communications between a licensed masters level psychologist and such psychologist's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(b) The confidential relations and communications between a licensed clinical psychotherapist and such psychotherapist's client are placed on the same basis as provided by law for those between an attorney and an attorney's client.

(c) Nothing in this section or in this act shall be construed to prohibit any licensed masters level psychologist or licensed clinical psychotherapist from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of the client. There is no privilege under this section for information which is required to be reported to a public official.

HISTORY: L. 1988, ch. 304, § 9; L. 1996, ch. 153, § 40; L. 1999, ch. 117, § 36; July 1, 2000.

CHAPTER 75. STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
ARTICLE 33. SOCIAL AND REHABILITATION SERVICES

75-3307b. Enforcement of laws relating to hospitalization or treatment of certain persons; rules and regulations; licensing; standards; continuation of licensure of certain entities.

(a) The enforcement of the laws relating to the hospitalization of mentally ill persons of this state in a psychiatric hospital and the diagnosis, care, training or treatment of persons in community mental health centers or facilities for persons with mental illness, developmental disabilities or other persons with disabilities is entrusted to the secretary of social and rehabilitation services. The secretary may adopt rules and regulations on the following matters, so far as the same are not inconsistent with any laws of this state:

(1) The licensing, certification or accrediting of private hospitals as suitable for the detention, care or treatment of mentally ill persons, and the withdrawal of licenses granted for causes shown;

(2) the forms to be observed relating to the hospitalization, admission, transfer, custody and discharge of patients;

(3) the visitation and inspection of psychiatric hospitals and of all persons detained therein;

(4) the setting of standards, the inspection and the licensing of all community mental health centers which receive or have received any state or federal funds, and the withdrawal of licenses granted for causes shown;

(5) the setting of standards, the inspection and licensing of all facilities for persons with mental illness, developmental disabilities or other persons with disabilities receiving assistance through the department of social and rehabilitation services which receive or have received after June 30, 1967, any state or federal funds, or facilities where persons with mental illness or developmental disabilities reside who require supervision or require limited assistance with the taking of medication, and the withdrawal of licenses granted for causes shown. The secretary may adopt rules and regulations that allow the facility to assist a resident with the taking of medication when the medication is in a labeled container dispensed by a pharmacist. No license for a residential facility for eight or more persons may be issued under this paragraph unless the secretary of health and environment has approved the facility as meeting the licensing standards for a lodging establishment under the food service and lodging act. No license for a residential facility for the elderly or for a residential facility for persons with disabilities not related to mental illness or developmental disability, or both, or related conditions shall be issued under this paragraph;

(6) reports and information to be furnished to the secretary by the superintendents or other executive officers of all psychiatric hospitals, community mental health centers or facilities for persons with developmental disabilities and facilities serving other persons with disabilities receiving assistance through the department of social and rehabilitation services.

(b) An entity holding a license as a community mental health center under paragraph (4) of subsection (a) on the day immediately preceding the effective date of this act, but which does not meet the definition of a community mental health center set forth in this act, shall continue to be licensed as a community mental health center as long as the entity remains affiliated with a licensed community mental health center and continues to meet the licensing standards established by the secretary.

(c) Not withstanding the existence or pursuit of any other remedy, the secretary of social and rehabilitation services, as the licensing agency, in the manner provided by the act for judicial review and civil enforcement of agency actions, may maintain an action in the name of the state of Kansas for injunction against any person or facility to restrain or prevent the operation of a psychiatric hospital, community mental health center or facility for persons with mental illness, developmental disabilities or other persons with disabilities operating without a license.

(d) The secretary of social and rehabilitation services shall license and inspect any facility or provider of residential services which serves two or more residents who are not self-directing their services and which is subject to licensure under subsection (a)(5) of this section, unless the provider of services is already licensed to provide such services.

HISTORY: L. 1963, ch. 254, § 5; L. 1965, ch. 468, § 1; L. 1969, ch. 403, § 1; L. 1972, ch. 228, § 15; L. 1973, ch. 369, § 43; L. 1976, ch. 384, § 1; L. 1976, ch. 243, § 44; L. 1979, ch. 191, § 17; L. 1984, ch. 321, § 2; L. 1985, ch. 208, § 9; L. 1986, ch. 324, § 2; L. 1995, ch. 143, § 6; July 1.

CHAPTER 75. STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
ARTICLE 43. PUBLIC OFFICERS AND EMPLOYEES

75-4301a. Governmental ethics applicable to local governmental subdivisions; definitions. As used in K.S.A. 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and amendments thereto:

(a) "Substantial interest" means any of the following:

(1) If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding $ 5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.
(2) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of $ 2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(3) If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of $ 500 or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

(4) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States code, the individual has a substantial interest in that business, irrespective of the amount of compensation received by the individual or individual's spouse.

(5) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has

a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of $ 2,000 or more in the preceding calendar year.

As used in this subsection, "client or customer" means a business or combination of businesses.

(b) "Business" means any corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income.

(c) "Local governmental employee" means any employee of any governmental subdivision or any of its agencies.

(d) "Local governmental officer" means any elected or appointed officer of any governmental subdivision or any of its agencies.

(e) "Candidate for local office" means any candidate for nomination or election to any elective office of a governmental subdivision.

(f) "Governmental subdivision" means any city, county, township, school district, drainage district or other governmental subdivision of the state having authority to receive or hold public moneys or funds.

(g) "Contracts" means agreements including but not limited to sales and conveyances of real and personal property and agreements for the performance of services.

(h) "Acts" means the exercise of power or authority or performance of any duty incident to public office or employment.

(i) "Compensation" means any money, thing of value or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by that person or another, but shall not mean nor include reimbursement of reasonable expenses if the reimbursement does not exceed the amount actually expended for the expenses and it is substantiated by an itemization of expenses.

(j) "Preceding calendar year" has its usual meaning, except that in the case of candidates and individuals newly appointed to office or employment, it means the 12 months immediately preceding a required filing date.

HISTORY: L. 1990, ch. 306, § 14; L. 1991, ch. 150, § 45; July 1.

75-4302a. Same; statement of substantial interests; individuals required to file; filing; rules and regulations; sample forms; disclosure if individual or spouse is officer of nonprofit corporation exempt from federal income taxes.

(a) The statement of substantial interests shall include all substantial interests of the individual making the statement.

(b) Statements of substantial interests shall be filed by the following individuals at the times specified:

(1) By a candidate for local office who becomes a candidate on or before the filing deadline for the office, not later than 10 days after the filing deadline, unless before that time the candidacy is officially declined or rejected.

(2) By a candidate for local office who becomes a candidate after the filing deadline for the office, within five days of becoming a candidate, unless within that period the candidacy is officially declined or rejected.

(3) By an individual appointed on or before April 30 of any year to fill a vacancy in an elective office of a governmental subdivision, between April 15 and April 30, inclusive, of that year.

(4) By an individual appointed after April 30 of any year to fill a vacancy in an elective office of a governmental subdivision, within 15 days after the appointment.

(5) By any individual holding an elective office of a governmental subdivision, between April 15 and April 30, inclusive, of any year if, during the preceding calendar year, any change occurred in the individual's substantial interests.

(c) The statement of substantial interests required to be filed pursuant to this section shall be filed in the office where declarations of candidacy for the local governmental office sought or held by the individual are required to be filed.

(d) The governmental ethics commission shall adopt rules and regulations prescribing the form and the manner for filing the disclosures of substantial interests required by law. The commission shall provide samples of the form of the statement to each county election officer.

(e) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor in an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States code, the individual shall comply with all disclosure provisions of subsections (a), (b), (c) and (d) of this section notwithstanding the provisions of K.S.A. 75-4301, and amendments thereto, which provide that these individuals may not have a substantial interest in these corporations.

HISTORY: L. 1990, ch. 306, § 15; L. 1991, ch. 150, § 46; L. 1998, ch. 117, § 25; July 1.

75-4303a. Same; advisory opinions on interpretation or application of act; presumption of compliance with act; filing of opinions; administration of act, rules and regulations.

(a) The governmental ethics commission shall render advisory opinions on the interpretation or application of K.S.A. 75-4301a, 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and amendments thereto. The opinions shall be rendered after receipt of a written request therefor by a local governmental officer or employee or by any person who has filed as a candidate for local office. Any person who requests and receives an advisory opinion and who acts in accordance with its provisions shall be presumed to have complied with the provisions of the general conflict of interests law. A copy of any advisory opinion rendered by the commission shall be filed by the commission in the office of the secretary of state, and any opinion so filed shall be open to public inspection. All requests for advisory opinions shall be directed to the secretary of state who shall notify the commission thereof.

(b) The governmental ethics commission shall administer K.S.A. 75-4301a, 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and amendments thereto, and may adopt rules and regulations therefor.

HISTORY: L. 1974, ch. 396, § 1; L. 1981, ch. 171, § 47; L. 1990, ch. 306, § 16; L. 1991, ch. 150, § 42; L. 1998, ch. 117, § 26; July 1.

75-4304. Same; making or participating in certain contracts prohibited; exceptions; abstaining from action.

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

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

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

(d) This section shall not apply to the following:

(1) Contracts let after competitive bidding has been advertised for by published notice; and

(2) contracts for property or services for which the price or rate is fixed by law.

(e) Any local governmental officer or employee who is convicted of violating this section shall forfeit the office or employment.

HISTORY: L. 1970, ch. 366, § 4; L. 1974, ch. 397, § 1; L. 1990, ch. 306, § 17; May 31.

75-4305. Same; filing of report of interest if statement of substantial interest not filed; abstaining from action.

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

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

HISTORY: L. 1970, ch. 366, § 5; L. 1974, ch. 397, § 2; L. 1990, ch. 306, § 18; May 31.

75-4306. Penalties for violations; severability.

(a) Violation of K.S.A. 75-4304 or 75-4305, and amendments thereto, or failure to make any disclosure of substantial interests required by K.S.A. 75-4302a is a class B misdemeanor.

(b) If any clause, paragraph, subsection or section of this act is held invalid or unconstitutional it shall be conclusively presumed that the legislature would have enacted the remainder of this act without the invalid or unconstitutional clause, paragraph, subsection or section.

HISTORY: L. 1970, ch. 366, § 6; L. 1990, ch. 306, § 19; May 31.

75-4308. Oath required for public officers and employees. Before entering upon the duties of his or her office or employment, each person to be employed by the state or any agency thereof or by any county, city or other municipality of the state including any school, college or university supported in whole or in part by public funds collected under any tax law of the state or any municipality thereof shall be required to subscribe in writing to the oath set out in K.S.A. 54-106.

HISTORY: L. 1968, ch. 106, § 1; July 1.

75-4309. Same; falsifying oaths or affirmations. All oaths or affirmations submitted hereunder shall subject the person who shall falsify them to the pains and penalties of perjury.

HISTORY: L. 1968, ch. 106, § 2; July 1.

75-4310. Oath required for public officers and employees; administering; filing. Oaths required hereunder shall be administered before the officers and in the manner prescribed by K.S.A. 54-101, 54-102 and 54-103. All oaths administered under the provisions of this act shall be filed in writing with the governing body of the county, city or any municipality or such governing body's duly authorized agent, or in the case of public schools with the superintendent of

any such school district, but in the case of the state or any agency thereof such oath shall be filed with the employing state agency. In the case of private schools receiving public moneys as defined in K.S.A. 75-4308, such oath shall be filed in the office of the chief administrative officer of such school, college or university.

HISTORY: L. 1968, ch. 106, § 3; L. 1983, ch. 294, § 1; April 14.

75-4311. Same; funds withheld until oath subscribed to and filed. A state agency officer disbursing payroll warrants or a treasurer or other disbursing officer of any city, county or any municipality or of any public school district or of any private school, college or university receiving public funds shall not disburse any funds in payment for services to any officer or employee subject to the provisions of this act until the required oath has been duly subscribed and filed by such officer or employee.

HISTORY: L. 1968, ch. 106, § 4; L. 1983, ch. 294, § 2; April 14.

75-4312. Same; persons required to take oath; time for filing; penalty. All persons employed by the state or any agency thereof or by any city, county or other municipality or by any public school or by any private school, college or university receiving public funds as defined by K.S.A. 75-4308, at the time this act becomes effective shall take and subscribe the oath required by this act and shall file said oath in writing with the appropriate officer designated by K.S.A. 75-4310 on or before January 1, 1969, and any such officer or employee failing so to do shall be subjected to the penalties as in this act prescribed.

HISTORY: L. 1968, ch. 106, § 5; July 1.

75-4313. Same; unauthorized disbursement of funds; penalty. It shall be unlawful for any state agency officer disbursing payroll warrants or any treasurer or other disbursing officer of any city, county or any municipality or of any public school district or of any private school, college or university receiving public funds as defined in K.S.A. 75-4308 knowingly to disburse any funds in payment for services to any officer or employee covered by the provisions of this act, which officer or employee has not subscribed and filed the oath required by this act. Violation of this section shall constitute a class C misdemeanor.

HISTORY: L. 1968, ch. 106, § 6; L. 1983, ch. 294, § 3; April 14.

75-4314. Same; officer or employee receiving funds without subscribing and filing oath; penalty. Any officer or employee having rendered service for the state or any county, city or any municipality or for any public school district or for any private school, college or university receiving public funds who shall knowingly receive and convert to his or her use any payment for such services without having subscribed and filed an oath as prescribed by this act shall be deemed guilty of a felony and upon conviction thereof shall be punished by confinement and hard labor not exceeding five years or in the county jail not less than six months.

HISTORY: L. 1968, ch. 106, § 7; July 1.

75-4315. Political subdivisions of state authorized to pay compensation semimonthly; section applicable to state agencies until biweekly payroll periods established. Notwithstanding any other provision of law to the contrary, all political subdivisions of the state shall pay to their employees such salaries and wages as may be due and payable, and such compensation may be paid as often as semimonthly. The provisions of this section shall apply to any state agency until biweekly payroll periods are required for such state agency in accordance with the provisions of K.S.A. 75-5501 et seq. and amendments thereto.

HISTORY: L. 1968, ch. 310, § 1; L. 1974, ch. 390, § 27; L. 1975, ch. 452, § 21; L. 1980, ch. 264, § 16; L. 1995, ch. 132, § 3; Dec. 17.

75-4316. Discharge of public employee declaring or subjected to bankruptcy, wage earners' plan or similar proceeding unlawful; "public employee" defined; violation of act declared misdemeanor.

(a) For the purpose of this act, "public employee" means any employee of the state of Kansas, any employee of a city incorporated under the laws of the state of Kansas or any employee of a county, township, school district or other political subdivision of the state of Kansas.

(b) No public employee shall be discharged from employment solely by reason of the fact that he or she has availed himself or herself of or has been subjected by creditors to any proceeding in a state or federal court due to such employee's financial condition, which shall include, but not be limited to, a proceeding in bankruptcy, a proceeding to effect a wage earners' plan or any other similar proceeding instituted because of such employee's insolvency.

(c) Any person who discharges a public employee from employment in violation of this act shall be guilty of a class A misdemeanor.

HISTORY: L. 1971, ch. 283, § 1; July 1.

75-4317. Open meetings declared policy of state; citation of act.

(a) In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a).

(c) K.S.A. 75-4317 through 75-4320a shall be known and may be cited as the open meetings act.

HISTORY: L. 1972, ch. 319, § 1; L. 1975, ch. 455, § 1; L. 1999, ch. 96, § 1; July 1.

75-4317a. Meeting defined.

(a) As used in this act, "meeting" means any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.

HISTORY: L. 1977, ch. 301, § 1; L. 1994, ch. 64, § 1; April 7.

75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited.

(a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of

(1) the justification for closing the meeting,

(2) the subjects to be discussed during the closed or executive meeting and

(3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of nonelected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (d)(1) of K.S.A. 38-1507 and amendments thereto or subsection (e) of K.S.A. 38-1508 and amendments thereto;

(9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

(10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 39-7,119 and amendments thereto;

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(13) matters relating to the security of a public body or agency, public building or facility or the information system of a public body or agency, if the discussion of such matters at an open meeting would jeopardize the security of such public body, agency, building, facility or information system; and

(14) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (f) of K.S.A. 65-525, and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(13), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

HISTORY: L. 1972, ch. 319, § 3; L. 1977, ch. 301, § 3; L. 1981, ch. 344, § 1; L. 1988, ch. 315, § 4; L. 1992, ch. 318, § 9; L. 1993, ch. 286, § 75; L. 1994, ch. 254, § 3; L. 1996, ch. 256, § 23; L. 1999, ch. 96, § 2; L. 2001, ch. 190, § 2; July 1.

75-4320. Penalties.

(a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318 shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of

not to exceed five hundred dollars ($ 500) for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within ten (10) days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

HISTORY: L. 1972, ch. 319, § 4; L. 1977, ch. 301, § 4; July 1.

75-4320a. Enforcement of act by district courts; burden of proof; court costs; precedence of cases.

(a) The district court of any county in which a meeting is held shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319, and amendments thereto, with respect to such meeting, by injunction, mandamus or other appropriate order, on application of any person.

(b) In any action hereunder, the burden of proof shall be on the public body or agency to sustain its action.

(c) In any action hereunder, the court may award court costs to the person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, if the court finds that the provisions of those statutes were violated. The award shall be assessed against the public agency or body responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant court costs if the court finds that the plaintiff maintained the action frivolously, not in good faith or without a reasonable basis in fact or law.
(e) Except as otherwise provided by law, proceedings arising under this section shall take precedence over all other cases and shall be assigned for hearing and trial at the earliest practicable date.

(f) As used in this section, "meeting" has the meaning provided by K.S.A. 75-4317a and amendments thereto.

HISTORY: L. 1981, ch. 344, § 2; July 1.

CHAPTER 75. STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
ARTICLE 56. DEPARTMENT OF HEALTH AND ENVIRONMENT

75-5601. Secretary of health and environment; appointment and confirmation; creation of department of health and environment; department and office of secretary subject to K-GOAL.

(a) There is hereby created a department of health and environment, the head of which shall be the secretary of health and environment, which office is hereby created. The governor shall appoint the secretary of health and environment, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and the secretary shall serve at the pleasure of the governor. The department of health and environment shall consist of the division of health and the division of environment. The secretary of health and environment shall receive an annual salary fixed by the governor.

(b) The provisions of the Kansas governmental operations accountability law apply to the department of health and environment, and the department is subject to audit, review and evaluation under such law.

HISTORY: L. 1974, ch. 351, § 1; L. 1978, ch. 308, § 76; L. 1982, ch. 347, § 74; L. 1992, ch. 116, § 50; L. 2001, ch. 86, § 14; April 12.

75-5602. Transfer of powers, duties and functions; preservation of rules and regulations, orders and directives.

(a) All of the powers, duties, functions, records, property and personnel of the existing state board of health and the state department of health including the power to expend funds now or hereafter made available in accordance with appropriation acts are hereby transferred to and conferred and imposed upon the secretary of health and environment created by this order, except as is herein otherwise provided.

(b) The secretary of health and environment created by this order shall be the successor in every way to the powers, duties and functions of the state board of health, the state department of health, and the director of health in which the same were vested prior to the effective date of this order, except as herein otherwise provided. Every act performed under the authority of the secretary of health and environment created by this order shall be deemed to have the same force and effect as if performed by the state board of health, the state department of health or the director of health, in which such functions were vested prior to the effective date of this order.

(c) Whenever the state board of health, or the state department of health, or words of like effect, is referred to or designated by the statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of health and environment created by this order.

(d) Whenever the executive secretary of the state board of health or the director of health, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of health and environment created by this order.

(e) All rules and regulations and all orders or directives of the state board of health or the director of health in existence on the effective date of this order, shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the secretary of health and environment created by this order, until revised, amended, repealed or nullified pursuant to law.
(f) The secretary of health and environment created by this order shall be a continuation of the state board of health provided to be appointed under K.S.A. 74-901 and the director of health established by K.S.A. 74-901b.

HISTORY: L. 1974, ch. 351, § 2; July 1.

75-5603. Division of health, establishment and administration; director of the division of health, qualifications, appointment, compensation. There is hereby established within and as a part of the department of health and environment a division of health, the head of which shall be the director of the division of health. Under the supervision of the secretary of health and environment, the director of the division of health shall administer the division of health. The director shall be a physician, hold a valid license to practice medicine and surgery, and have experience and educational training in the field of public health. The secretary of health and environment shall appoint the director of the division of health. Each person appointed shall be appointed subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto and shall serve for a term of four years from and after the date of such appointment, and thereafter at the pleasure of the secretary. The director shall be in the unclassified service and shall receive an annual salary fixed by the secretary and approved by the governor.

HISTORY: L. 1974, ch. 351, § 3; L. 1974, ch. 352, § 186; L. 1993, ch. 169, § 1; April 22.

75-5604. Powers, duties and functions of existing divisions and directors transferred to new secretary; orders and directives continued in effect until revised, amended or repealed.

(a) All of the powers, duties and functions of the existing division of food and drug, division of registration and health statistics, division of vital statistics established by K.S.A. 65-2402, division of health education, division of epidemiology and disease control, division of maternal and child health, division of child hygiene created by K.S.A. 65-152, division of medical and dental health, and the division of hospital facilities established by K.S.A. 65-412 and the existing director of the division of food and drug, director of the division of registration and health statistics, state registrar of vital statistics established by K.S.A. 65-2405, director of the division of health education, director of the division of epidemiology and disease control, director of the division of maternal and child health, director of the

division of medical and dental health and director of the division of hospital facilities established by K.S.A. 65-412, are hereby transferred to and conferred and imposed upon the secretary of health and environment created by this order, except as is herein otherwise provided.

(b) The secretary of health and environment created by this order shall be the successor in every way to the powers, duties and functions of the director of the division of food and drug, director of the division of registration and health statistics, state registrar of vital statistics established by K.S.A. 65-2405, director of the division of health education, director of the division of epidemiology and disease control, director of the division of maternal and child health, director of the division of medical and dental health and director of the division of hospital facilities established by K.S.A. 65-412, in which the same were vested prior to the effective date of this act, except as herein otherwise provided. Every act performed under the authority of the secretary of health and environment created by this order shall be deemed to have the same force and effect as if performed by the division of food and drug or the director thereof, respectively, or the division of registration and health statistics or the director thereof, respectively, of the division of vital statistics established by K.S.A. 65-2402, or the state registrar of vital statistics established by K.S.A. 65-2405, respectively, or the division of health education or the director thereof, respectively, or the division of epidemiology and disease control or the director thereof, respectively, or the division of maternal and child health or the director thereof, respectively, or the division of child hygiene created by K.S.A. 65-152, or the division of medical and dental health or the director thereof, respectively, or the division of hospital facilities or the director thereof, respectively, both established by K.S.A. 65-412, in which divisions and directors such functions were vested prior to the effective date of this order.

(c) All powers, duties and functions of existing divisions of the state board of health not specifically transferred nor abolished herein shall be transferred to the secretary of health and environment.

(d) Whenever the director of the division of food and drug or the division of food and drug, or the director of the division of registration and health statistics or the division of registration and health statistics, or the division of vital statistics established by K.S.A. 65-2402 or the state registrar of vital statistics established by K.S.A. 65-2405, or the director of the division of health education or the division of health education, or the director of the division of epidemiology and disease control or the division of epidemiology and disease control, or the director of the division of maternal and child health or the division of maternal and child health, or the division of child hygiene created by K.S.A. 65-152, or the director of the division of medical and dental health or the division of medical and dental health, or the director of the division of hospital facilities or the division of hospital facilities, both established by K.S.A. 65-412, or words of like effect is referred to or designated by a statute, contract, or other document, such reference or designation shall be deemed to apply to the secretary of health and environment created by this order.

(e) All orders or directives of the director of the division of food and drug, the director of the division of registration and health statistics, the state registrar of vital statistics established by K.S.A. 65-2405, the director of the division of health education, the director of the division of epidemiology and disease control, the director of the division of maternal and child health, the director of the division of medical and dental health, the director of the division of hospital facilities established by K.S.A. 65-412, in existence on the effective date of this act shall continue to be effective and shall be deemed to be the orders or directives of the secretary of health and environment created by this order until revised, amended, repealed or nullified pursuant to law.

(f) The secretary of health and environment created by this order shall be a continuation of the director of the division of food and drug, the director of the division of registration and health statistics, the state registrar of vital statistics established by K.S.A. 65-2405, the director of the division of health education, the director of the division of epidemiology and disease control, the director of the division of maternal and child health, the director of the division of medical and dental health and the director of the division of hospital facilities established by K.S.A. 65-412.

(g) All orders and directives of the divisions of the state board of health not specifically mentioned nor abolished herein shall be deemed to be the orders of the secretary of health and environment created by this order until revised, amended, repealed or nullified pursuant to law.

HISTORY: L. 1974, ch. 351, § 4; L. 1974, ch. 352, § 187; July 1.

CHAPTER 75. STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES
ARTICLE 61. KANSAS TORT CLAIMS ACT

75-6101. Citation of act; claims to which act applicable; act applicable to municipalities.

(a) K.S.A. 75-6101 to 75-6115, inclusive, shall be known and may be cited as the Kansas tort claims act.

(b) The Kansas tort claims act shall be applicable to claims arising from acts or omissions occurring on and after the effective date of this act.

(c) Municipalities may not exempt themselves from the provisions of the Kansas tort claims act by charter ordinance, charter resolution or other action.

HISTORY: L. 1979, ch. 186, § 1; July 1.

75-6102. Definitions. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity except

(1) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections,

(2) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor; and

(3) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program. "Employee" also includes an employee of an indigent health care clinic. "Employee" also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity. "Employee" also includes any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response.

“Employee” does not include an individual or entity for actions within the scope of section 1 and amendments thereto.

(e) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a physician assistant licensed by the state board of healing arts or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary;

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120 and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 et seq., and amendments thereto, or dental hygienist services defined by K.S.A. 65-1456 and amendments thereto, that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis at a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location. Except that such dentistry services and dental hygienist services shall not include "oral and maxillofacial surgery" as defined by Kansas administrative regulation 71-2-2, or use sedation or general anesthesia that result in "deep sedation" or "general anesthesia" as defined by Kansas administrative regulation 71-5-1.

(f) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(g) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(h) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

(i) "Fire control, fire rescue or emergency medical services equipment" means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

HISTORY: L. 1979, ch. 186, § 2; L. 1982, ch. 374, § 1; L. 1983, ch. 299, § 1; L. 1987, ch. 353, § 1; L. 1990, ch. 146, § 4; L. 1990, ch. 329, § 2; L. 1990, ch. 149, § 9; L. 1991, ch. 268, § 1; L. 1991, ch. 182, § 5; L. 1993, ch. 29, § 2; L. 1994,

ch. 343, § 1; L. 1995, ch. 82, § 7; L. 1996, ch. 91, § 4; L. 1997, ch. 156, § 91; L. 2000, ch. 164, § 1; L. 2002, ch. 46, § 1; L. 2003, ch. 2, § 1; L. 2003, ch. 158, § 9; July 1.

75-6103. Liability of governmental entities for damages caused by employee acts or omissions, when; applicable procedure.

(a) Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state.

(b) (1) Except as otherwise provided in this act, either the code of civil procedure or, subject to provision (2) of this subsection, the code of civil procedure for limited actions shall be applicable to actions within the scope of this act. Actions for claims within the scope of the Kansas tort claims act brought under the code of civil procedure for limited actions are subject to the limitations provided in K.S.A. 2003 Supp. 61-2802, and amendments thereto.

(2) Actions within the scope of the Kansas tort claims act may not be brought under the small claims procedure act.

HISTORY: L. 1979, ch. 186, § 3; L. 1980, ch. 294, § 1; L. 2000, ch. 161, § 116; Jan. 1, 2001.

75-6104. Same; when; exceptions from liability. A governmental entity or an employee acting within the scope of the employee's employment shall not be liable for damages resulting from:

(a) Legislative functions, including, but not limited to, the adoption or failure to adopt any statute, regulation, ordinance or resolution;

(b) judicial function;

(c) enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, rule and regulation, ordinance or resolution;

(d) adoption or enforcement of, or failure to adopt or enforce, any written personnel policy which protects persons' health or safety unless a duty of care, independent of such policy, is owed to the specific individual injured, except that the finder of fact may consider the failure to comply with any written personnel policy in determining the question of negligence;

(e) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee, whether or not the discretion is abused and regardless of the level of discretion involved;

(f) the assessment or collection of taxes or special assessments;

(g) any claim by an employee of a governmental entity arising from the tortious conduct of another employee of the same governmental entity, if such claim is (1) compensable pursuant to the Kansas workers compensation act or (2) not compensable pursuant to the Kansas workers compensation act because the injured employee was a firemen's relief association member who was exempt from such act pursuant to K.S.A. 44-505d, and amendments thereto, at the time the claim arose;

(h) the malfunction, destruction or unauthorized removal of any traffic or road sign, signal or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction or removal. Nothing herein shall give rise to liability arising from the act or omission of any governmental entity in placing or removing any of the above signs,

signals or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;

(i) any claim which is limited or barred by any other law or which is for injuries or property damage against an officer, employee or agent where the individual is immune from suit or damages;

(j) any claim based upon emergency management activities, except that governmental entities shall be liable for claims to the extent provided in article 9 of chapter 48 of the Kansas Statutes Annotated;

(k) the failure to make an inspection, or making an inadequate or negligent inspection, of any property other than the property of the governmental entity, to determine whether the property complies with or violates any law or rule and regulation or contains a hazard to public health or safety;

(l) snow or ice conditions or other temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the governmental entity;

(m) the plan or design for the construction of or an improvement to public property, either in its original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval and if the plan or design was prepared in conformity with the generally recognized and prevailing standards in existence at the time such plan or design was prepared;

(n) failure to provide, or the method of providing, police or fire protection;

(o) any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury;

(p) the natural condition of any unimproved public property of the governmental entity;

(q) any claim for injuries resulting from the use or maintenance of a public cemetery owned and operated by a municipality or an abandoned cemetery, title to which has vested in a governmental entity pursuant to K.S.A. 17-1366 through 17-1368, and amendments thereto, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing the injury;

(r) the existence, in any condition, of a minimum maintenance road, after being properly so declared and signed as provided in K.S.A. 68-5,102, and amendments thereto;

(s) any claim for damages arising from the operation of vending machines authorized pursuant to K.S.A. 68-432 or K.S.A. 75-3343a, and amendments thereto;

(t) providing, distributing or selling information from geographic information systems which includes an entire formula, pattern, compilation, program, device, method, technique, process, digital database or system which electronically records, stores, reproduces and manipulates by computer geographic and factual information which has been developed internally or provided from other sources and compiled for use by a public agency, either alone or in cooperation with other public or private entities;

(u) any claim arising from providing a juvenile justice program to juvenile offenders, if such juvenile justice program has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice. The provisions of this section do not apply to community service work within the scope of section 1, and amendments thereto;

(v) performance of, or failure to perform, any activity pursuant to K.S.A. 74-8922, and amendments thereto, including, but not limited to, issuance and enforcement of a consent decree agreement, oversight of contaminant remediation and taking title to any or all of the federal enclave described in such statute;

(w) any claim arising from the making of a donation of used or excess fire control, fire rescue, or emergency medical services equipment to a fire department, fire district, volunteer fire department, medical emergency response team or the Kansas forest service if at the time of making the donation the donor believes that the equipment is serviceable or may be made serviceable. This subsection also applies to equipment that is acquired through the Federal Excess Personal Property Program established by the Federal Property and Administrative Services Act of 1949 (P.L. 81-152; 63 stat. 377; 40 United States Code Section 483). This subsection shall apply to any breathing apparatus or any mechanical or electrical device which functions to monitor, evaluate, or restore basic life functions, only if it is recertified to the manufacturer's specifications by a technician certified by the manufacturer; or

(x) any claim arising from the acceptance of a donation of fire control, fire rescue or emergency medical services equipment, if at the time of the donation the donee reasonably believes that the equipment is serviceable or may be made serviceable and if after placing the donated equipment into service, the donee maintains the donated equipment in a safe and serviceable manner.

The enumeration of exceptions to liability in this section shall not be construed to be exclusive nor as legislative intent to waive immunity from liability in the performance or failure to perform any other act or function of a discretionary nature.

HISTORY: L. 1979, ch. 186, § 4; L. 1981, ch. 358, § 2; L. 1981, ch. 357, § 1; L. 1981, ch. 359, § 1; L. 1987, ch. 353, § 3; L. 1991, ch. 209, § 3; L. 1994, ch. 248, § 30; L. 1995, ch. 56, § 1; L. 1995, ch. 260, § 10; L. 1996, ch. 131, § 1; L. 1997, ch. 156, § 92; L. 1998, ch. 142, § 20; L. 2000, ch. 99, § 1; L. 2003, ch. 107, § 2; July 1.

75-6105. Same; maximum liability for claims; apportionment of multiple claims; no liability for punitive or exemplary damages or interest.

(a) Subject to the provisions of K.S.A. 75-6111 and amendments thereto, the liability for claims within the scope of this act shall not exceed $ 500,000 for any number of claims arising out of a single occurrence or accident.

(b) When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant the proper share of the total amount limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence or accident.

(c) A governmental entity shall not be liable for punitive or exemplary damages or for interest prior to judgment. An employee acting within the scope of the employee's employment shall not be liable for punitive or exemplary damages or for interest prior to judgment, except for any act or omission of the employee because of actual fraud or actual malice.

HISTORY: L. 1979, ch. 186, § 5; L. 1980, ch. 294, § 2; L. 1987, ch. 353, § 4; July 1.

75-6106. Same; settlement of claims, procedure; effect of settlement.

(a) Subject to the terms of an insurance contract, if any, a claim against the state or employee thereof acting within the scope of the employee's office or employment may be compromised or settled for and on behalf of the state and any such employee by the attorney general, with the approval of the state finance council. The approval of settlements and compromises by the state finance council is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, except that such approval also may be given when the legislature is in session.

(b) Subject to the terms of the insurance contract, if any, claims against a municipality or employee thereof acting within the scope of the employee's office or employment may be compromised or settled by the governing body of the municipality, or in such manner as such governing body may designate.

(c) The acceptance by a claimant of any such compromise or settlement hereunder shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the governmental entity involved and against the employee whose act or omission gave rise to the claim, by reason of the same subject matter.

HISTORY: L. 1979, ch. 186, § 6; L. 1981, ch. 360, § 1; July 1.

75-6107. Same; judgment against governmental entity, effect; judgment against employee, effect.

(a) The judgment in an action subject to the provisions of this act against a governmental entity shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose act or omission gave rise to the claim.

(b) Any judgment against an employee whose act or omission gave rise to the claim shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against a governmental entity.

HISTORY: L. 1979, ch. 186, § 7; July 1.

75-6108. Same; defense of governmental entity or employee, when; provision of legal counsel to employee summoned to appear before grand jury or inquisition, when; refusal by governmental entity to provide defense, when; recovery of defense or legal counsel costs, when; requests to provide defense, procedure; reimbursement of defense costs, when.

(a) Upon request of an employee in accordance with subsection (e), a governmental entity shall:

(1) Provide for the defense of any civil action or proceeding against such employee, in such employee's official or individual capacity or both, on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c); and

(2) provide legal counsel to such employee when such employee is summoned to appear before any grand jury or inquisition on account of an act or omission in the scope of such employee's employment as an employee of the governmental entity, except as provided in subsection (c).

(b) A governmental entity may provide for a defense or representation by its own attorney or by employing other counsel for this purpose or by purchasing insurance which requires that the insurer provide the defense. A governmental entity has no right to recover such expenses from the employee defended or represented, except as provided in K.S.A. 75-6109 and amendments thereto.

(c) Except as provided in K.S.A. 75-4360 and amendments thereto, a governmental entity may refuse to provide for the defense of an action against an employee or representation of the employee if the governmental entity determines that:

(1) The act or omission was not within the scope of such employee's employment;

(2) such employee acted or failed to act because of actual fraud or actual malice;

(3) the defense of the action or proceeding by the governmental entity would create a conflict of interest between the governmental entity and the employee; or

(4) the request was not made in accordance with subsection (e).

(d) If after a timely request in accordance with subsection (e), a governmental entity fails or refuses to provide an employee with a defense and the employee retains the employee's own counsel to defend the action or proceeding, or provide representation, such employee is entitled to recover from the governmental entity such reasonable attorney fees, costs and expenses as are necessarily incurred in defending the action or proceeding or providing representation if the action or proceeding or representation arose out of an act or omission in the scope of employment as an employee of the

governmental entity and the trier of fact does not find that such employee acted or failed to act because of actual fraud or actual malice.

Nothing in this section shall be construed to deprive an employee of the right to petition a court of competent jurisdiction to compel the governmental entity or the governing body or an employee thereof to perform the duties imposed by this section.

Except as provided in subsection (a)(2), nothing in this section shall be construed to require a governmental entity to provide the defense or representation to any employee in a criminal or civil service proceeding.

(e) An employee's request for a governmental entity to provide for the defense of the employee or representation shall be made in writing within 15 days after service of process or subpoena upon the employee in the action. In actions involving employees of the state, such request shall be filed in the office of the attorney general. In actions involving employees of a municipality, such request shall be filed with the governing body thereof or as otherwise provided by such governing body. A governmental entity, in its discretion, may provide requested defense or representation for any of its employees who failed to make a request within the time prescribed by this subsection.

(f) Notwithstanding any other provision of law to the contrary, a governmental entity may reimburse an employee such reasonable attorney fees, costs and expenses as are necessarily incurred in defending a claim against the employee for punitive or exemplary damages if the governmental entity finds that:

(1) The action or proceeding arose out of an act or omission in the scope of the employee's employment; and

(2) the employee reasonably cooperated in good faith in the defense of the claim.

HISTORY: L. 1979, ch. 186, § 8; L. 1987, ch. 353, § 5; L. 1999, ch. 72, § 1; July 1.

75-6109. Same; indemnification of employee acting within scope of employment; no punitive or exemplary damages; recovery or defense costs by governmental entity. Except as otherwise provided in the Kansas [tort] claims act, a governmental entity is liable, and shall indemnify its employees against damages, for injury or damage proximately caused by an act or omission of an employee while acting within the scope of his or her employment. A governmental entity shall not be liable under the provisions of this act for any punitive or exemplary damages against an employee, nor for payment of any costs, judgments or settlements which are paid through an applicable contract or policy of insurance. The governmental entity shall have the right to recover any payments made by it for any judgment, or portion thereof, and costs or fees incurred by or on behalf of an employee's defense if the employee fails to cooperate in good faith in the defense of the claim or action or if the trier of fact finds that the act or omission of the employee was because of such employee's actual fraud or actual malice.

HISTORY: L. 1979, ch. 186, § 9; July 1.

75-6110. Same; costs for defense of municipalities or its employees; special liability expense fund, establishment and maintenance; tax levy.

(a) Except as provided for school districts, payments by municipalities for the cost of providing for its defense and the defense of employees pursuant to this act and for the payment of claims and other direct and indirect costs resulting from the implementation of this act may be paid from the general or other existing fund of such municipality or from a special liability expense fund established for such purpose pursuant to subsection (b). School districts shall make such payments from the special liability expense fund of the school district.

(b) Whenever the governing body of any municipality shall determine that it is advisable to establish a special fund for the payment of such costs and to establish a reserve therefor, in lieu of paying the same out of the general or other existing fund of the municipality, such governing body may create and establish a special liability expense fund for the payment of such costs and may place therein any moneys received by the municipality from any source whatsoever which may be lawfully utilized for such purpose including the proceeds of tax levies hereinafter authorized and provided. Such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In making

the budget of such municipality, the amounts credited to and the amount on hand in such special fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of such municipality.

(c) Whenever the governing body of any municipality which is authorized by law to levy taxes upon property has established a special liability expense fund under the provisions of this section and determines that moneys from other sources will be insufficient to pay such costs, the governing body may levy an annual tax upon all taxable tangible property within the municipality in an amount determined by the governing body to be necessary for such purpose and in the case of cities and counties, to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located in such city or county.

HISTORY: L. 1979, ch. 186, § 10; L. 1990, ch. 66, § 52; L. 2003, ch. 116, § 17; July 1.

75-6111. Same; purchase of insurance; interlocal agreements for purchase of insurance or pooling arrangements.

(a) A governmental entity may obtain insurance to provide for

(1) its defense,

(2) for its liability for claims pursuant to this act, including liability for civil rights actions as provided in K.S.A. 75-6116 and amendments thereto,

(3) the defense of its employees, and

(4) for medical payment insurance when purchased in conjunction with insurance authorized by (1), (2) or (3) above.

Any insurance purchased under the provisions of this section may be purchased from any insurance company or association. In the case of municipalities any such insurance may be obtained by competitive bids or by negotiation. In the case of the state, any such insurance shall be purchased in the manner and subject to the limitations prescribed by K.S.A. 75-4114, and amendments thereto, except as provided in K.S.A. 76-749, and amendments thereto. With regard to claims pursuant to the Kansas tort claims act, insurers of governmental entities may avail themselves of any defense that would be available to a governmental entity defending itself in an action within the scope of this act, except that the limitation on liability provided by subsection (a) of K.S.A. 75-6105 and amendments thereto shall not be applicable where the contract of insurance provides for coverage in excess of such limitation in which case the limitation on liability shall be fixed at the amount for which insurance coverage has been purchased or, where the governmental entity has entered into a pooling arrangement or agreement pursuant to subsection (b)(2) and has provided for coverage in excess of such limitation by ordinance or resolution of its governing body, in which case the limitation on liability shall be fixed at the amount specified in such ordinance or resolution.

(b) Pursuant to the interlocal cooperation act, municipalities may enter into interlocal agreements providing for:

(1) The purchase of insurance to provide for the defense of employees and for liability for claims pursuant to this act; or

(2) pooling arrangements or other agreements to share and pay expenditures for judgments, settlements, defense costs and other direct or indirect expenses incurred as a result of implementation of this act including, but not limited to, the establishment of special funds to pay such expenses.

HISTORY: L. 1979, ch. 186, § 11; L. 1986, ch. 330, § 4; L. 1987, ch. 74, § 16; L. 1987, ch. 353, § 6; July 1.

75-6112. Same; judgments against municipalities, payment; periodic payments, conditions; interest; structured annuities.

(a) Upon motion of a municipality against whom final judgment has been rendered for a claim within the scope of this act, the court in accordance with subsection (b) may include in such judgment a requirement that the judgment be paid in whole or in part by periodic payments. Periodic payments may be ordered paid over any period of time not exceeding 10 years. Any periodic payment upon becoming due and payable under the terms of the judgment shall constitute a separate judgment. Any judgment ordering any such payments shall specify the total amount awarded, the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. Judgments paid pursuant to this section shall bear interest as provided in K.S.A. 16-204 and amendments thereto. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event and periodic payments shall not be ordered paid over a period in excess of 10 years. Nothing herein shall be construed to prohibit the use of structured annuities to satisfy judgments.
(b) A court may order periodic payments only if the court finds that:

(1) Payment of the judgment is not totally covered by insurance coverage obtained therefor; and

(2) funds for the current budget year and other funds of the municipality which lawfully may be utilized to pay judgments are insufficient to finance both the adopted budget of expenditures for the year and the payment of that portion of the judgment not covered by insurance obtained therefor.

HISTORY: L. 1979, ch. 186, § 12; L. 1987, ch. 353, § 7; July 1.

75-6113. Moneys for payment of judgments or settlements against municipalities, sources. Payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 et seq., and amendments thereto, may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants, temporary notes or general obligation bonds. Warrants or temporary notes issued under the authority of this section may mature serially at such yearly dates as to be payable by not more than 10 tax levies. Bonds issued under the authority of this section shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of this state.

HISTORY: L. 1979, ch. 186, § 13; L. 1987, ch. 354, § 1; L. 1990, ch. 66, § 53; May 31.

75-6115. Claims for damages against health care providers.

(a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than:

(1) A charitable health care provider;

(2) a hospital owned by a municipality and the employees thereof;

(3) a local health department and the employees thereof;

(4) an indigent health care clinic and the employees thereof; or

(5) a district coroner or deputy district coroner appointed pursuant to K.S.A. 22a-226 and amendments thereto.

(b) Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than those health care providers enumerated in subsection (a), arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(c) As used in this section:

(1) "Indigent health care clinic" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(2) "Charitable health care provider" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(3) "Health care provider" shall have the meaning ascribed to such term under K.S.A. 40-3401, and amendments thereto.

(4) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

(5) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

HISTORY: L. 1979, ch. 186, § 15; L. 1982, ch. 375, § 1; L. 1989, ch. 143, § 7; L. 1990, ch. 329, § 3; L. 1993, ch. 29, § 3; L. 1993, ch. 276, § 1; July 1.

75-6116. Defense and payment of liability and defense costs of employee in civil cases; payment of punitive or exemplary damages or reimbursement of related defense costs; compromise or settlement of claim; not a waiver of immunity; certain health care providers considered employees.

(a) If an employee of a governmental entity is or could be subject to personal civil liability on account of a noncriminal act or omission which is within the scope of the employee's employment and which allegedly violates the civil rights laws of the United States or of the state of Kansas, the governmental entity:

(1) Shall provide for the defense of any civil action or proceeding which arises out of the act or omission and which is brought against the employee in the employee's official or individual capacity, or both, to the extent and under the conditions and limitations provided by K.S.A. 75-6108 and amendments thereto for the defense of actions and proceedings under the Kansas tort claims act; and

(2) may reimburse the employee attorney fees, costs and expenses incurred in defending a claim for punitive or exemplary damages in such action or proceeding to the extent and under the conditions and limitations provided by K.S.A. 75-6108 and amendments thereto for reimbursement of such fees, costs and expenses incurred in defending a claim for punitive or exemplary damages under the Kansas tort claims act.

(b) The governmental entity, subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, shall pay or cause to be paid any judgment or settlement of the claim or suit, including any award of attorney fees, and all costs and fees incurred by the employee in defense thereof if:

(1) The governmental entity finds that the employee reasonably cooperated in good faith in the defense of the action or proceeding;

(2) the trier of fact finds that the action or proceeding arose out of an act or omission in the scope of the employee's employment; and

(3) the trier of fact does not find that the employee acted or failed to act because of actual fraud or actual malice.

(c) Notwithstanding any other provision of law to the contrary, a governmental entity may pay any part of a judgment taken against an employee of the governmental entity that is for punitive or exemplary damages for the violation of the civil rights laws of the United States if the governmental entity finds that:

(1) The action or proceeding arose out of an act or omission in the scope of the employee's employment;

(2) the employee reasonably cooperated in good faith in the defense of the claim; and

(3) the employee's act or omission was not the result of actual fraud or actual malice.

(d) The possibility that a governmental entity may pay that part of a judgment that is for punitive or exemplary damages or attorney fees or other costs related thereto shall not be disclosed in any trial in which it is alleged that an employee of that entity is liable for punitive or exemplary damages, and such disclosure shall be grounds for mistrial.

(e) A municipality may pay for the cost of providing defense, judgments and other costs involving actions for alleged civil rights violations in the same manner as that provided in the Kansas tort claims act.

(f) In actions described in subsection (a), a claim against the state or an employee of the state may be compromised or settled for and on behalf of the state or employee under the conditions and procedures provided by K.S.A. 75-6106 and amendments thereto for settlements of actions pursuant to the Kansas tort claims act.

(g) Nothing in this section or in the Kansas tort claims act shall be construed as a waiver by the state of Kansas of immunity from suit under the 11th amendment to the constitution of the United States.

(h) For the purposes of this section only, a health care provider, as defined by K.S.A. 75-6115 and amendments thereto, who provides professional services at a state correctional institution shall be considered an employee for the purposes of this section, even if such services were rendered pursuant to contract as an independent contractor.

HISTORY: L. 1979, ch. 186, § 16; L. 1983, ch. 299, § 2; L. 1985, ch. 293, § 1; L. 1987, ch. 353, § 8; L. 1989, ch. 279, § 1; July 1.

75-6117. Tort claims fund for payment of claims and defense expenses.

(a) There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.

(b) Moneys in the tort claims fund shall be used only for the purpose of paying

(1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and

(2) costs of defending the state or an employee of the state in any actions or proceedings on those claims. Payment of a compromise or settlement shall be subject to approval by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. Payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired. No payment shall be made from the fund to satisfy a compromise, settlement or final judgment when there exists insurance coverage obtained therefor, except that payment shall be made from the fund to satisfy a compromise settlement or final judgment for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by

(A) a charitable health care provider as defined by K.S.A. 75-6102 and amendments thereto,

(B) a local health department as defined by K.S.A. 65-241 and amendments thereto or an employee thereof, or

(C) an indigent health care clinic as defined by K.S.A. 75-6115 and amendments thereto, or an employee thereof, even if there exists insurance coverage obtained therefor.

(c) Upon certification by the attorney general to the director of accounts and reports that the unencumbered balance in the tort claims fund is insufficient to pay an amount for which the fund is liable, the director of accounts and reports shall transfer an amount equal to the insufficiency from the state general fund to the tort claims fund.

(d) When payment is made from the Kansas tort claims fund on behalf of the university of Kansas hospital authority, the authority shall transfer to the tort claims fund an amount equal to the payment made by the tort claims fund on behalf of the authority.

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

HISTORY: L. 1981, ch. 360, § 2; L. 1983, ch. 299, § 3; L. 1990, ch. 329, § 4; L. 1991, ch. 268, § 2; L. 1991, ch. 182, § 6; L. 1993, ch. 29, § 4; L. 1995, ch. 83, § 1; L. 1998, ch. 12, § 16; Feb. 26.

75-6118. Settlement of claims under other statutes. Nothing in the Kansas tort claims act shall be construed to preclude settlement and payment of a claim pursuant to K.S.A. 46-920 or 46-922, and amendments thereto.

HISTORY: L. 1981, ch. 360, § 4; July 1.

75-6119. Exception from liability for members of governing body, appointive board, commission, committee or council of a municipality.

(a) A member of a governing body of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or governing body.

(b) A member of any appointive board, commission, committee or council of a municipality who is acting within the scope of such member's office and without actual fraud or actual malice shall not be liable for damages caused by the negligent or wrongful act or omission of such member or board, commission, committee or council.

(c) Nothing in this section shall be construed to affect the liability of a municipality for damages caused by the negligent or wrongful act or omission of the governing body, or any appointive board, commission, committee or council, of the municipality, or any member thereof, and the negligence or wrongful act or omission of any member of such a governing body, board, commission, committee or council, when acting as such, shall be imputed to the municipality for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

HISTORY: L. 1987, ch. 353, § 2; July 1.

75-6120. Agreements for provision of gratuitous services by charitable health care providers; providers considered employees under act; rules and regulations; effect of claim on rate or cancellation of policy.

(a) The secretary of health and environment may enter into agreements with charitable health care providers in which such charitable health care provider stipulates to the secretary of health and environment that when such charitable health care provider renders professional services to a medically indigent person such services will be provided gratuitously. The secretary of health and environment shall adopt rules and regulations which specify the conditions for termination of any such agreement, and such rules and regulations are hereby made a part of any such agreement. A charitable health care provider for purposes of any claim for damages arising as a result of rendering professional services to a medically indigent person, which professional services were rendered gratuitously at a time when an agreement entered into by the charitable health care provider with the secretary of health and environment under this section was in effect, shall be considered an employee of the state under the Kansas tort claims act.

(b) The secretary of health and environment shall establish by rules and regulations eligibility criteria for determining whether a person qualifies as a medically indigent person.

(c) Any claim arising from the rendering of or failure to render professional services by a charitable health care provider brought pursuant to the Kansas tort claims act shall not be considered by an insurance company in determining the rate charged for any professional liability insurance policy for health care providers or whether to cancel any such policy.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

HISTORY: L. 1990, ch. 329, § 1; L. 1991, ch. 268, § 3; April 25.

CHAPTER 76. STATE INSTITUTIONS AND AGENCIES; HISTORICAL PROPERTY
ARTICLE 3. UNIVERSITY OF KANSAS
AFFILIATED FAMILY PRACTICE; RESIDENCY TRAINING

76-366. Affiliated family practice residency training program; policy. It is the policy of the state to promote family practice residency training programs at locations within the state that do not currently provide such training. It is the purpose of this legislation to encourage such programs through appropriate affiliation agreements between the University of Kansas School of Medicine and qualified medical care facilities or nonprofit community organizations. It is recognized that the establishment of such program will require the financial assistance of both the state, through appropriations made available to the University of Kansas School of Medicine, and local communities, and that such assistance must span several fiscal years.

It is further the policy of this state to insure that any programs receiving such state assistance meet appropriate standards of fiscal, academic and quality control. It is recognized that this control can be most effectively exercised by limiting the numbers and sites of such programs, and by regulating the terms of the affiliation agreements between the university and its affiliates.

HISTORY: L. 1977, ch. 309, § 1; July 1.

76-367. Same; definitions. As used in this act:

(a) "University" means the University of Kansas school of medicine.

(b) "Affiliate" means a medical care facility or nonprofit community organization which has submitted jointly with the university an application for accreditation of a family practice residency training program to the council on medical education of the American medical association or the successor to such council.

(c) "Program" means the affiliated family practice residency training program authorized by this act.

(d) "Accreditation team" means a designated group of existing university of Kansas school of medicine staff who make occasional trips to affiliate locations for the purpose of reviewing the affiliated family practice residency training program at such locations as deemed necessary by the university of Kansas school of medicine.

HISTORY: L. 1977, ch. 309, § 2; July 1.

76-369. Same; affiliation agreements; terms. Affiliation agreements entered into by the university shall contain such terms as may be necessary to accomplish the objectives of the family practice residency training programs, except that each affiliation agreement shall provide that:

(a) Reimbursement is conditioned upon obtaining and retaining accreditation from the council on medical education of the American medical association or the successor to such council;

(b) All teaching personnel participating in the program will be approved by the university and will at all times carry at least adjunct professorial rank, such rank to be subject to all board of regents and university policies applying thereto;

(c) Program curriculum will be approved by the university;

(d) Residents will be selected jointly by the university and its affiliates;

(e) The university will annually approve the fiscal year budget for the program;

(f) An accreditation team will occasionally review the program as deemed necessary;

(g) The university will reimburse all appropriate costs within its determined share and within budget limitations otherwise established; and

(h) All applications for funds from governmental sources shall be approved by the chancellor of the University of Kansas. Any funds received from such sources for basic program support may be subtracted from the related program budget before the university's percentage obligation for that year is calculated.

HISTORY: L. 1977, ch. 309, § 4; July 1.

76-370. Affiliated family practice residency training program; reimbursement of affiliate, limitations.

(a) Within the limits of appropriations therefor, the university may reimburse an affiliate for costs incurred in the payment of the program director's compensation in an amount not to exceed 60% of the program director's compensation until such time as an affiliation agreement is entered into under K.S.A. 76-369 and amendments thereto or until the application for accreditation is rejected by the council on medical education of the American medical association or the successor to such council. Any costs incurred by the affiliate due to compensation paid to the program director prior to affiliation shall be included as part of the reimbursable costs during the period of time prior to the training of residents in the program.

(b) Within the limits of appropriations therefor and prior to July 1, 1980, the university may provide for reimbursement to each affiliate during the period of time prior to the training of residents in the program in amounts not to exceed $ 100,000 for salaries and other expenses and in amounts not to exceed $ 100,000 for site acquisition and development or leasing of facilities. No affiliate shall be eligible for reimbursement for costs involved in site acquisition and development unless such affiliate shall first submit to the university for approval the plan of the affiliate for site acquisition and development. The maximum reimbursable amount for site acquisition and development shall not exceed 50% of the total cost to the affiliate of the site acquisition and development or $100,000, whichever amount is less.

(c) (1) During the first year of training of residents in the program, the university may reimburse an affiliate, within the limits of appropriations therefor, an amount equal to 70% of the program budget of the affiliate, other than resident salaries, but the total amount of such reimbursement shall not exceed $ 60,000, and the university may reimburse the affiliate for the cost of resident salaries in an amount not to exceed the state's usual base stipend for family practice residents.

(2) During the second year of training of residents in the program, the university may reimburse an affiliate, within the limits of appropriations therefor, in an amount equal to 60% of the program budget of the affiliate, other than resident salaries, but the total amount of such reimbursement shall not exceed $80,000, and the university may reimburse the affiliate for the cost of resident salaries in an amount not to exceed the state's usual base stipend for family practice residents.

(3) During the third year of training of residents in the program and each year thereafter, the university may reimburse an affiliate, within the limits of appropriations therefor, in an amount equal to not more than 50% of the annual program budget of the affiliate, other than resident salaries, and the university may reimburse the affiliate for the costs of resident salaries.

HISTORY: L. 1977, ch. 309, § 5; L. 1978, ch. 378, § 1; L. 1979, ch. 198, § 10; L. 1983, ch. 302, § 2; L. 1992, ch. 263, § 1; July 1.

76-371. Same; affiliate located in Topeka; use of adult outpatient clinic at Topeka state hospital. If an affiliate selected under K.S.A. 76-368 is located in the city of Topeka, such affiliate is hereby authorized to and shall lease as a site for its location the adult outpatient clinic building located at Topeka state hospital. The secretary of social and rehabilitation services shall negotiate with the affiliate reasonable terms for the lease of such building.

HISTORY: L. 1977, ch. 309, § 6; July 1.

76-372. Same; no limitation on authority of the university to establish health education centers. Nothing in this act shall be construed to limit the university's authority to establish area health education centers within the state.

HISTORY: L. 1977, ch. 309, § 7; July 1.

76-375. Medically underserved areas, list of; preparation by secretary of health and environment. On or before December 31 in each year, the secretary of health and environment, shall prepare a list of the areas of this state which the secretary determines to be medically underserved areas. In preparing such a list, the portion of time of persons engaged in the practice of medicine and surgery at any institution under the jurisdiction and control of the secretary of social and rehabilitation services shall not be included in determining whether an area is medically underserved. Every such list shall note that all state medical care facilities or institutions qualify for such service commitments, in addition to listing those areas determined to be medically underserved. Medically underserved areas established prior to the effective date of this act by the chancellor of the university of Kansas, or the designee of the chancellor, shall continue in effect until changed by the secretary of health and environment.

HISTORY: L. 1978, ch. 377, § 3; L. 1980, ch. 297, § 1; L. 1980, ch. 298, § 1; L. 1981, ch. 361, § 4; L. 1982, ch. 378, § 5; L. 1985, ch. 298, § 1; L. 1986, ch. 357, § 2; L. 1987, ch. 232, § 10; L. 1987, ch. 356, § 1; L. 1987, ch. 355, § 2; L. 1987, ch. 355, § 3; L. 1988, ch. 362, § 2; L. 1990, ch. 334, § 2; L. 1995, ch. 212, § 1; L. 1996, ch. 229, § 136; L. 1999, ch. 149, § 11; L. 2002, ch. 103, § 1; July 1.

CHAPTER 79. TAXATION
ARTICLE 2. PROPERTY EXEMPT FROM TAXATION

79-201. Property exempt from taxation; religious, educational, literary, scientific, benevolent, alumni association, veterans' organization or charitable purposes; parsonages; community service organizations providing humanitarian services. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All buildings used exclusively as places of public worship and all buildings used exclusively by school districts and school district interlocal cooperatives organized under the laws of this state, with the furniture and books therein contained and used exclusively for the accommodation of religious meetings or for school district or school district interlocal cooperative purposes, whichever is applicable, together with the grounds owned thereby if not leased or otherwise used for the realization of profit, except that:

(a) (1) Any school building, or portion thereof, together with the grounds upon which the building is located, shall be considered to be used exclusively by the school district for the purposes of this section when leased by the school district to any political or taxing subdivision of the state, including a school district interlocal cooperative, or to any association, organization or nonprofit corporation entitled to tax exemption with respect to such property; and

(2) any school building, together with the grounds upon which the building is located, shall be considered to be used exclusively by a school district interlocal cooperative for the purposes of this section when being acquired pursuant to a lease-purchase agreement; and

(b) any building, or portion thereof, used as a place of worship, together with the grounds upon which the building is located, shall be considered to be used exclusively for the religious purposes of this section when used as a not-for-profit day care center for children which is licensed pursuant to K.S.A. 65-501 et seq., and amendments thereto, or when used to house an area where the congregation of a church society and others may purchase tracts, books and other items relating to the promulgation of the church society's religious doctrines.

Second. All real property, and all tangible personal property, actually and regularly used exclusively for literary, educational, scientific, religious, benevolent or charitable purposes, including property used exclusively for such purposes by more than one agency or organization for one or more of such exempt purposes. Except with regard to real property which is owned by a religious organization, is to be used exclusively for religious purposes and is not used for a nonexempt purpose prior to its exclusive use for religious purposes which property shall be deemed to be actually and regularly used exclusively for religious purposes for the purposes of this paragraph, this exemption shall not apply to such property, not actually used or occupied for the purposes set forth herein, nor to such property held or used as an investment even though the income or rentals received therefrom is used wholly for such literary, educational, scientific, religious, benevolent or charitable purposes. In the event any such property which has been exempted pursuant to the preceding sentence is not used for religious purposes prior to its conveyance which results in its use for nonreligious purposes, there shall be a recoupment of property taxes in an amount equal to the tax which would have been levied upon such property except for such exemption for all taxable years for which such exemption was in effect. Such recoupment tax shall become due and payable in such year as provided by K.S.A. 79-2004, and amendments thereto. A lien for such taxes shall attach to the real property subject to the same on November 1 in the year such taxes become due and all such taxes remaining due and unpaid after the date prescribed for the payment thereof shall be collected in the manner provided by law for the collection of delinquent taxes. Moneys collected from the recoupment tax hereunder shall be credited by the county treasurer to the several taxing subdivisions within which such real property is located in the proportion that the total tangible property tax levies made in the preceding year for each such taxing subdivision bear to the total of all such levies made in that year by all such taxing subdivisions. Such moneys shall be credited to the general fund of the taxing subdivision or if such taxing subdivision is making no property tax levy for the support of a general fund such moneys may be credited to any other tangible property tax fund of general application of such subdivision. This exemption shall not be deemed inapplicable to property which would otherwise be exempt pursuant to this paragraph because an agency or organization:

(a) Is reimbursed for the provision of services accomplishing the purposes enumerated in this paragraph based upon the ability to pay by the recipient of such services; or

(b) is reimbursed for the actual expense of using such property for purposes enumerated in this paragraph; or

(c) uses such property for a nonexempt purpose which is minimal in scope and insubstantial in nature if such use is incidental to the exempt purposes of this paragraph; or

(d) charges a reasonable fee for admission to cultural or educational activities or permits the use of its property for such activities by a related agency or organization, if any such activity is in furtherance of the purposes of this paragraph.

Third. All moneys and credits belonging exclusively to universities, colleges, academies or other public schools of any kind, or to religious, literary, scientific or benevolent and charitable institutions or associations, appropriated solely to sustain such institutions or associations, not exceeding in amount or in income arising therefrom the limit prescribed by the charter of such institution or association.

Fourth. The reserve or emergency funds of fraternal benefit societies authorized to do business under the laws of the state of Kansas.

Fifth. All buildings of private nonprofit universities or colleges which are owned and operated by such universities and colleges as student union buildings, presidents' homes and student dormitories.

Sixth. All real and tangible personal property actually and regularly used exclusively by the alumni association associated by its articles of incorporation with any public or nonprofit Kansas college or university approved by the Kansas board of regents to confer academic degrees or with any community college approved by its board of trustees to grant certificates of completion of courses or curriculum, to provide accommodations and services to such college or university or to the alumni, staff or faculty thereof.

Seventh. All parsonages owned by a church society and actually and regularly occupied and used predominantly as a residence by a minister or other clergyman of such church society who is actually and regularly engaged in conducting the services and religious ministrations of such society, and the land upon which such parsonage is located to the extent necessary for the accommodation of such parsonage.

Eighth. All real property, all buildings located on such property and all personal property contained therein, actually and regularly used exclusively by any individually chartered organization of honorably discharged military veterans of the United States armed forces or auxiliary of any such organization, which is exempt from federal income taxation pursuant to section 501(c)(19) of the federal internal revenue code of 1986, for clubhouse, place of meeting or memorial hall purposes, and real property to the extent of not more than two acres, and all buildings located on such property, actually and regularly used exclusively by any such veterans' organization or its auxiliary as a memorial park.

Ninth. All real property and tangible personal property actually and regularly used by a community service organization for the predominant purpose of providing humanitarian services, which is owned and operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign not-for-profit corporation if:

(a) The directors of such corporation serve without pay for such services;

(b) the corporation is operated in a manner which does not result in the accrual of distributable profits, realization of private gain resulting from the payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered or the realization of any other form of private gain;

(c) no officer, director or member of such corporation has any pecuniary interest in the property for which exemption is claimed;

(d) the corporation is organized for the purpose of providing humanitarian services;

(e) the actual use of property for which an exemption is claimed must be substantially and predominantly related to the purpose of providing humanitarian services, except that, the use of such property for a nonexempt purpose which is minimal in scope and insubstantial in nature shall not result in the loss of exemption if such use is incidental to the purpose of providing humanitarian services by the corporation;

(f) the corporation is exempt from federal income taxation pursuant to section 501(c)(3) of the internal revenue code of 1986 and;

(g) contributions to the corporation are deductible under the Kansas income tax act.

As used in this clause, "humanitarian services" means the conduct of activities which substantially and predominantly meet a demonstrated community need and which improve the physical, mental, social, cultural

or spiritual welfare of others or the relief, comfort or assistance of persons in distress or any combination thereof including but not limited to health and recreation services, child care, individual and family counseling, employment and training programs for handicapped persons and meals or feeding programs. Notwithstanding any other provision of this clause, motor vehicles shall not be exempt hereunder unless such vehicles are exclusively used for the purposes described therein, except that the use of any such vehicle for the purpose of participating in a coordinated transit district in accordance with the provisions of K.S.A. 75-5032 through 75-5037, and amendments thereto, or K.S.A. 75-5051 through 75-5058, and amendments thereto, shall be deemed as exclusive use.

Tenth. For all taxable years commencing after December 31, 1986, any building, and the land upon which such building is located to the extent necessary for the accommodation of such building, owned by a church or nonprofit religious society or order which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and actually and regularly occupied and used exclusively for residential and religious purposes by a community of persons who are bound by vows to a religious life and who conduct or assist in the conduct of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministrations or the performance of health care services.

Eleventh. For all taxable years commencing after December 31, 1998, all property actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies. For purposes of this section, "renewable energy resources or technologies" shall include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal and landfill gas resources or technologies.

Twelfth. For all taxable years commencing after December 31, 2001, all personal property actually and regularly used predominantly to collect, refine or treat landfill gas or to transport landfill gas from a landfill to a transmission pipeline, and the landfill gas protected therefrom.

The provisions of this section, except as otherwise more specifically provided, shall apply to all taxable years commencing after December 31, 1995.

HISTORY: L. 1907, ch. 408, § 2; R.S. 1923, 79-201; L. 1929, ch. 283, § 1; L. 1963, ch. 456, § 1; L. 1965, ch. 509, § 1; L. 1967, ch. 486, § 1; L. 1969, ch. 429, § 1; L. 1974, ch. 427, § 1; L. 1975, ch. 495, § 1; L. 1980, ch. 306, § 1; L. 1984, ch. 349, § 1; L. 1985, ch. 311, § 1; L. 1986, ch. 368, § 1; L. 1986, ch. 369, § 1; L. 1988, ch. 372, § 1; L. 1988, ch. 373, § 1; L. 1989, ch. 288, § 1; L. 1992, ch. 84, § 1; L. 1997, ch. 122, § 2; L. 1999, ch. 154, § 3; L. 2000, ch. 139, § 3; July 1.

79-201a. Property exempt from property and ad valorem taxes. 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 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 to 12-1749, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, 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, 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, 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, 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 the standard industrial classification codes, major groups 52 through 59, inclusive, 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 "standard industrial classification code" means a standard industrial classification code published in the Standard Industrial Classification manual, 1987, as prepared by the statistical policy division 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. 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 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.

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 nonprofit 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 chapter 304 of the 1921 Session Laws of the state of Kansas. [See K.S.A. 79-205.]

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.

Except as otherwise specifically provided, the provisions of this section shall apply to all taxable years commencing after December 31, 2000.

HISTORY: L. 1975, ch. 495, § 2; L. 1977, ch. 323, § 1; L. 1978, ch. 390, § 1; L. 1979, ch. 307, § 1; L. 1980, ch. 68, § 5; L. 1981, ch. 370, § 1; L. 1982, ch. 389, § 1; L. 1987, ch. 395, § 1; L. 1987, ch. 368, § 4; L. 1989, ch. 118, § 190; L. 1989, ch. 288, § 2; L. 1989, ch. 274, § 6; L. 1992, ch. 287, § 1; L. 1994, ch. 193, § 1; L. 1994, ch. 357, § 1; L. 1995, ch. 254, § 3; L. 1997, ch. 126, § 36; L. 1997, ch. 187, § 2; L. 1998, ch. 146, § 1; L. 1999, ch. 154, § 73; L. 2001, ch. 214, § 1; July 1.

79-201b. Property exempt from taxation; hospitals, public hospital authority, adult care homes, children's homes, group housing of certain handicapped persons and housing for elderly persons. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All real property, and tangible personal property, actually and regularly used exclusively for hospital purposes by a hospital as the same is defined by K.S.A. 65-425, and amendments thereto, or a psychiatric hospital as the same was defined by K.S.A. 59-2902, and amendments thereto, as in effect on January 1, 1976, which hospital or psychiatric hospital is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, or a public hospital authority; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for hospital, psychiatric hospital or public hospital authority purposes. This exemption shall not be deemed inapplicable to property which would otherwise be exempt pursuant to this paragraph because any such hospital, psychiatric hospital or public hospital authority:

(a) Uses such property for a nonexempt purpose which is minimal in scope and insubstantial in nature if such use is incidental to the exempt purpose enumerated in this paragraph; or

(b) is reimbursed for the actual expense of using such property for the exempt purposes enumerated in this paragraph or paragraph second of K.S.A. 79-201, and amendments thereto; or

(c) permits the use of such property for the exempt purposes enumerated in this paragraph or paragraph second of K.S.A. 79-201, and amendments thereto, by more than one agency or organization for one or more of such purposes.

Second. All real property, and tangible personal property, actually and regularly used exclusively for adult care home purposes by an adult care home as the same is defined by K.S.A. 39-923, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation, interest on indebtedness, acquisition costs, interest and other expenses of financing acquisition costs, lease expenses and costs of services provided by a parent corporation at its costs and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for adult care home purposes. For purposes of this paragraph and for all taxable years commencing after December 31, 1976, an adult care home which uses its property in a manner which is consistent with the federal internal revenue service ruling 72-124 issued pursuant to section 501(c)(3) of the federal internal revenue code, shall be deemed to be operating at the lowest feasible cost. The fact that real property or real or tangible personal property may be leased from a not-for-profit corporation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the internal revenue code of 1986, and amendments thereto, and which is the parent corporation to the not-for-profit operator of an adult care home, shall not be grounds to deny exemption or deny that such property is actually and regularly used exclusively for adult care home purposes by an adult care home, nor shall the terms of any such lease be grounds for any such denial. For all taxable years commencing after December 31, 1995, such property shall be deemed to be used exclusively for adult care home purposes when used as a not-for-profit day care center for children which is licensed pursuant to K.S.A. 65-501 et seq., and amendments thereto.

Third. All real property, and tangible personal property, actually and regularly used exclusively for private children's home purposes by a private children's home as the same is defined by K.S.A. 75-3329, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for children's home purposes.

Fourth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly and handicapped persons having a limited or lower income, or used exclusively for cooperative housing for persons having a limited or low income, assistance for the financing of which was received under 12 U.S.C.A. 1701 et seq., or under 42 U.S.C.A. 1437 et seq., which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing. For the purposes of this subsection, cooperative housing shall mean those not-for-profit cooperative housing projects operating pursuant to sections 236 or 221(d)(3), or both, of the national housing act and which have been approved as a cooperative housing project pursuant to applicable federal housing administration and U.S. Department of Housing and Urban Development statutes, and rules and regulations, during such time as the use of such properties are restricted pursuant to such act, statutes or rules and regulations.

Fifth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage

in business in this state as a foreign, not-for-profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for the purpose of such housing. For purposes of this paragraph and for all taxable years commencing after December 31, 1976, an adult care home which uses its property in a manner which is consistent with the federal internal revenue service ruling 72-124 issued pursuant to section 501(c)(3) of the federal internal revenue code, shall be deemed to be operating at the lowest feasible cost. For all taxable years commencing after December 31, 1995, such property shall be deemed to be used exclusively for housing for elderly persons purposes when used as a not-for-profit day care center for children which is licensed pursuant to K.S.A. 65-501 et seq., and amendments thereto.

Sixth. All real property and tangible personal property actually and regularly used exclusively for the purpose of group housing of mentally ill or retarded and other handicapped persons which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act, and which is licensed as a facility for the housing of mentally ill or retarded and other handicapped persons under the provisions of K.S.A. 75-3307b, and amendments thereto, or as a rooming or boarding house used as a facility for the housing of mentally retarded and other handicapped persons which is licensed as a lodging establishment under the provisions of K.S.A. 36-501 et seq., and amendments thereto.

The provisions of this section, except as otherwise specifically provided, shall apply to all taxable years commencing after December 31, 1998.

HISTORY: L. 1975, ch. 495, § 3; L. 1976, ch. 421, § 1; L. 1977, ch. 324, § 1; L. 1985, ch. 311, § 2; L. 1986, ch. 369, § 2; L. 1988, ch. 372, § 2; L. 1988, ch. 373, § 2; L. 1996, ch. 264, § 6; L. 1998, ch. 12, § 26; L. 1999, ch. 154, § 74; May 27.

79-210. Property exempt from taxation; claim to be filed each year; forms, content and filing of claims; rules and regulations. The owner or owners of all property which is exempt from the payment of property taxes under the laws of the state of Kansas for a specified period of years, other than property exempt under K.S.A. 79-201g and 79-201d Second, and amendments thereto, shall in each year after approval thereof by the board of tax appeals claim such exemption on or before March 1 of each year in which such exemption is claimed in the manner hereinafter provided. All claims for exemption from the payment of property taxes shall be made upon forms prescribed by the director of property valuation and shall identify the property sought to be exempt, state the basis for the exemption claimed and shall be filed in the office of the assessing officer of the county in which such property is located. The assessing officers of the several counties shall list and value for assessment, all property located within the county for which no claim for exemption has been filed in the manner hereinbefore provided. The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this section. The provisions of this section shall apply to property exempted pursuant to the provisions of section 13 of article 11 of the Kansas constitution. The claim for exemption annually filed by the owner of such property with the assessing officer shall include a written statement, signed by the clerk of the city or county granting the exemption, that the property continues to meet all the terms and conditions established as a condition of granting the exemption.

HISTORY: L. 1969, ch. 429, § 2; L. 1970, ch. 380, § 1; L. 1972, ch. 342, § 85; L. 1978, ch. 391, § 2; L. 1980, ch. 307, § 2; L. 1984, ch. 349, § 2; L. 1990, ch. 344, § 1; L. 1994, ch. 187, § 2; Jan. 1, 1995.

79-2925. Budgets of taxing bodies; application of act; exceptions; definitions.

(a) This act shall apply to all taxing subdivisions or municipalities of the state, except:

(1) Townships in counties having the county road unit system which have an annual expenditure of less than two hundred dollars;

(2) any money received by such taxing subdivision or municipality as a gift or bequest;

(3) any revolving fund set up for the operation of a municipal airport. Any city, board of park commissioners, or other agency designated and authorized to operate a municipal airport is hereby authorized to set up a revolving fund for use as an operating fund, either out of the budget or out of the receipts from the operation of such airport, in an amount as may be reasonable and necessary as an operating fund for the efficient and business-like operation of such airport. The financial transactions of said airport shall be audited in accordance with the minimum standard audit program prescribed by the director of accounts and reports as other municipal funds. Profits arising from the operation of the airport after the payment of all necessary operating expenses and the establishment of the revolving fund shall be applied to reduce the tax levy for the budgeted fund under which the operation of such airport is financed;

(4) any special recreation facilities reserve set up by the board of park commissioners in any city for the repair, replacement, or addition to the recreation facilities of such city. The financial transactions of said recreation facilities shall be audited in accordance with the minimum standard audit program prescribed by the director of accounts and reports as other municipal funds. Profits arising from the coliseum events fund and the coliseum concessions, after the payment of all necessary expenses, and the establishment and maintenance of such special recreation facilities reserve shall be applied to reduce the tax levy for the budget fund under which the operation of such recreation facilities is financed; and

(5) any special recreation facilities fund set up by the board of county commissioners for the operation of a county coliseum. The financial transactions of the special recreation facilities fund shall be audited in accordance with the minimum standard audit program prescribed by the director of accounts and reports as other municipal funds. Moneys derived from the operation of a county coliseum and deposited in the special recreation facilities fund shall be applied to reduce the tax levy for the budget fund under which the operation of such county coliseum is financed.

(b) Whenever the term "fund" is used in this act it is intended to have reference to those funds which are authorized by statute to be established. "Fund" is not intended to mean the individual budgeted items of a fund, but is intended to have reference to the total of such individual items.

(c) Whenever the term "director" is used in this act it shall mean the state director of property valuation.

HISTORY: L. 1933, ch. 316, § 1; L. 1933, ch. 121, § 1 (Special Session); L. 1941, ch. 377, § 1; L. 1945, ch. 92, § 2; L. 1959, ch. 62, § 3; L. 1969, ch. 446, § 1; L. 1971, ch. 185, § 19; L. 1975, ch. 498, § 1; L. 1980, ch. 89, § 4; July 1.

79-2926. Budget forms prescribed; furnished by director of accounts and reports; duties of certain officers.

(a) Subject to the provisions of subsection (b), the director of accounts and reports shall prepare and prescribe forms for the annual budgets of all taxing subdivisions or municipalities of the state. Such forms shall show the information required by this act necessary and proper to disclose complete information as to the financial condition of such taxing subdivision or municipality, and the receipts and expenditures thereof, both past and anticipated.

(b) (1) From and after July 1, 2004 and based upon recommendations by the state department of education, the director shall prepare and prescribe forms for the annual budget and a summary of the proposed budget of

school districts. The state department of education shall make such recommendations after considering the best practices and standards established by the government finance officers association and the association of school business officials.

(2) (A) The school district budget form shall include a separate table outlining the aggregate amount of expenditures for salaries and wages for the following categories:

(i) Certified and noncertified administrators;

(ii) persons employed full-time as teachers;

(iii) other certified employees who are not employed full-time as teachers;

(iv) classified employees;

(v) other positions designated by the state department of education; and

(vi) substitutes and other temporary employees.

(B) The school district budget form shall show the number of full-time employee positions specified in paragraph (A) of this subsection and the average salaries or wages for such positions.

(C) The school district budget form shall show any other information recommended by the state department of education.

(3) The summary of the proposed budget form shall include:

(A) An overview of the proposed budget of the school district and the budgetary process;

(B) a summary of the changes in the proposed budget from the previous budget year;

(C) a summary of the estimated expenditures to be made and revenues to be received in the ensuing budget year and the sources of such revenue;
(D) the internet website address for school building report cards compiled by the state department of education; and

(E) any other information specified by the state department of education.

(4) Nothing in this subsection (b) shall be construed as limiting the authority of school districts to develop and provide material or information in addition to that required by the state department of education.

(5) The state department of education shall provide technical advice and assistance to school districts to insure compliance with the provisions of this section.

(c) All such budget and tax levy forms shall be printed by the division of printing in such quantity as required by the director. The director shall deliver the forms for school districts to the clerk of the board of education of each school district. The forms for all other taxing subdivisions or municipalities of the state shall be delivered by the director to the county clerk of each county, who shall deliver the same to the presiding officer of the governing body of the respective taxing subdivisions or municipalities within the county.

HISTORY: L. 1933, ch. 316, § 2; L. 1933, ch. 121, § 2 (Special Session); L. 1941, ch. 377, § 2; L. 1969, ch. 310, § 60; L. 1970, ch. 386, § 1; L. 1971, ch. 185, § 20; L. 1974, ch. 364, § 29; L. 2003, ch. 116, § 18; July 1.

79-2927. Itemized budget; parallel columns showing corresponding items and revenue; non-appropriated balances; balanced budget required, exception.

(a) The governing body of each taxing subdivision or municipality shall meet not later than the first day of August of each year, and shall prepare in writing on forms furnished by the director of accounts and reports a budget itemized and classified by funds and showing amounts to be raised by taxation and from other sources for the ensuing budget year. The budget shall show in parallel columns all amounts and items to be expended for the ensuing budget year and the amounts appropriated for corresponding or other items during the current budget year and amounts expended for corresponding or other items during the preceding budget year. The budget for each fund shall not include any item for sundry or miscellaneous purposes in excess of 10% of the total. Except for school districts, municipal universities and community colleges, the budget for each fund may include a non-appropriated balance of not to exceed 5% of the total of each fund.

(b) The budget shall show in parallel columns the amount of revenue actually received from taxation and from other sources, with the amount from each source separately stated for the preceding budget year and the amount actually received and estimated to be received from taxation and from sources other than direct taxation with the amount for each source separately stated for the current budget year and also the amount estimated to be received during the ensuing budget year, with the amount estimated to be received from each source separately stated. Except as provided by K.S.A. 2003 Supp. 79-2927a, and amendments thereto, the budget of expenditures for each fund shall balance with the budget of revenues for such fund and that portion of the budget of revenues to be derived from ad valorem property taxation shall not exceed the amount of tax which can be raised by any fund limit or aggregate limit placed upon such fund.

HISTORY: L. 1933, ch. 316, § 3; L. 1941, ch. 377, § 3; L. 1970, ch. 387, § 1; L. 1989, ch. 295, § 1; L. 2003, ch. 116, § 19; July 1.

79-2929. Proposed budget; amendments; public hearing; notice, publication and contents. Prior to the filing of the adopted budget with the county clerk, the governing body of each taxing or political subdivision or municipality shall meet for the purpose of answering and hearing objections of taxpayers relating to the proposed budget and for the purpose of considering amendments to such proposed budget. The governing body shall give at least 10 days' notice of the time and place of the meeting by publication in a weekly or daily newspaper of the county having a general circulation therein. Such notice shall include the proposed budget and shall set out all essential items in the budget except such groupings as designated by the director of accounts and reports on a special publication form prescribed by the director of accounts and reports and furnished with the regular budget form. The notice of a governing body of any taxing subdivision or municipality having an annual expenditure of $ 500 or less shall specify the time and place of the meeting required by this section but shall not be required to include the proposed budget of such taxing subdivision or municipality.

HISTORY: L. 1933, ch. 316, § 5; L. 1941, ch. 377, § 4; L. 1970, ch. 387, § 2; L. 1978, ch. 402, § 1; L. 1981, ch. 173, § 79; July 1.

79-2929a. Amended budget; publication; notice; public hearing. The governing body of any taxing subdivision or municipality which is subject to the budget law provisions of K.S.A. 79-2925 to 79-2936, inclusive, and amendments thereto, which proposes to amend its adopted current budget during the year in which such budget is in effect, shall be subject to the same publication, notice and public hearing requirements as is required by K.S.A. 79-2929, and amendments thereto, for the adoption of the original budget and, in addition thereto, such published budget shall show any proposed changes in the amount of expenditures, by fund. Any proposed increase in expenditures shall be balanced by previously unbudgeted increases in revenue other than ad valorem property taxes. A copy of the adopted amended budget shall be filed with the county clerk and with the director of accounts and reports.

HISTORY: L. 1981, ch. 368, § 1; L. 1989, ch. 218, § 10; L. 1992, ch. 280, § 53; July 1.

79-2930. Submission of adopted budgets and additional information pertaining thereto to county clerk; duties of county clerk; limitation on taxes levied, exception.

(a) Two copies of the budget certificate giving the amount of ad valorem tax to be levied and the total amount of the adopted budget of expenditures by fund, along with itemized budget forms for each and every fund and proof of

publication of the notice of budget hearing containing the budget summary shall be presented to the county clerk within the time prescribed by K.S.A. 79-1801 as amended. Where action has been taken under any statute to increase the amount of tax to be levied authorized by law, a statement showing the increased amount or tax levy rate voted, or a copy of the charter resolution or ordinance making the change, shall be attached to the budget each year the change is in effect.

(b) The county clerk shall make any reductions to the ad valorem tax to be levied, compute the tax levy rates based on the final equalized assessed valuation, and enter such on the budget certificate before attesting the budget. A copy of all budgets for taxing subdivisions of the county, properly attested, shall be filed with the director of accounts and reports, along with a copy of the tax levy rate summary required of the county treasurer by K.S.A. 79-2002, and amendments thereto.

(c) Each fund of the adopted budget certified to the county clerk in no event shall exceed the amount of ad valorem tax to be levied and the proposed expenditures of such fund in the proposed budget as originally published. The governing body of each taxing subdivision shall not certify an amount of ad valorem taxes to be levied that is in excess of any tax levy rate or amount limitations or any aggregate tax levy limitations. The governing bodies, in fixing the amount may take into consideration and make allowance for the taxes which may not be paid, such allowance, however, shall not exceed by more than 5% the percentage of delinquency for the preceding tax year.

HISTORY: L. 1933, ch. 316, § 6; L. 1941, ch. 377, § 5; L. 1970, ch. 387, § 3; L. 1974, ch. 364, § 28; L. 1981, ch. 379, § 5; July 1.

79-2933. Time for budget hearing; adoption; validity of levies. The hearing herein required to be held upon all budgets by all taxing subdivisions or municipalities of the state shall be held not less than ten (10) days prior to the date on which they shall certify their annual levies to the county clerk as required by law. After such hearing the budget shall be adopted or amended and adopted as amended, but no levy shall be made until and unless a budget is prepared, published and filed, but no levy of taxes shall be invalidated because of any insufficiency, informality, or delay in preparing, publishing and filing said budget.

HISTORY: L. 1933, ch. 316, § 9; L. 1941, ch. 377, § 8; L. 1970, ch. 387, § 4; March 13.

79-2934. Funds appropriated by budget; balances; duties of clerks and officers; distribution of tax proceeds. The budget as approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose. No money in any fund shall be used to pay for any indebtedness created in excess of the total amount of the adopted budget of expenditures for such fund. Any balance remaining in such fund at the end of the current budget year shall be carried forward to the credit of the fund for the ensuing budget year. The clerk or secretary of each taxing subdivision or municipality shall open and keep an account of each fund, showing the total amount appropriated for each fund, and shall charge such appropriation with the amount of any indebtedness created at the time such indebtedness is incurred. If any indebtedness is reimbursed during the current budget year and the reimbursement is in excess of the amount which was shown as reimbursed expense in the budget of revenues for the current budget year, the charge made shall be reduced by the amount of the reimbursement.

No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law. The county treasurer shall distribute the proceeds of the taxes levied by each taxing subdivision in the manner provided by K.S.A. 12-1678a, and amendments thereto.

HISTORY: L. 1933, ch. 316, § 10; L. 1941, ch. 377, § 9; L. 1945, ch. 363, § 1; L. 1970, ch. 387, § 5; L. 1983, ch. 319, § 3; July 1.

79-2935. Creation of indebtedness in excess of budget unlawful; exceptions. It shall be unlawful for the governing body of any taxing subdivision or municipality in any budget year to create an indebtedness in any manner or in any fund after the total indebtedness created against such fund shall equal the total amount of the adopted budget of expenditures for such fund for that budget year. Any indebtedness incurred by the governing body or any officer or

officers of such taxing subdivision or municipality in excess of said amount shall be void as against such taxing subdivision or municipality: Provided, That indebtedness may be created in excess of the total amount of the adopted budget of expenditures for the current budget year only when payment has been authorized by a vote of the municipality, or when provision has been made for payment by the issuance of bonds, or when provision has been made for payment by the issuance of warrants authorized by the commission in accordance with the provisions of K.S.A. 79-2938, 79-2939 and 79-2940.

HISTORY: L. 1933, ch. 316, § 11; L. 1941, ch. 377, § 10; June 30.

79-2936. Removal from office for violation. Any member of the governing body, or any other officer of any taxing subdivision or municipality of the state, who violates any of the provisions of this act shall be subject to removal from office.

HISTORY: L. 1933, ch. 316, § 12; L. 1941, ch. 377, § 14; June 30.

79-2937. Invalidity of part. If any section, clause, sentence, paragraph, part or provision of this act shall be held invalid by any court it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, clause, sentence, paragraph, part or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections, clauses, sentences, paragraphs, parts or provisions may be held invalid by any court.

HISTORY: L. 1933, ch. 316, § 13; March 24.

79-2938. No-fund warrants for shortages in revenue, when; procedure; limitation of amount; notice and hearing; protests; tax levy to pay. Whenever during the current budget year it becomes apparent to the governing body of any taxing district that because of unforeseen circumstances the revenues of the current budget year for any fund are insufficient to finance the adopted budget of expenditures for such fund for the current budget year, the governing body may make application to the board of tax appeals for authority to issue warrants to pay for such budgeted expenditures. The application shall be signed and sworn to, and shall have a majority approval of any governing body composed of three members or less, and a 3/4 majority of any governing body composed of more than three members. The application shall reveal the following:

(1) The circumstances which caused the shortage in revenues;

(2) a copy of the budget adopted for the current budget year; and

(3) a detailed statement showing why the budget of expenditures cannot be reduced during the remainder of the current budget year so that additional revenue will not be necessary. If the board of tax appeals shall find that the evidence submitted in writing in support of the application shows:

(a) That the adopted budget of revenues balanced with the adopted budget of expenditures;

(b) that the governing body exercised prudent judgment at the time of preparing the budget of revenues; and

(c) that the budget of expenditures cannot be reduced during the remainder of the current budget year so that additional revenue will not be necessary, the board of tax appeals is empowered to authorize the issuance of warrants for the payment of that portion (in dollars) of the unfinanced budget of expenditures which the board of tax appeals deems necessary. The amount of such warrants for any fund of any taxing district shall not exceed 25% of the amount of money that could have been raised by levy for such fund under the individual fund limit for the payment of expenses for the current budget year, nor shall the amount of such warrants for any fund, of any taxing district exceed 25% of the amount of money that could have been raised by levy for such fund under the limitation placed

upon such fund by reason of the aggregate limit, and in no case shall the total amount of such warrants for all funds exceed 25% of the amount of money that could have been raised by levy within the aggregate limit prescribed by law for such taxing district for the payment of expenses of the current budget year. The limitations of the foregoing provision shall have no application to funds for payment of general obligation bonds and interest thereon.

No order for the issuance of such warrants shall be made without a public hearing before the board of tax appeals conducted in accordance with the provisions of the Kansas administrative procedure act. In addition to notice to the parties, notice of such hearing shall be published in two issues of a paper of general circulation within the district applying for such authority at least 10 days prior to such hearing. The notice shall be in such form as the board of tax appeals prescribes, and the expense of such publication shall be borne by the taxing district making application. Any taxpayer interested may file a written protest against such application. Any member of the governing body of the taxing district making an application hereunder may appear and be heard in person at such hearing in support of the application. All records and findings of such hearings shall be subject to public inspection. Whenever the authority to issue warrants under this section is granted, the governing body of such taxing district shall make a tax levy, at the first tax-levying period after such authority is granted, sufficient to pay such warrants, and such tax levy may be levied outside of the aggregate tax levy limit prescribed by law.

HISTORY: L. 1941, ch. 377, § 11; L. 1963, ch. 480, § 1; L. 1976, ch. 424, § 2; L. 1988, ch. 356, § 325; July 1, 1989.

79-2939. No-fund warrants for emergencies, when; procedure; limitation of amount; notice and hearing; protests; tax levy to pay. Whenever there is an unforeseen occurrence which causes an expense in any fund of any municipality or other taxing district which could not have been anticipated at the time the budget for the current budget year was prepared, and by reason of such unforeseen occurrence the governing body of any such municipality or taxing district is of the opinion that it will be impossible to pay for such unforeseen expense and pay for the imperative functions of the fund without incurring indebtedness in excess of the adopted budget of expenditures for the current budget year, the governing body may make application to the board of tax appeals for authority to issue no-fund warrants to pay for such unforeseen expense. The application shall be signed and sworn to, and shall have a majority approval of any governing body composed of three members or less, and a 3/4 majority of any governing body composed of more than three members. The application shall reveal:

(1) The nature of the unforeseen occurrence;

(2) a copy of the final budget adopted for the current budget year; and

(3) a detailed statement showing why the budgeted expenditures for the current budget year cannot be reduced during the remainder of the current budget year so that the total expenditure for the current budget year, including the unforeseen expense, will not exceed the adopted budget. If the board of tax appeals shall find that the evidence submitted in writing in support of the application shows:

(a) There was an occurrence which could not have been foreseen at the time the budget for the current budget year was prepared; and

(b) that from the time of such unforeseen occurrence to the end of the current budget year it will be impossible to reduce the expenditures of the adopted budget to the extent the total expenditure for the current budget year, including the unforeseen expense, will not exceed the adopted budget, the board of tax appeals is empowered to authorize the issuance of warrants for the payment of that portion (in dollars) of such unforeseen expense which must be in excess of the adopted budget. The amount of such warrants for a public utility fund shall not exceed the amount of money on hand in the utility fund not required for budgeted expenses. The amount of such warrants for any fund, excepting public utility funds, of any municipality or other taxing district, other than a township, shall not exceed the amount of money that could have been raised by levy for such fund under the individual fund limit for the payment of expenses of the current budget year, nor shall the amount of such warrants for any fund, of any municipality or other taxing district, other than a township, exceed the amount of money that could have been raised by levy for such fund under the limitation placed upon such fund by

reason of the aggregate limit, and in no case shall the total amount of such warrants for all such tax funds, other than warrants issued by a township, exceed the amount of money that would have been raised by levy within the aggregate limit prescribed by law for such municipality or other taxing district for the payment of expenses of the current budget year.

No order for the issuance of such warrants shall be made without a public hearing before the board of tax appeals conducted in accordance with the provisions of the Kansas administrative procedure act. In addition to notice to the parties, notice of such hearing shall be published in two issues of a paper of general circulation within the district applying for such authority at least 10 days prior to such hearing. The notice shall be in such form as the board of tax appeals prescribes, and the expense of such application shall be borne by the municipality or taxing district making application. Any taxpayer interested may file a written protest against such application. Any member of the governing body of the municipality or other taxing district making application hereunder may appear and be heard in person at such hearing in support of the application. All records and findings of such hearings shall be subject to public inspection.

Whenever the authority to issue warrants under this section is granted, the governing body of such municipality or other taxing district shall make not more than five equal annual tax levies, as determined by the board of tax appeals, except as to any public utility funds, at the next succeeding tax-levying periods after such authority is granted, sufficient to pay such warrants, and such tax levy or levies may be levied outside of the aggregate tax levy limit prescribed by law. If there is money in the fund over and above the amount needed for the adopted budget, such money shall be used and the tax levy or levies shall be only for the difference, if any, between the money available and the amount of warrants issued. Any municipality having a surplus in any public utility fund may use such surplus to pay the warrants authorized by the board of tax appeals under this section. When the money must be raised by a tax levy the taxing unit may issue and sell at par no-fund warrants in multiples of $100 and place the money in the fund and issue regular warrants in the usual manner. Whenever any municipality or taxing district receives insurance money in payment of damage occasioned by the unforeseen occurrence, and authority to issue warrants is authorized by the board of tax appeals under this section, such insurance money shall be deposited with the county treasurer immediately and used by the county treasurer in lieu of ad valorem taxes as provided in K.S.A. 79-2940, and amendments thereto. This section shall not require a deposit of insurance money in excess of the total amount of such warrants and interest thereon.

HISTORY: L. 1941, ch. 377, § 12; L. 1947, ch. 456, § 1; L. 1975, ch. 499, § 1; L. 1976, ch. 424, § 3; L. 1981, ch. 383, § 1; L. 1988, ch. 356, § 326; July 1, 1989.

79-2939b. No-fund warrants to cover the failure of receipt of motor vehicle tax. To finance needed expenditures and to avoid violations of the cash basis law resulting from the failure of receipts from the special tax on motor vehicles to equal the amount budgeted therefrom, the governing body of any city may, during the calendar year 1981, issue no-fund warrants. The amount of such warrants shall not exceed the difference between the amount budgeted as receipts from 1981 from the special tax on motor vehicles and the amount actually received from such tax in 1981. The resolution providing for the issuance of such no-fund warrants may authorize the city clerk or other finance officer of the city, subject to the approval of the mayor or city manager of such city, to sell such amounts of the authorized warrants as may be necessary. Moneys not immediately needed in any fund of the city may be invested in such no-fund warrants. Such resolution shall provide for the redemption during 1982 of any warrants which are actually sold, with the principal and interest thereon payable from receipts from the special motor vehicle tax revenue of the city.

HISTORY: L. 1981, ch. 60, § 1; July 1.

79-2940. No-fund warrants; issuance, interest, form, registration, redemption and transfer of surplus funds to general fund. A certified copy of orders issued by the board of tax appeals authorizing the issuance of warrants in accordance with the provisions of K.S.A. 79-2938 and 79-2939, and amendments thereto, shall be delivered by the board of tax appeals to the county treasurer, county clerk, and clerk of the municipality or other taxing district. Warrants issued thereunder shall be issued in like manner as other warrants, or such warrants in multiples of one hundred dollars ($100) not exceeding the amount authorized and to be raised by tax levy may be issued and sold at par and the money placed in the fund and paid out on regular warrants, and the warrants or single warrant issued under this section shall bear interest at the rate of not more than the maximum rate of interest prescribed by K.S.A. 10-1009, and amendments thereto, except that such warrants shall be made payable at the office of the county treasurer, shall be designated on their face as "no-

fund warrants," and shall also bear the notation "issued pursuant to authority granted by order No. _____, dated _____ of the state board of tax appeals."

Such warrants, when presented to the county treasurer, shall be registered in accordance with the provisions of K.S.A. 10-807 and 10-808, and amendments thereto. No warrants shall be registered in excess of the amount authorized by the board of tax appeals. The county treasurer shall maintain a separate register for such warrants and all warrants issued under a particular order of the board of tax appeals shall be registered under the particular order number in the register. When the tax levy to redeem warrants issued under K.S.A. 79-2938 and 79-2939, and amendments thereto, is made, the county treasurer shall keep the proceeds of such tax levy in a separate fund and charge the warrants against such fund when paid. In the event a surplus exists in any such fund at any tax levying time, the county treasurer shall certify the amount of such surplus to the county clerk and the county clerk shall deduct the levy equivalent of such surplus from the general fund tax levy of such district, and the maximum general fund levy and aggregate limit of such taxing district shall be reduced accordingly, and that amount of surplus shall be considered and used as revenue in lieu of ad valorem taxes for such taxing district.

On January 1 following such action by the county clerk, and in that event only, the county treasurer shall transfer to the general fund of such taxing district the amount of surplus as used by the county clerk in reducing ad valorem taxes, except that the governing body of any city may request, by resolution, that the county treasurer pay to the city treasurer all money collected from the levy for the payment of emergency warrants. Upon presentation of such resolution, the county treasurer shall pay to the city treasurer all moneys collected from the levy for the payment of such warrants and the city treasurer shall deposit the money in the bond and interest fund and redeem the emergency warrants for which such levy was made and shall forthwith exhibit such redeemed warrants to the county treasurer who shall record such redemption in the warrant register. The provisions of this act shall not apply to utilities managed, operated and controlled by a board of public utilities as provided for by chapter 126 of the Laws of Kansas for 1929.

HISTORY: L. 1941, ch. 377, § 13; L. 1943, ch. 303, § 1; L. 1947, ch. 456, § 2; L. 1970, ch. 64, § 90; L. 1985, ch. 321, § 1; July 1.

79-2941. Warrants for emergencies, when; procedure; limitation of amount; notice and hearing. Whenever it shall be apparent to a majority of the members of any board authorized to levy taxes in any taxing district in any county adjoining a United States army post or military reservation, or to any officer solely charged with that duty therein, that the rates of levy in the particular taxing district under consideration are so limited as to be insufficient for the raising of funds necessary to supply the needs of such taxing district for general maintenance expenses for the current tax year, such officers or officer shall have the authority to issue warrants to meet such general maintenance expenses for the current tax year to the amount of money not exceeding 50% of the amount of money which can be raised in such taxing district by using the rates limited by law. No such authority to issue warrants shall be exercised until an application for such exercise shall be made to the board of tax appeals, which body, if the evidence submitted in support of the application shall show an emergency need for the issue of warrants for the additional amount hereby authorized or any part thereof, is hereby empowered to order the issuance of such warrants as may be shown to be necessary, but no order for the issuance of such warrants shall be made without a public hearing before the state board of tax appeals conducted in accordance with the provisions of the Kansas administrative procedure act. In addition to notice to the parties, notice of such hearing shall be published in two issues of a paper of general circulation within the district applying for such authority at least 10 days prior to such hearing.

The notice shall be in such form as the state board of tax appeals shall prescribe, and the expense of such publication shall be borne by the district making application. At no time shall the issuance of such warrants authorized by the board of tax appeals in any such taxing district exceed in amount 50% of the amount of money that can be raised by taxation in any such district for the current tax year under the existing rates.

HISTORY: L. 1941, ch. 371, § 1; L. 1988, ch. 356, § 327; July 1, 1989.

79-2942. Same; tax levy to pay. Whenever any board or officer shall issue warrants under the authority prescribed in K.S.A. 79-2941, the said board or officer is authorized and empowered to fix the rates of levy in such district which will raise an amount of money sufficient to pay and discharge such warrants. Such rate of levy shall be in addition to the

rate authorized or limited by law at the time of making such levy: Provided, That the amount of such warrants shall not exceed by more than fifty percent the amount of money that could be raised by taxation in any such district for the year in which the indebtedness represented by the warrants was incurred.

HISTORY: L. 1941, ch. 371, § 2; June 30.

CHAPTER 79. TAXATION
ARTICLE 36. KANSAS RETAILERS' SALES TAX

79-3601. Title of act; additional to certain other taxes. This act shall be known as the "Kansas retailers' sales tax act" and the tax herein imposed shall be in addition to all other occupation or privilege taxes imposed by the state of Kansas or by any municipal corporation or by any political subdivision thereof.

HISTORY: L. 1937, ch. 374, § 1; April 9.

79-3602. Definitions. Except as otherwise provided, as used in the Kansas retailers' sales tax act:

(a) "Agent" means a person appointed by a seller to represent the seller before the member states.

(b) "Agreement" means the multistate agreement entitled the streamlined sales and use tax agreement approved by the streamlined sales tax implementing states at Chicago, Illinois on November 12, 2002.

(c) "Alcoholic beverages" means beverages that are suitable for human consumption and contain .05% or more of alcohol by volume.

(d) "Certified automated system (CAS)" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(e) "Certified service provider (CSP)" means an agent certified under the agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(f) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(g) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(h) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(i) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

(j) "Direct mail" means printed material delivered or distributed by United States mail or other delivery services to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

(k) "Director" means the state director of taxation.

(l) "Educational institution" means any nonprofit school, college and university that offers education at a level above the twelfth grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an "educational institution," as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include:

(1) A group of educational institutions that operates exclusively for an educational purpose;

(2) nonprofit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution;

(3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.

(m) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(n) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages or tobacco.

(o) "Gross receipts" means the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state; and embraced within the provisions of this act. The taxpayer, may take credit in the report of gross receipts for:

(1) An amount equal to the selling price of property returned by the purchaser when the full sale price thereof, including the tax collected, is refunded in cash or by credit; and
(2) an amount equal to the allowance given for the trade-in of property.

(p) "Ingredient or component part" means tangible personal property which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following items of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of "ingredient or component part" as herein set forth:

(1) Containers, labels and shipping cases used in the distribution of property produced, manufactured or compounded for sale which are not to be returned to the producer, manufacturer or compounder for reuse.

(2) Containers, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to be returned to such wholesaler or retailer for reuse.

(3) Seeds and seedlings for the production of plants and plant products produced for resale.

(4) Paper and ink used in the publication of newspapers.

(5) Fertilizer used in the production of plants and plant products produced for resale.

(6) Feed for animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber, fur, or the production of offspring for use for any such purpose or purposes.

(q) "Isolated or occasional sale" means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. Such term shall include:

(1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and

(2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is nonrecurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property.

(r) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(1) Lease or rental does not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) a transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of $100 or 1% of the total required payments; or

(C) providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect or set-up the tangible personal property.

(2) Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

(3) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et seq. and amendments thereto, or other provisions of federal, state or local law.

(4) This definition will be applied only prospectively from the effective date of this act and will have no retroactive impact on existing leases or rentals.

(s) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(t) "Member state" means a state that has entered in the agreement, pursuant to provisions of article VIII of the agreement.

(u) "Model 1 seller" means a seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(v) "Model 2 seller" means a seller that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(w) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least $500,000,000, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection a seller includes an affiliated group of sellers using the same proprietary system.

(x) "Municipal corporation" means any city incorporated under the laws of Kansas.

(y) "Nonprofit blood bank" means any nonprofit place, organization, institution or establishment that is operated wholly or in part for the purpose of obtaining, storing, processing, preparing for transfusing, furnishing, donating or distributing human blood or parts or fractions of single blood units or products derived from single blood units, whether or not any remuneration is paid therefor, or whether such procedures are done for direct therapeutic use or for storage for future use of such products.

(z) "Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number; and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.

(aa) "Political subdivision" means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law.
(bb) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(cc) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software, except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(dd) "Property which is consumed" means tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in

(1) the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property,

(2) the providing of services,

(3) the irrigation of crops, for sale in the regular course of business, or

(4) the storage or processing of grain by a public grain warehouse or other grain storage facility, and which is not reusable for such purpose. The following is a listing of tangible personal property, included by way of illustration but not of limitation, which qualifies as property which is consumed:

(A) Insecticides, herbicides, germicides, pesticides, fungicides, fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use in commercial or agricultural production, processing or storage of fruit, vegetables, feeds, seeds, grains, animals or animal products whether fed, injected, applied, combined with or otherwise used;

(B) electricity, gas and water; and

(C) petroleum products, lubricants, chemicals, solvents, reagents and catalysts.

(ee) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

(ff) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(gg) "Quasi-municipal corporation" means any county, township, school district, drainage district or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.

(hh) "Registered under this agreement" means registration by a seller with the member states under the central registration system provided in article IV of the agreement.

(ii) "Retailer" means a seller regularly engaged in the business of selling, leasing or renting tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.

(jj) "Retail sale" or "sale at retail" means any sale, lease or rental for any purpose other than for resale, sublease or subrent.

(kk) "Sale" or "sales" means the exchange of tangible personal property, as well as the sale thereof for money, and every transaction, conditional or otherwise, for a consideration, constituting a sale, including the sale or furnishing of electrical energy, gas, water, services or entertainment taxable under the terms of this act and including, except as provided in the following provision, the sale of the use of tangible personal property by way of a lease, license to use or the rental thereof regardless of the method by which the title, possession or right to use the tangible personal property is transferred. The term "sale" or "sales" shall not mean the sale of the use of any tangible personal property used as a dwelling by way of a lease or rental thereof for a term of more than 28 consecutive days.

(ll) (1) "Sales or selling price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(A) The seller's cost of the property sold;

(B) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;

(C) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(D) delivery charges;

(E) installation charges; and

(F) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(2) "Sales or selling price" shall not include:

(A) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(B) interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(C) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(D) the amount equal to the allowance given for the trade-in of property, if separately stated on the invoice, billing or similar document given to the purchaser.

(mm) "Seller" means a person making sales, leases or rentals of personal property or services.

(nn) "Service" means those services described in and taxed under the provisions of K.S.A. 79-3603 and amendments thereto.

(oo) "Sourcing rules" means the rules set forth in K.S.A. 2003 Supp. 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments thereto, which shall apply to identify and determine the state and local taxing jurisdiction sales or use taxes to pay, or collect and remit on a particular retail sale.

(pp) "Tangible personal property" means personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam and prewritten computer software.

(qq) "Taxpayer" means any person obligated to account to the director for taxes collected under the terms of this act.

(rr) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

HISTORY: L. 1937, ch. 374, § 2; L. 1941, ch. 382, § 1; L. 1947, ch. 463, § 1; L. 1953, ch. 447, § 1; L. 1957, ch. 509, § 1; L. 1960, ch. 58, § 1; L. 1963, ch. 493, § 1; L. 1967, ch. 499, § 1; L. 1968, ch. 383, § 1; L. 1970, ch. 389, § 1; L. 1971, ch. 321, § 1; L. 1977, ch. 337, § 1; L. 1978, ch. 415, § 1; L. 1980, ch. 322, § 1; L. 1981, ch. 389, § 1; L. 1982, ch. 418, § 1; L. 1985, ch. 330, § 1; L. 1988, ch. 386, § 1; L. 1989, ch. 301, § 1; L. 1992, ch. 280, § 58; L. 1994, ch. 2, § 1; L. 1995, ch. 118, § 1; L. 1995, ch. 242, § 2; L. 1998, ch. 130, § 29; L. 1998, ch. 181, § 1; L. 1999, ch. 154, § 1; L. 2000, ch. 140, § 8; L. 2003, ch. 147, § 5; July 1.

79-3603. Retailers' sales tax imposed; rate. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3% on and after July 1, 2002, and before July 1, 2004, 5.2% on and after July 1, 2004, and before July 1, 2005, and 5% on and after July 1, 2005, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) (1) the gross receipts from intrastate telephone or telegraph services;

(2) the gross receipts received from the sale of interstate telephone or telegraph services, which

(A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or

(B) originate outside this state and terminate within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include:

(A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located;

(B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges;

(C) any value-added nonvoice service in which computer processing applications are used to act on the form, content, code or protocol of the information to be transmitted;

(D) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or

(E) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001; and

(3) the gross receipts from the provision of services taxable under this subsection which are billed on a combined basis with nontaxable services, shall be accounted for and the tax remitted as follows: The taxable portion of the selling price of those combined services shall include only those charges for taxable services if the selling price for the taxable services can be readily distinguishable in the retailer's books and records from the selling price for the nontaxable services. Otherwise, the gross receipts from the sale of both taxable and nontaxable services billed on a combined basis shall be deemed attributable to the taxable services included therein. Within 90 days of billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the secretary identifying the methodology to be used in determining the taxable portion of the selling price of those combined services. The burden of proving that any receipt or charge is not taxable shall be upon the retailer. Upon request from the customer, the retailer shall disclose to the customer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on a combined basis;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, except that, on and after January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from:

(1) The sale of a rural water district benefit unit;

(2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or

(3) connection or reconnection fees collected by a water supplier;

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated;

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties;

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon;

(i) the gross receipts from the rendering of dry cleaning, pressing, dyeing and laundry services except laundry services rendered through a coin-operated device whether automatic or manually operated;

(j) the gross receipts from the rendering of the services of washing and washing and waxing of vehicles;

(k) the gross receipts from cable, community antennae and other subscriber radio and television services;

(l) (1) except as otherwise provided by paragraph (2), the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen for use by them in erecting structures, or building on, or otherwise improving, altering, or repairing real or personal property.

(2) Any such contractor, subcontractor or repairman who maintains an inventory of such property both for sale at retail and for use by them for the purposes described by paragraph (1) shall be deemed a retailer with respect to purchases for and sales from such inventory, except that the gross receipts received from any such sale, other than a sale at retail, shall be equal to the total purchase price paid for such property and the tax imposed thereon shall be paid by the deemed retailer;

(m) the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from:

(1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph Ninth of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt

from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and

(2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from:

(1) Dues charged by any organization exempt from property taxation pursuant to paragraphs Eighth and Ninth of K.S.A. 79-201, and amendments thereto; and

(2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including:

(1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or

(2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or

(3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 et seq., and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. Any amount of sales tax paid pursuant to the Kansas Retailers Sales Tax Act on the isolated or occasional sale of motor vehicles or trailers on and after July 1, 2004, which the base for computing the tax was the value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments thereto, when such amount was higher than the amount of sales tax which would have been paid under the law as it existed on June 30, 2004, shall be refunded to the taxpayer pursuant to the procedure prescribed by this section. Such refund shall be in an amount equal to the difference between the amount of sales tax paid by the taxpayer and the amount of sales tax which would have been paid by the taxpayer under the law as it existed on June 30, 2004. Each claim for a sales tax refund shall be verified and submittednot later than six months from the effective date of this act to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of tax paid as provided by this act. All such refunds shall be paid from the sales taxrefund fund, upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation or the director's designee. No refund for an amount less than $10 shall be paid pursuant to this act. In determining the base for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction,

restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.

For the purposes of this subsection:

(1) "Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;

(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and

(4) "residence" shall mean only those enclosures within which individuals customarily live;

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) the gross receipts received from the sale of computer software, the sale of the service of providing computer software other than prewritten computer software and the sale of the services of modifying, altering, updating or maintaining computer software, whether the computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;

(t) the gross receipts received for telephone answering services, mobile telecommunication services, beeper services and other similar services. On and after August 1, 2002, the provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002, shall be applicable to all sales of mobile telecommunication services taxable pursuant to this subsection. The secretary of revenue is hereby authorized and directed to perform any act deemed necessary to properly implement such provisions;

(u) the gross receipts received from the sale of prepaid calling service as defined in K.S.A. 2003 Supp. 79-3673, and amendments thereto; and

(v) the gross receipts received from the sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq., and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq., and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

HISTORY: L. 1937, ch. 374, § 3; L. 1947, ch. 463, § 2; L. 1951, ch. 497, § 1; L. 1957, ch. 509, § 2; L. 1958, ch. 31, § 1 (Special Session); L. 1964, ch. 38, § 1 (Budget Session); L. 1965, ch. 533, § 1; L. 1970, ch. 389, § 2; L. 1971, ch. 321, §

2; L. 1973, ch. 403, § 1; L. 1977, ch. 337, § 2; L. 1978, ch. 416, § 2; L. 1979, ch. 326, § 1; L. 1981, ch. 390, § 1; L. 1986, ch. 386, § 1; L. 1987, ch. 182, § 108; L. 1988, ch. 386, § 2; L. 1989, ch. 209, § 59; L. 1992, ch. 280, § 59; L. 1994, ch. 2, § 2; L. 1994, ch. 198, § 1; L. 1995, ch. 118, § 2; L. 1995, ch. 118, § 3; L. 1995, ch. 242, § 3; L. 1997, ch. 185, § 6; L. 1998, ch. 130, § 30; L. 1998, ch. 181, § 2; L. 1999, ch. 158, § 11; L. 2000, ch. 140, § 9; L. 2001, ch. 96, § 1; L. 2001, ch. 199, § 2; L. 2002, ch. 185, § 6; L. 2003, ch. 147, § 6; July 1.

79-3604. Tax paid by consumer and collected by retailer; exceptions; fee. The tax levied under the Kansas retailers' sales tax act shall be paid by the consumer or user to the retailer and it shall be the duty of each and every retailer in this state to collect from the consumer or user, the full amount of the tax imposed or an amount equal as nearly as possible or practicable to the average equivalent thereof. Such tax shall be a debt from the consumer or user to the retailer, when so added to the original purchase price, and shall be recoverable at law in the same manner as other debts, except that the tax levied on isolated or occasional sales of motor vehicles or trailers within the state and upon the sales of taxable tangible personal property or services when the director shall determine the same to be necessary as hereinafter provided shall be paid and collected as herein provided for.

The tax on such isolated or occasional sales shall be paid to the director of taxation by the purchaser of the motor vehicle or trailer or to the county treasurer upon application for certificate of registration or ownership. The purchaser shall sign and present to the county treasurer or director of taxation a statement specifying the true and correct selling price of the motor vehicle or trailer and containing a warning to the purchaser of the consequences of making false statements or information or presenting falsified documents related thereto. Such a statement shall be in a form promulgated by the director of taxation. If payment is made to the director of taxation, the director shall issue a receipt therefor. If the sales tax is not paid to the director of taxation, the county treasurer, upon application for certificate of registration or ownership, shall collect such sales tax payment from the applicant. The county treasurer shall charge the applicant a collection service fee of $ .50, and shall give the applicant a receipt showing the tax and fee paid in full. The county treasurer shall transmit monthly all such sales tax moneys collected to the director of taxation and shall place the fees collected in the special fund provided in K.S.A. 8-145 and amendments thereto, to be used for the purpose of paying necessary extra help and expenses.

Whenever the director of taxation determines that in the retail sale of any tangible personal property or services because of the nature of the operation of the business including the turnover of independent contractors, the lack of a place of business in which to display a registration certificate or keep records, the lack of adequate records or because such retailers are minors or transients there is a likelihood that the state will lose tax funds due to the difficulty of policing such business operations, it shall be the duty of the vendor to such person to collect the full amount of the tax imposed by this act and to make a return and payment of the tax to the director of taxation in like manner as that provided for the making of returns and the payment of taxes by retailers under the provisions of this act. The director shall notify the vendor or vendors to such retailer of the duty to collect and make a return and payment of the tax.

In the event the full amount of the tax provided by this act is not paid to the retailer by the consumer or user, the director of taxation may proceed directly against the consumer or user to collect the full amount of the tax due on the retail sale.

HISTORY: L. 1937, ch. 374, § 4; L. 1957, ch. 509, § 3; L. 1960, ch. 58, § 2; L. 1961, ch. 50, § 2; L. 1970, ch. 389, § 3; L. 1988, ch. 388, § 1; L. 1994, ch. 2, § 3; Feb. 17.

79-3605. Assumption of tax by retailer unlawful. It shall be unlawful for any retailer to advertise or hold out, or state to the public, or to any consumer, directly or indirectly, that the tax, or any part thereof, imposed by this act will be assumed or absorbed by the retailer, or that it will not be considered as an element in the price to the consumer, or if added, that it, or any part thereof, will be refunded.

HISTORY: L. 1937, ch. 374, § 5; April 9.

79-3606. Exempt sales. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, and drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when:

(1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or

(2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school or educational institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or district described in subsection (s), the total cost of which is paid from funds of such political subdivision or district and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. Nothing in this subsection or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or any such district. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, district described in subsection (s), public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such

status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) sales of aircraft including remanufactured and modified aircraft, sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft sold to persons using directly or through an authorized agent such aircraft and aircraft repair, modification and replacement parts as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft for use outside of the United States;

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole

trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

(o) all sales of animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) all sales of drugs dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection, "drug" means a compound, substance or preparation and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages, recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, and supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or intended to affect the structure or any function of the body;

(q) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(r) all sales of prosthetic devices and mobility enhancing equipment prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry, and in addition to such sales, all sales of hearing aids, as defined by subsection (c) of K.S.A. 74-5807, and amendments thereto, and repair and replacement parts therefore, including batteries, by a person licensed in the practice of dispensing and fitting hearing aids pursuant to the provisions of K.S.A. 74-2808, and amendments thereto. For the purposes of this subsection: (1) "Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include durable medical equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer; and (2) "prosthetic device" means a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction or support a weak or deformed portion of the body;

(s) except as provided in K.S.A. 2003 Supp. 82a-2101, and amendments thereto, all sales of tangible personal property or services purchased directly or indirectly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 et seq. and amendments thereto, by a rural water district organized or operating under the authority of K.S.A. 82a-612, and amendments thereto, or by a water supply district organized or operating under the authority of K.S.A. 19-3501 et seq., 19-3522 et seq. or 19-3545, and amendments thereto, which property or services are used in the construction activities, operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term "farm machinery and equipment or aquaculture machinery and equipment" shall include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(v) all sales of food products to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization, and all sales of food products for use in preparing meals for consumption by indigent or homeless individuals whether or not such meals are consumed at a place designated for such purpose;

(w) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes:

(1) To residential premises for noncommercial use by the occupant of such premises;

(2) for agricultural use and also, for such use, all sales of propane gas;

(3) for use in the severing of oil; and

(4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b Second through Sixth. As used in this paragraph, "severing" shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto. For all sales of natural gas, electricity and heat delivered through mains, lines or pipes pursuant to the provisions of subsection (w)(1) and (w)(2), the provisions of this subsection shall expire on December 31, 2005;

(x) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises occurring prior to January 1, 2006;

(y) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(z) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418 and amendments thereto;

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of used mobile homes or manufactured homes. As used in this subsection:

(1) "Mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202 and amendments thereto; and

(2) "sales of used mobile homes or manufactured homes" means sales other than the original retail sale thereof;

(cc) all sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115 and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto. As used in this subsection, "business" and "retail business" have the meanings respectively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

(dd) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture;

(ee) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(ff) on and after July 1, 1988, all sales of new mobile homes or manufactured homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, "mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202 and amendments thereto;

(gg) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(hh) all sales of medical supplies and equipment, including durable medical equipment, purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes. As used in this subsection, "durable medical equipment" means equipment including repair and replacement parts for such equipment, but does not include mobility enhancing equipment as defined in subsection (r) which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury and is not worn in or on the body;

(ii) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(jj) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based mental retardation facility or mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(kk) (1) (A) all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility;

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

(A) "Integrated production operation" means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include:

(i) Production line operations, including packaging operations;

(ii) preproduction operations to handle, store and treat raw materials;

(iii) post production handling, storage, warehousing and distribution operations; and

(iv) waste, pollution and environmental control operations, if any;

(B) "production line" means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs;

(C) "manufacturing or processing plant or facility" means a single, fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. Such term shall not include any facility primarily operated for the purpose of conveying or assisting in the conveyance of natural gas, electricity, oil or water. A business may operate one or more manufacturing or processing plants or facilities at different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail;

(D) "manufacturing or processing business" means a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation.

(i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution.

(ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grinding, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities.

(iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonindustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair tangible personal property for its owner;

(E) "repair and replacement parts and accessories" means all parts and accessories for exempt machinery and equipment, including, but not limited to, dies, jigs, molds, patterns and safety devices that are attached to exempt machinery or that are otherwise used in production, and parts and accessories that require periodic replacement such as belts, drill bits, grinding wheels, grinding balls, cutting bars, saws, refractory brick and other refractory items for exempt kiln equipment used in production operations;

(F) "primary" or "primarily" mean more than 50% of the time.

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;

(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility;

(C) to act upon, effect, promote or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(D) to guide, control or direct the movement of property undergoing manufacturing or processing;

(E) to test or measure raw materials, the property undergoing manufacturing or processing or the finished product, as a necessary part of the manufacturer's integrated production operations;

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(H) to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer's production operation; or, if purchased or delivered from offsite, from the point where the substance enters the site of the plant or facility to that manufacturer's production operations;

(J) to cool, heat, filter, refine or otherwise treat water, steam, acid, oil, solvents or other substances that are used in production operations;

(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

(M) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation.

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation:

(A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development or product design;

(B) machinery and equipment that is utilized by a manufacturing or processing business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations, including tools, dies, molds, forms and other parts of qualifying machinery and equipment;

(C) portable plants for aggregate concrete, bulk cement and asphalt including cement mixing drums to be attached to a motor vehicle;

(D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and

(E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(C) transportation, transmission and distribution equipment not primarily used in a production, warehousing or material handling operation at the plant or facility, including the means of conveyance of natural gas, electricity, oil or water, and equipment related thereto, located outside the plant or facility;

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

(F) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

(H) machinery and equipment used for general plant heating, cooling and lighting;

(I) motor vehicles that are registered for operation on public highways; or

(J) employee apparel, except safety and protective apparel that is purchased by an employer and furnished gratuitously to employees who are involved in production or research activities.

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall determine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

(ll) all sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health;

(mm) all sales of seeds and tree seedlings; fertilizers, insecticides, herbicides, germicides, pesticides and fungicides; and services, purchased and used for the purpose of producing plants in order to prevent soil erosion on land devoted to agricultural use;

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

(oo) all sales of tangible personal property purchased by a community action group or agency for the exclusive purpose of repairing or weatherizing housing occupied by low income individuals;

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing educational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(ss) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station;

(tt) all sales of tangible personal property and services purchased by or on behalf of a not-for-profit corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the sole purpose of constructing a Kansas Korean War memorial;

(uu) all sales of tangible personal property and services purchased by or on behalf of any rural volunteer fire-fighting organization for use exclusively in the performance of its duties and functions;

(vv) all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;

(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;

(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;

(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;

(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;

(7) the Kansas chapters of the Parkinson's disease association for the purpose of eliminating Parkinson's disease through medical research and public and professional education related to such disease; and

(8) the National Kidney Foundation of Kansas and Western Missouri for the purpose of eliminating kidney disease through medical research and public and private education related to such disease;

(ww) all sales of tangible personal property purchased by the Habitat for Humanity for the exclusive use of being incorporated within a housing project constructed by such organization;

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following

the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(bbb) all sales of food for human consumption by an organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof;

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such clinic or center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue;

(eee) on and after January 1, 1999, and before January 1, 2001, all sales of materials and services purchased for the original construction, reconstruction, repair or replacement of grain storage facilities, including railroad sidings providing access thereto;

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state; all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation; and

(ggg) all sales of tangible personal property and services purchased by or on behalf of the Kansas Academy of Science which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and used solely by such academy for the preparation, publication and dissemination of education materials.

HISTORY: L. 1937, ch. 374, § 6; L. 1938, ch. 77, § 1; L. 1941, ch. 382, § 2; L. 1947, ch. 463, § 3; L. 1949, ch. 488, § 1; L. 1957, ch. 509, § 4; L. 1961, ch. 457, § 1; L. 1961, ch. 458, § 1; L. 1963, ch. 494, § 1; L. 1964, ch. 39, § 1 (Budget Session); L. 1965, ch. 534, § 1; L. 1966, ch. 47, § 1 (Budget Session); L. 1967, ch. 500, § 1; L. 1970, ch. 389, § 4; L. 1971, ch. 320, § 1; L. 1971, ch. 321, § 3; L. 1977, ch. 337, § 3; L. 1978, ch. 416, § 1; L. 1978, ch. 415, § 2; L. 1979, ch. 326, § 2; L. 1979, ch. 327, § 1; L. 1980, ch. 323, § 1; L. 1980, ch. 322, § 2; L. 1981, ch. 376, § 5; L. 1981, ch. 391, § 1; L. 1982, ch. 420, § 1; L. 1982, ch. 419, § 1; L. 1982, ch. 421, § 1; L. 1984, ch. 362, § 1; L. 1985, ch. 331, § 1; L. 1986, ch. 384, § 1; L. 1986, ch. 385, § 6; L. 1987, ch. 292, § 32; L. 1987, ch. 64, § 1; L. 1988, ch. 386, § 3; L. 1989, ch. 302, § 1; L. 1991, ch. 33, § 42; L. 1992, ch. 280, § 60; L. 1994, ch. 2, § 4; L. 1994, ch. 325, § 1; L. 1995, ch. 242, § 4; L. 1996, ch. 264, § 7; L. 1997, ch. 126, § 32; L. 1997, ch. 185, § 7; L. 1998, ch. 12, § 27; L. 1998, ch. 130, § 31; L. 1998, ch. 188, § 7; L. 1999, ch. 154, § 6; L. 1999, ch. 154, § 75; L. 2000, ch. 123, § 1;. L. 2000, ch. 140, § 10; L. 2001, ch. 146, § 1; L. 2001, ch. 199, § 3; L. 2003, ch. 147, § 7; July 1.

79-3607. Time for returns and payment of tax; forms; extension of time; exceptions.

(a) Retailers shall make returns to the director at the times prescribed by this section upon forms prescribed and furnished by the director stating:

(1) The name and address of the retailer;

(2) the total amount of gross sales of all tangible personal property and taxable services rendered by the retailer during the period for which the return is made;

(3) the total amount received during the period for which the return is made on charge and time sales of tangible personal property made and taxable services rendered prior to the period for which the return is made;

(4) deductions allowed by law from such total amount of gross sales and from total amount received during the period for which the return is made on such charge and time sales;

(5) receipts during the period for which the return is made from the total amount of sales of tangible personal property and taxable services rendered during such period in the course of such business, after deductions allowed by law have been made;

(6) receipts during the period for which the return is made from charge and time sales of tangible personal property made and taxable services rendered prior to such period in the course of such business, after deductions allowed by law have been made;

(7) gross receipts during the period for which the return is made from sales of tangible personal property and taxable services rendered in the course of such business upon the basis of which the tax is imposed.

The return shall include such other pertinent information as the director may require. In making such return, the retailer shall determine the market value of any consideration, other than money, received in connection with the sale of any tangible personal property in the course of the business and shall include such value in the return. Such value shall be subject to review and revision by the director as hereinafter provided. Refunds made by the retailer during the period for which the return is made on account of tangible personal property returned to the retailer shall be allowed as a deduction under subdivision (4) of this section in case the retailer has theretofore included the receipts from such sale in a return made by such retailer and paid taxes therein imposed by this act. The retailer shall, at the time of making such return, pay to the director the amount of tax herein imposed, except as otherwise provided in this section. The director may extend the time for making returns and paying the tax required by this act for any period not to exceed 60 days under such rules and regulations as the secretary of revenue may prescribe. When the total tax for which any retailer is liable under this act, does not exceed the sum of $80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year. When the total tax liability does not exceed $1,600 in any calendar year, the retailer shall file returns quarterly on or before the 25th day of the month following the end of each calendar quarter. When the total tax liability exceeds $1,600 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. When the total tax liability exceeds $32,000 in any calendar year, the retailer shall be required to pay the sales tax liability for the first 15 days of each month to the director on or before the 25th day of that month. Any

such payment shall accompany the return filed for the preceding month. A retailer will be considered to have complied with the requirements to pay the first 15 days' liability for any month if, on or before the 25th day of that month, the retailer paid 90% of the liability for that fifteen-day period, or 50% of such retailer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs computed at the rate applicable in the month in which the fifteen-day period occurs, and, in either case, paid any underpayment with the payment required on or before the 25th day of the following month. Such retailers shall pay their sales tax liabilities for the remainder of each such month at the time of filing the return for such month. Determinations of amounts of liability in a calendar year for purposes of determining filing requirements shall be made by the director upon the basis of amounts of liability by those retailers during the preceding calendar year or by estimates in cases of retailers having no previous sales tax histories. The director is hereby authorized to modify the filing schedule for any retailer when it is apparent that the original determination was inaccurate.

(b) All model 1, model 2 and model 3 sellers are required to file returns electronically. Any model 1, model 2 or model 3 seller may submit its sales and use tax returns in a simplified format approved by the director. Any seller that is registered under the agreement, which does not have a legal requirement to register in this state, and is not a model 1, model 2 or model 3 seller, may submit its sales and use tax returns as follows:

(1) Upon registration, the director shall provide to the seller the returns required;

(2) seller shall file a return anytime within one year of the month of initial registration, and future returns are required on an annual basis in succeeding years; and

(3) in addition to the returns required in subsection (b)(2), sellers are required to submit returns in the month following any month in which they have accumulated state and local sales tax funds for this state in the amount of $1,600 or more.

HISTORY: L. 1937, ch. 374, § 7; L. 1938, ch. 78, § 1; L. 1965, ch. 533, § 2; L. 1967, ch. 501, § 1; L. 1978, ch. 417, § 1; L. 1983, ch. 331, § 1; L. 1986, ch. 386, § 2; L. 2003, ch. 147, § 8; July 1.

79-3608. Registration certificates; application; display; revocation by director, when; appointment of agent; sellers registering under streamlined sales and use tax agreement.

(a) Except as otherwise provided, it shall be unlawful for any person to engage in the business of selling tangible personal property at retail or furnishing taxable services in this state without a registration certificate from the director of taxation. Application for such certificate shall be made to the director upon forms furnished by the director, and shall state the name of the applicant, the address or addresses at which the applicant proposes to engage in such business, and the character of such business. Utilities taxable under this act shall not be required to register but shall comply with all other provisions of this act. The taxpayer may be registered by an agent. Such appointment of the agent by the taxpayer shall be in writing and submitted to the director. The taxpayer shall be issued a registration certificate to engage in the business for which application is made unless the applicant at the time of making such application owes any sales tax, penalty or interest, and in such case, before a registration certificate is issued, the director of taxation shall require the applicant to pay the amount owed.

(b) A separate registration certificate shall be issued for each place of business, and shall be conspicuously displayed therein.

(c) A seller registering under the agreement is considered registered in this state and shall not be required to pay any registration fees or other charges to register in this state if the seller has no legal requirement to register. A written signature from the seller registering under the agreement is not required. An agent may register a seller under uniform procedures determined by the secretary. A seller may cancel its registration under the system at any time under uniform procedures determined by the secretary. Cancellation does not relieve the seller of its liability for remitting to this state any taxes collected.

HISTORY: L. 1937, ch. 374, § 8; L. 1943, ch. 290, § 8; L. 1947, ch. 463, § 4; L. 1957, ch. 429, § 29; L. 1988, ch. 389, § 3; L. 1992, ch. 198, § 1; L. 2003, ch. 147, § 9; July 1.

79-3609. Books and records; inspection; preservation; actions for collection; refunds and credits; limitations; extension of period for making assessment or filing refund claim; interest on overpayments; payment of certain refunds of tax paid on manufacturing and processing equipment.

(a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption. Any retailer asserting a claim that certain sales are exempt who does not have the required exemption certificates in possession shall acquire such certificates within 60 days after receiving notice from the director that such certificates are required. If such certificates are not obtained within the period set forth herein, the sales shall be deemed to be taxable sales under this act.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. No refund or credit shall be allowed by the director after three years from the date of payment of the tax as provided in this act unless before the expiration of such period a claim therefor is filed by the taxpayer, and no suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing a claim therefor with the director.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) For all taxable periods subject to assessment on January 1, 1998, including periods subject to an agreement to extend the statute of limitations, and for all taxable periods commencing after December 31, 1997, interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the due date of the return if it was timely filed and accompanied by the tax due or, if the return was not timely filed, from the date of payment, except that no interest shall be allowed on any such refund if the same is paid within 60 days after the date of the return or the date of payment, as the case requires.

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

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

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to

any refund exceeding $50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

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

HISTORY: L. 1937, ch. 374, § 9; L. 1947, ch. 463, § 5; L. 1969, ch. 465, § 1; L. 1977, ch. 339, § 1; L. 1988, ch. 386, § 5; L. 1992, ch. 198, § 2; L. 1997, ch. 126, § 2; L. 2000, ch. 123, § 2; July 1.

79-3610. Examination of returns; final determinations; notice; informal conferences; jeopardy assessments. The director of taxation shall examine all returns filed under the provisions of this act, and shall issue final determinations of tax liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto, relating to income taxes. Any determination may be made on the basis of a generally recognized valid and reliable sampling technique, whether or not the person being audited has complete records of transactions and whether or not such person consents. In any such case, the director shall notify the taxpayer in writing of the sampling technique to be utilized, including the design and population of such sample. If the taxpayer demonstrates that any such technique used was not in accordance with generally recognized sampling techniques, the audit shall be dismissed with respect to that portion of the audit based upon such technique, and a new audit shall be performed. Within 60 days after the mailing of notice of the director's determination any taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to such taxpayer's tax liability, including the issue of whether the use of a generally recognized sampling technique achieved a result that was reflective of the taxpayer's actual tax liability, and an informal conference thereon shall be conducted and the secretary of revenue or the secretary's designee shall make a final determination and give the taxpayer notice thereof. In case any person required by the provisions of this act to make a return fails or refuses to do so, the secretary of revenue or the secretary's designee, after notice to such person, shall make a final determination of the amount of such tax according to the best judgment and information of the secretary of revenue or the secretary's designee.

Whenever the director of taxation has reason to believe that a person liable for tax under any provisions of the Kansas retailers' sales tax act is about to depart from the state or to remove such person's property therefrom, or to conceal oneself or such person's property therein, or to do any other act tending to prejudice, jeopardize or render wholly or partly ineffectual the collection of such sales tax unless proceedings be brought without delay, the director shall immediately make an assessment for all sales taxes due from such taxpayer, noting such finding on the assessment. The assessment shall be made on the basis of emergency proceedings in accordance with the provisions of K.S.A. 77-536 and amendments thereto. Thereupon a warrant shall forthwith be issued for the collection of the tax as provided in K.S.A. 79-3235, and amendments thereto. The taxpayer may within 15 days from the date of filing of such warrant request an informal conference with the secretary or the secretary's designee on the correctness of the jeopardy assessment.

HISTORY: L. 1937, ch. 374, § 10; L. 1943, ch. 290, § 9; L. 1947, ch. 463, § 6; L. 1957, ch. 429, § 30; L. 1987, ch. 391, § 1; L. 1988, ch. 356, § 343; L. 1992, ch. 65, § 2; L. 1997, ch. 126, § 12; July 1.

79-3611. Investigations and hearings. For the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any person engaged in the business of selling tangible personal property at retail, or furnishing services taxable hereunder, the director of taxation, or any officer or employee of the director of taxation designated, in writing, may hold investigations and hearings concerning any matters covered by this act, and may examine any books, papers, records, or memoranda bearing upon such sales of any such person, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the director nor any officer or employee thereof shall be bound by the technical rules of evidence, and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order or decision made or

approved by the director. The director, or any officer or employee thereof, shall have power to administer oaths to such persons.

HISTORY: L. 1937, ch. 374, § 11; L. 1957, ch. 429, § 31; July 1.

79-3612. Lien upon property upon sale of business; duties and liability of purchaser. The tax imposed by this act shall be a lien upon the property of any person who shall sell his or her business consisting of tangible personal property. The person acquiring such business or property shall withhold a sufficient amount of the purchase price thereof to cover the amount of any taxes due and unpaid by the seller, until the seller shall furnish the purchaser with a receipt from the director of taxation, as herein provided, showing that such taxes have been paid. The purchaser shall be personally liable for the payment of any unpaid taxes of the seller, to the extent of the value of the property received by the purchaser, and if a receipt is not furnished by such seller within twenty (20) days from the date of sale of such business, the purchaser shall remit the amount of such unpaid taxes to the director of taxation on or before the twentieth (20th) day of the month succeeding that in which he or she acquired such business or property.

HISTORY: L. 1937, ch. 374, § 12; April 9.

79-3613. Sufficiency of notice to taxpayer. All notices required to be mailed to the taxpayer under the provisions of this act, if mailed to him or her at his or her last known address as shown on the records of the director of taxation, shall be sufficient for the purposes of this act.

HISTORY: L. 1937, ch. 374, § 13; April 9.

79-3614. Confidentiality of tax returns and investigations; exceptions. Any information obtained by the department of revenue in connection with administration of the Kansas Retailer's Sales Tax Act is subject to the confidentiality provisions as set forth in K.S.A. 75-5133, and amendments thereto.

HISTORY: L. 1937, ch. 374, § 14; L. 1943, ch. 307, § 4; L. 1977, ch. 186, § 8; L. 1983, ch. 289, § 14; L. 1994, ch. 188, § 4; L. 1997, ch. 126, § 47; July 1.

79-3615. Interest and penalties.

(a) If any taxpayer shall fail to pay the tax required under this act at the time required by or under the provisions of this act, there shall be added to the unpaid balance of the tax, interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968 and amendments thereto from the date the tax was due until paid.

(b) For all taxable years ending prior to January 1, 2002, if any taxpayer due to negligence or intentional disregard fails to file a return or pay the tax due at the time required by or under the provisions of this act, there shall be added to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) For all taxable years ending prior to January 1, 2002, if any person fails to make a return, or to pay any tax, within six months from the date the return or tax was due, except in the case of an extension of time granted by the secretary of revenue or the secretary's designee, there shall be added to the tax due a penalty equal to 25% of the unpaid balance of such tax due. Notwithstanding the foregoing, in the event an assessment is issued following a field audit for any period for which a return was filed by the taxpayer and all of the tax was paid pursuant to such return, a penalty shall be imposed for the period included in the assessment in the amount of 10% of the unpaid balance of tax due shown in the notice of assessment. If after review of a return for any period included in the assessment, the secretary or secretary's designee determines that the underpayment of tax was due to the failure of the taxpayer to make a reasonable attempt to comply with the provisions of this act, such penalty shall be imposed for the period included in the assessment in the amount of 25% of the unpaid balance of tax due.

(d) For all taxable years ending after December 31, 2001, if any taxpayer fails to file a return or pay the tax if one is due, at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to 1% of the unpaid balance of the tax due for each month or fraction thereof during which such failure continues, not exceeding 24% in the aggregate, plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid. Notwithstanding the foregoing, in the event an assessment is issued following a field audit for any period for which a return was filed by the taxpayer and all of the tax was paid pursuant to such return, a penalty shall be imposed for the period included in the assessment in an amount of 1% per month not exceeding 10% of the unpaid balance of tax due shown in the notice of assessment. If after review of a return for any period included in the assessment, the secretary or secretary's designee determines that the underpayment of tax was due to the failure of the taxpayer to make a reasonable attempt to comply with the provisions of this act, such penalty shall be imposed for the period included in the assessment in the amount of 25% of the unpaid balance of tax due.

(e) If any taxpayer, with fraudulent intent, fails to pay any tax or make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, there shall be added to the tax a penalty in an amount equal to 50% of the unpaid balance of tax due.

(f) Penalty or interest applied under the provisions of subsections (a) and (d) shall be in addition to the penalty added under any other provisions of this section, but the provisions of subsections (b) and (c) shall be mutually exclusive of each other.

(g) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (a), (b), (c) and (d) of this section was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of the penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

(h) In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under the Kansas retailers' sales tax act, or who makes a false or fraudulent return, or fails to keep any books or records prescribed by this act, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of this act, or who aids and abets another in attempting to evade the payment of any tax imposed by this act, or who violates any other provision of this act, shall, upon conviction thereof, be fined not less than $500, nor more than $10,000, or be imprisoned in the county jail not less than one month, nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

(i) No penalty assessed hereunder shall be collected if the taxpayer has had the tax abated on appeal, and any penalty collected upon such tax shall be refunded.

HISTORY: L. 1937, ch. 374, § 15; L. 1938, ch. 79, § 1; L. 1980, ch. 308, § 24; L. 1982, ch. 422, § 1; L. 1988, ch. 390, § 1; L. 1989, ch. 291, § 6; L. 1994, ch. 95, § 6; L. 1997, ch. 126, § 20; L. 2000, ch. 184, § 19; July 1.

79-3616. Bond requirements; amount. When, in the judgment of the director of taxation after evidence is documented relating to the probable risk in the ability of the person to collect and remit taxes as required by this act, it is necessary, in order to secure the collection of any tax, penalties or interest due, or to become due, the director may require any person subject to such tax to file a bond with the director of taxation in such form and amount as the director of taxation may prescribe. In any such case, any person who is required to report and pay sales tax liability on an annual basis shall only be required to file a bond in the amount of $25.

HISTORY: L. 1937, ch. 374, § 16; L. 1987, ch. 392, § 1; L. 1988, ch. 389, § 2; July 1.

79-3617. Collection of delinquent taxes; tax lien. Whenever any taxpayer liable to pay any sales or compensating tax, refuses or neglects to pay the tax, the amount, including any interest or penalty, shall be collected in the following manner. The secretary of revenue or the secretary's designee shall issue a warrant under the hand of the secretary or the secretary's designee and official seal directed to the sheriff of any county of the state commanding the sheriff to levy

upon and sell the real and personal property of the taxpayer found within the sheriff's county to satisfy the tax, including penalty and interest, and the cost of executing the warrant and to return such warrant to the secretary or the secretary's designee and pay to the secretary or the secretary's designee the money collected by virtue thereof not more than 90 days from the date of the warrant. Firearms seized may be appraised and disposed of in the same manner prescribed in K.S.A. 79-5212, and amendments thereto. The sheriff shall, within five days, after the receipt of the warrant file with the clerk of the district court of the county a copy thereof, and thereupon the clerk shall either enter in the appearance docket the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of it, interest and penalties for which the warrant is issued and the date such copy is filed and note the taxpayer's name in the general index. No fee shall be charged for either such entry. The amount of such warrant so docketed shall thereupon become a lien upon the title to, and interest in, the real property of the taxpayer against whom it is issued. The sheriff shall proceed in the same manner and with the same effect as prescribed by law with respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services.

The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in the court. A warrant of similar terms, force and effect may be issued by the secretary or the secretary's designee and directed to any officer or employee of the secretary or the secretary's designee, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs with respect to executions issued against property upon judgments of a court of record and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The taxpayer shall have the right to redeem the real estate within a period of 18 months from the date of such sale. If a warrant is returned, unsatisfied in full, the secretary or the secretary's designee shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the taxpayer for the amount of the tax. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a levy and sale under any of the warrants or upon any execution issued upon any judgment rendered in any action for sales or compensating taxes. Except as provided further, the secretary or the secretary's designee shall have the right after a warrant has been returned unsatisfied, or satisfied only in part, to issue alias warrants until the full amount of the tax is collected. No costs incurred by the sheriff or the clerk of the court shall be charged to the secretary or the secretary's designee.

If execution is not issued within 10 years from the date of the docketing of any such warrant, or if 10 years shall have intervened between the date of the last execution issued on such warrant, and the time of issuing another writ of execution thereon, such warrant shall become dormant, and shall cease to operate as a lien on the real estate of the delinquent taxpayer. Such dormant warrant may be revived in like manner as dormant judgments under the code of civil procedure.

HISTORY: L. 1937, ch. 374, § 17; L. 1953, ch. 448, § 1; L. 1976, ch. 145, § 245; L. 1977, ch. 109, § 42; L. 1984, ch. 147, § 23; L. 1989, ch. 291, § 9; L. 1998, ch. 130, § 35; July 1.

79-3618. Administration; rules and regulations; payment upon basis of gross receipts, when; appointment of agents and employees; abatement of taxes.

(a) The secretary of revenue or the secretary's designee shall administer and enforce this act. The secretary shall adopt rules and regulations for the administration of this act. The secretary or the secretary's designee may upon application of any taxpayer give such applicant the privilege of paying the tax levied by this act upon the basis of gross receipts accrued but not received provided such applicant's books are regularly kept on such basis. The secretary or the secretary's designee shall appoint agents and employees for the enforcement and administration of this act.

(b) The secretary of revenue or the secretary's designee may abate all or part of any final sales tax and compensating tax liabilities in the same manner and to the same extent as provided for final income tax liabilities at K.S.A. 79-3233a through K.S.A. 79-3233i, and amendments thereto.

HISTORY: L. 1937, ch. 374, § 18; L. 1972, ch. 342, § 112; L. 1989, ch. 291, § 10; L. 1999, ch. 94, § 7; July 1.

CHAPTER 79. TAXATION
ARTICLE 37. KANSAS COMPENSATING TAX

79-3704. Exemptions. The provisions of this act shall not apply:

(a) In respect to the use, storage or consumption of any article of tangible personal property brought into the state of Kansas by a nonresident who is within the state for not to exceed sixty (60) days for his or her use or enjoyment while within the state; or by a railroad or public utility for consumption or movement in interstate commerce;

(b) In respect to the use, storage or consumption of tangible personal property purchased other than at retail; as defined in K.S.A. 79-3602;

(c) In respect to the use, storage or consumption of any article of tangible personal property the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this act whether under the laws of this state or of some other state of the United States;

(d) In respect to the use, storage or consumption of any article of tangible personal property brought into or used within the state of Kansas if such article of tangible personal property would not have been subject to tax under the provisions of the retailers' sales tax act of this state if purchased within this state.

HISTORY: L. 1937, ch. 375, § 4; L. 1945, ch. 370, § 4; L. 1967, ch. 503, § 1; April 29.

CHAPTER 80. TOWNSHIPS AND TOWNSHIP OFFICERS
ARTICLE 25. HOSPITALS AND HEALTH CARE FACILITIES
HOSPITALS

80-2501. Definitions. As used in this act:

(a) "Board" means a hospital board which is selected in accordance with the provisions of this act and which is vested with the management and control of an existing hospital or a hospital established under the provisions of this act;

(b) "hospital" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto and includes within its meaning any clinic, long-term care facility, limited care residential retirement facility, child-care facility, emergency medical or ambulance service operated in connection with the operation of the medical care facility and joint enterprises for the provision of health care services operated in connection with the operation of the medical care facility;

(c) "hospital moneys" means, but is not limited to, moneys acquired through the issuance of bonds, the levy of taxes, the receipt of grants, donations, gifts, bequests, interest earned on investments authorized by this act and state or federal aid and from fees and charges for use of and services provided by the hospital;

(d) "existing hospital" means a hospital established under the provisions of article 21 of chapter 80 of Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto prior to the effective date of this act and being maintained and operated on the effective date of this act;

(e) "political subdivision" means a township, a city or a hospital district established under the provisions of article 21 of chapter 80 of Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto prior to the effective date of this act or established under this act;

(f) "qualified elector" means any person who has been a bona fide resident within the territory included in the taxing district of a hospital for 30 days prior to the date of any annual meeting or election provided for in this act and who possesses the qualifications of an elector provided for in the laws governing general elections;

(g) As used in this section, a "limited care residential retirement facility" means a facility, other than an adult care home, in which there are separate apartment-style living areas, bedrooms, bathrooms and individual utilities; which facility is available only to individuals 55 years of age or older; and which facility has at least the following characteristics:

(1) A common recreational and dining area;

(2) planned recreation and social gatherings;

(3) laundry facilities or services and housecleaning services;

(4) special dietary programs providing at least one meal per day;

(5) organized wellness programs;

(6) a 24-hour emergency call system in each unit staffed by the hospital district;

(7) a nursing staff from the hospital district on 24-hour call for residents; and

(8) availability of additional health related services, laundry services, housekeeping, means for individuals with special or additional needs;

(h) "joint enterprise" means a business undertaking by a hospital and one or more public or private entities for the provision of health care services.

HISTORY: L. 1984, ch. 374, § 1; L. 1991, ch. 289, § 1; L. 2003, ch. 51, § 3; July 1.

80-2502. Existing hospitals and districts governed by act; exceptions.

(a) Any existing hospital district and any existing hospital established under the laws of this state prior to the effective date of this act are hereby continued in existence and shall be governed in accordance with the provisions of this act, and any existing board shall be deemed to be the board for purposes of this act unless and until a new board is selected in accordance with the provisions of this act.

(b) This act shall not affect any judicial proceeding pending or any contract, tax levy, bond issuance or other legal obligation existing on the effective date of this act.

HISTORY: L. 1984, ch. 374, § 2; July 1.

80-2503. Hospital districts in adjoining political subdivisions; procedure to establish; petition and election; inclusion of territory in existing districts, when.

(a) Any two or more adjoining political subdivisions are hereby authorized to join in the establishment of a hospital district and in the acquisition, construction or reconstruction, improvement, enlargement, remodeling or repairing of a hospital within such hospital district and in the operation and maintenance of any such hospital.

(b) Upon the presentation to the board of commissioners of the county in which such political subdivisions, or the greater portion of the territory thereof, are located, of a petition setting forth the boundaries of the proposed hospital district and requesting the formation of such hospital district, and stating that a person who has signed the petition may withdraw such person's name from the petition by giving written notice thereof at any time within three days following the date of signing the petition, excluding Saturdays, Sundays and legal holidays to the county election officer of the county in which such political subdivision, or the greater portion of the territory of the proposed district, is located, signed by not less than 51% of the qualified electors of the proposed district and who reside within the limits of each political subdivision proposing to join in the establishment of the hospital district, the sufficiency of such petitions to be

determined by an enumeration taken and verified for this purpose by the county election officer of the county in which such political subdivision, or the greater portion of the territory of the proposed district, is located, it shall be the duty of the board of county commissioners, at its next regular meeting, to examine the petition. If the board of county commissioners finds that the petition is sufficient, regular and in due form as is provided in this section, such board shall enter an order in its proceedings establishing the hospital district. If any political subdivision within the territory of the proposed district owns and is operating a hospital at the time the petitions are filed, the petitions shall be accompanied by a copy of a resolution adopted by the governing body of the political subdivision within such district which owns the hospital, which resolution shall state that the political subdivision agrees to convey the hospital together with all the hospital equipment and the tract of land upon which the hospital is located to and for the use of the proposed hospital district. The governing body of the political subdivision is hereby authorized and directed to adopt such a resolution and to make such conveyance.

(c) Territory included within the boundaries of an existing hospital district operating and maintaining a hospital shall not be included in a new hospital district unless a majority of the qualified electors of the existing hospital district voting at an election vote to be included in such new hospital district. Such election shall be held in conformity with statutes applicable to question submitted elections.

HISTORY: L. 1984, ch. 374, § 3; July 1.

80-2504. Same; hospital board; election; notice; term; annual meeting. Upon the establishment of a hospital district, the board of county commissioners shall cause a notice to be published, once each week for two consecutive weeks, in a newspaper of general circulation in the hospital district stating that a meeting of the qualified electors of such hospital district will be held at the time and place fixed in the notice for the purpose of electing the first board for such district. The last publication of such notice shall be made not more than six days prior to the date fixed for the holding of the meeting. The cost of such publication shall be borne equally by the political subdivisions joining in the establishment of the hospital district and paid from the respective general funds thereof. At the time and place fixed for the holding of the meeting, the chairperson of the board of county commissioners, or a person designated by the chairperson, shall call such meeting to order and the qualified electors of the hospital district shall proceed to elect a chairperson and a secretary for the meeting. Thereupon, the qualified electors shall proceed to:

(a) Provide for the establishment of a board to be vested with the management and control of the hospital and fix the number of members thereof in accordance with the provisions of subsection (a) of K.S.A. 80-2506;

(b) elect by ballot the members of the first board to serve for designated terms of one, two and three years and until the selection and qualification of their successors who shall be selected in a manner to be determined at the meeting; and

(c) determine the date, time and place of annual meetings of the qualified electors which date, time and place shall be incorporated into the bylaws adopted by the board.

HISTORY: L. 1984, ch. 374, § 4; July 1.

80-2505. Same; transfer of hospital, property and funds to district. Upon the selection and organization of the first board, the governing body of any political subdivision joining in the establishment of the hospital district which owns and is operating a hospital at the time the petitions for the organization of such hospital district were filed, shall convey or lease its hospital and the tract of land upon which the hospital is located and all the hospital equipment to the hospital district established under the provisions of this act, which conveyance or lease shall take effect upon the delivery and acceptance of the hospital by the hospital district. The governing body of any such political subdivision shall pay over to the treasurer of the hospital district all the unencumbered moneys in the hospital fund of such political subdivision on January 1, and the treasurer shall place the moneys in the operation and maintenance fund of such hospital district. If any such political subdivision has accumulated and set aside funds for the construction of an addition to the hospital owned, operated and conveyed or leased by it or for the purpose of constructing and equipping a new hospital, or for other like purposes, the governing body of such political subdivision shall pay over to the treasurer of the hospital district all such funds on hand on January 1, and the treasurer of the hospital district shall place the same in a

special building fund to be used exclusively for the purpose of constructing and equipping an addition to the hospital or for the acquisition of a site and the construction and equipping of a new hospital or for the acquisition of any other hospital within the hospital district; and the funds may be used in addition to any other funds of the hospital district raised for such purposes by the issuance of bonds or the levying of taxes.

HISTORY: L. 1984, ch. 374, § 5; July 1.

80-2506. Hospital districts in adjoining political subdivisions; increase in membership of board; procedure; petition; election; terms of new members; vacancies.

(a) Every hospital shall be governed by a board composed of members who are qualified electors. The board shall be composed of three, five, seven or nine members. Whenever the number of members of a board is increased, the expiration of the terms of the members selected for the new positions on the board shall be fixed to coincide with the expiration of the terms of the members serving on the board at the time of the creation of the new positions so that not more than a simple majority of the members of the board is selected at the same time.

(b) Upon presentation to the board of commissioners of the county in which the hospital district, or the greater portion of the territory thereof, is located, of a petition requesting a change in the number of board members signed by not less than 5% of the qualified electors of the district, it shall be the duty of the board of county commissioners, at its next regular meeting, to examine the petition. The petition shall set forth the requested number of board members. If the board of county commissioners finds that the petition is sufficient and regular and in due form as is provided in this section, the board of county commissioners shall direct the county election officer of the county to prepare ballots for a special election, including ballots for that portion of the district located in any other county. The county election officers of each county shall present the question to the qualified voters of the district at the next general election in the counties, and the board of county commissioners of each county shall certify the results of the votes cast in the county to the board of county canvassers in the county in which the ballots were prepared. The change in number shall become effective at the next election for board members if a majority of the qualified electors voting on the question vote in favor of the change in number of board members.

(c) Subject to the provisions of subsection (b) of K.S.A. 80-2508, and amendments thereto, members of the board of every existing hospital shall serve as members of such board for the terms for which they were selected and until their successors are selected and qualified. Except as provided by subsection (a)(4) of K.S.A. 80-2508, and amendments thereto, successors to such members shall be selected to serve for a term of three years.

(d) Terms of members of the first board of any hospital established under the provisions of this act shall be as provided for in subsection (b) of K.S.A. 80-2504, and amendments thereto, and shall be staggered so that terms of not more than a simple majority of the members expire at the same time. Thereafter, except as provided by subsection (a)(4) of K.S.A. 80-2508, and amendments thereto, upon the expiration of terms of members first selected, successors to such members shall be selected to serve for terms of three years.

(e) Vacancies in the membership of a board occasioned by death, removal, resignation or any reason other than expiration of a term shall be filled for the unexpired term by appointment by the chairperson of the board with the advice and consent of the remaining members of the board.

HISTORY: L. 1984, ch. 374, § 6; L. 1987, ch. 397, § 1; July 1.

80-2507. Same; selection of members of board of existing hospital. Members of the board of every existing hospital shall be selected in accordance with the following:

(a) Every board which is being selected on the effective date of this act in the manner provided for in K.S.A. 80-2102, which section is repealed by this act, shall continue to be selected in such manner until changed in accordance with law.

(b) Every board which is being selected on the effective date of this act in the manner provided for in K.S.A. 80-2121, which section is repealed by this act, shall continue to be selected in such manner until changed in accordance with law.

(c) Every board which is being selected on the effective date of this act in the manner provided for in K.S.A. 80-2141, which section is repealed by this act, shall continue to be selected in such manner until changed in accordance with law.

(d) Every board which is being selected on the effective date of this act in the manner provided for in K.S.A. 80-2164, which section is repealed by this act, shall continue to be selected in such manner until changed in accordance with law.

(e) Every board which is being selected on the effective date of this act in the manner provided for in K.S.A. 80-2187, which section is repealed by this act, shall continue to be selected in such manner until changed in accordance with law.

(f) Every board which is being selected on the effective date of this act in the manner provided for in K.S.A. 80-21,109, which section is repealed by this act, shall continue to be selected in such manner until changed in accordance with law.

(g) Every board which is being selected on the effective date of this act in the manner provided for in K.S.A. 80-2132g, which section is repealed by this act, shall continue to be selected in such manner until changed in accordance with law.

HISTORY: L. 1984, ch. 374, § 7; July 1.

80-2508. Methods to select members of board; qualifications; ballots.

(a) Subject to the limitations provided in this act, any of the four methods described in this section may be used in the selection of members of boards. The four methods are:

(1) Elections of board members shall be held at the annual meeting of the qualified electors of the hospital district for the positions on the board which are to expire in such year.

(2) Board members shall be appointed by the governing bodies of the political subdivisions joining in the operation and maintenance of the hospital.

(3) (A) Elections of board members for three-year terms shall be held on the first Tuesday in April of each year for the positions on the board which are to expire in such year. All positions shall be at-large. Each board member shall take office on the May 1 following the date of election.

(B) Any person desiring to become a candidate for board member shall file with the county election officer of the county in which the political subdivisions joining in the operation and maintenance of the hospital, or the greater portion of the area thereof, are located, before the filing deadline specified in K.S.A. 25-2109, and amendments thereto, either a petition signed by not less than 50 electors eligible to vote for a candidate or a declaration of intent to become a candidate together with a filing fee in the amount of $10.

(C) The county election officer of the county specified in paragraph (B) shall prepare the ballots for such election including ballots for that portion of the district located in any other county. The county election officers of each county shall conduct the election in their respective counties, and the board of county canvassers of each such county shall certify the results of the votes cast in its county to the board of county canvassers in the county in which the ballots for the election were prepared.

(D) Ballots shall be prepared in such manner that each voter is instructed to vote for the same number of candidates as the number of positions to be filled. Such instruction shall specify that the voter may vote for fewer than the total number of candidates for which the voter is qualified to vote.

(E) Where not in conflict with this provision of this subsection, the laws applicable to the election of city officers shall apply to the election of members of the board.

(4) (A) Elections of board members for four-year terms shall be held on the first Tuesday in April of each year for the positions on the board which are to expire in such year. All positions shall be at-large. Each board member shall take office on the May 1 following the date of election.

(B) Any person desiring to become a candidate for board member shall file with the county election officer of the county in which the political subdivisions joining in the operation and maintenance of the hospital, or the greater portion of the area thereof, are located, before the filing deadline specified in K.S.A. 25-2109, and amendments thereto, either a petition signed by not less than 50 electors eligible to vote for a candidate or a declaration of intent to become a candidate together with a filing fee in the amount of $ 10.

(C) The county election officer of the county specified in paragraph (B) shall prepare the ballots for such election including ballots for that portion of the district located in any other county. The county election officers of each county shall conduct the election in their respective counties, and the board of county canvassers of each such county shall certify the results of the votes cast in its county to the board of county canvassers in the county in which the ballots for the election were prepared.

(D) Ballots shall be prepared in such manner that each voter is instructed to vote for the same number of candidates as the number of positions to be filled. Such instruction shall specify that the voter may vote for fewer than the total number of candidates for which the voter is qualified to vote.

(E) Where not in conflict with this provision of this subsection, the laws applicable to the election of city officers shall apply to the election of members of the board.

(b) If the method of selection of members of the board of any hospital is the method provided for in provision (1) or provision (2) of subsection (a), such method of selection may be changed to the method provided for in provision (3) or provision (4) of subsection (a) by majority vote of the qualified electors voting at an annual meeting thereof. Whenever the method of selection of members of a board is changed to the method provided for in provision (3) or provision (4) of subsection (a), the term of each member serving on the board at the time of the change of method of selection shall expire on May 1 of the year in which the term of such member is to expire, except that for the purpose of electing members to the board at a time to coincide with elections for other purposes, the board may extend the term of any member for not to exceed one year from the date such member's term would otherwise expire and the board of Sublette hospital district may change prior to the election the length of term for one member to be elected at the 1997 election from four years to two years. If the members of the board are currently selected pursuant to provision (3) of subsection (a), the method of selection may be changed to the method provided for in provision (4) of subsection (a) by a majority vote of the board members.

HISTORY: L. 1984, ch. 374, § 8; L. 1987, ch. 397, § 2; L. 1995, ch. 107, § 1; L. 1996, ch. 190, § 1; July 1.

80-2509. Same; hospital board; oath; organization; treasurer's bond; meetings; records and reports.

(a) Members of the board, within 10 days after their selection, shall qualify by taking the oath or affirmation of civil officers as provided for in article 1 of chapter 54 of Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto. Annually, the board shall organize by electing from its membership a chairperson and a vice-chairperson. The board shall appoint, from within or without its membership, a secretary and a treasurer who shall hold office at the pleasure of the board. No bond need be required of any member of the board except the treasurer.

(b) The treasurer, before entering upon the duties of office, shall give an official bond in an amount to be determined by the board.

(c) The board shall hold meetings at least once each month, and shall keep and maintain a complete record of all its proceedings and an accurate record of all qualified electors attending each meeting. Such records shall be available for public inspection upon request. A simple majority of the members serving on the board shall constitute a quorum for the transaction of business.

(d) The board shall make a report to the qualified electors at each annual meeting thereof, which report shall contain:

(1) A statement of all receipts and expenditures during the calendar year immediately preceding such annual meeting;

(2) a statement of the proceedings of the board which have been had since the last annual meeting; and

(3) such other information as the board shall deem advisable.

HISTORY: L. 1984, ch. 374, § 9; July 1.

80-2510. Same; hospital board; compensation; expenses. Members of the board may be allowed compensation by majority vote of the qualified electors voting at an annual meeting and, if allowed, such compensation shall be in an amount determined by the qualified electors voting at the annual meeting. If compensation is allowed, the board may allow the secretary additional compensation. All members may also be reimbursed for any actual and necessary personal expenses incurred as a member of the board, including an allowance for mileage, in the amount fixed under K.S.A. 75-3203 and amendments thereto for each mile actually traveled while engaged in hospital business. An itemized statement of all such expenses and money paid out shall be kept and maintained and shall be filed with the secretary of the board who shall keep and maintain the same as a part of the public records of the hospital.

HISTORY: L. 1984, ch. 374, § 10; July 1.

80-2511. Powers and duties of hospital board; bylaws; rules and regulations; expenditures and investments; hospital administrator and employees, appointment, bond and benefit plans.

(a) The board shall make and adopt such bylaws, rules and regulations for the management and control of the hospital as it deems necessary so long as the same are not inconsistent with this act, the statutes of the state of Kansas and the ordinances or resolutions of any political subdivision included in the area which constitutes the taxing district of the hospital. The board shall have the exclusive control of the expenditures of all hospital moneys and all expenditures shall be subject to the approval of a majority of the members of the board. The board is authorized to invest in any mutual insurance company organized by an association of health care providers to which the hospital belongs, enter into contracts with such company, pay any assessments pursuant to such contracts and arrange for the issuance of a letter of credit by any bank chartered by this state or which is a member bank of the federal reserve system.

(b) The board is charged with the supervision, care and custody of all hospital property. The board is authorized to appoint an administrator, to fix the compensation thereof, and to remove such administrator. The board may expend funds for the recruitment or retention of staff and such expenditures may include, but are not limited to:

(1) The expenditure of funds for the provision of loans or scholarships to aid in financing the education of persons who agree, upon completion of their education, to become members of the staff; and

(2) the purchase of professional liability insurance for such staff.

(c) The board may require personal or surety bonds of all hospital employees entrusted with the handling of hospital moneys, such bonds to be in an amount to be determined and approved by the board. The board may establish and fund pension and deferred compensation plans and any other employee benefit plans for hospital employees and may procure

contracts insuring hospital employees, their dependents, or any class or classes thereof, under a policy or policies covering one or more risks including, but not limited to, a policy or policies of life, disability income, health, accident, accidental death and dismemberment, and hospital, surgical and medical expense insurance or may provide for a plan of self-insurance for such purposes. The employee's contribution, if any, to the plan and to the premiums for insurance and for any expenses incurred by the board under a plan of self-insurance may be deducted by the employer from the employee's salary when authorized in writing by the employee.

HISTORY: L. 1984, ch. 374, § 11; L. 1988, ch. 147, § 13; L. 1991, ch. 66, § 9; July 1.

80-2512. Same; annual meeting of electors of district; notice.

(a) An annual meeting of the qualified electors who reside within the taxing district of the hospital shall be held on the date and at the time and place determined at the first meeting of the qualified electors in accordance with the provisions of subsection (c) of K.S.A. 80-2504 or determined at the first annual meeting of the qualified electors held after the effective date of this act. The date, time and place of annual meetings so determined shall be incorporated into the bylaws adopted by the board.

(b) The board shall give notice of every annual meeting by causing a notice to be published, once each week for two consecutive weeks, in a newspaper of general circulation in the taxing district of the hospital, the last publication of such notice to be made not more than six days prior to the date of holding the meeting. All notices shall include the time and place of the meeting.

HISTORY: L. 1984, ch. 374, § 12; July 1.

80-2513. Same; bonds; election; use of proceeds; debt limitation.

(a) The board of any hospital is hereby authorized to issue bonds of the taxing district of the hospital for the purpose of providing funds to be used for acquiring a site, constructing and equipping of a hospital building in the manner and subject to the requirements and limitations set forth in subsections (c), (d) and (e).

(b) Such board is hereby authorized to issue bonds of the taxing district for the purpose of providing funds to be used to reconstruct, build an addition to, or improve or equip an existing hospital building, or the purchase of improved or unimproved real estate for the use of the hospital, or for any one or more of such purposes in the manner and subject to the requirements and limitations set forth in subsections (c), (d) and (e).

(c) No bonds shall be issued under authority of this section unless and until the question of the issuance of same has been submitted to the qualified electors of such taxing district at a special election called for that purpose and a majority of those voting on the proposition shall have declared by their votes to be in favor of the issuance of the same. The board shall have power to call such special election, and notice thereof shall be given pursuant to the provisions of K.S.A. 10-120 and amendments thereto; and the election returns of the special election shall be made to the secretary and be canvassed by the board.

(d) All bonds issued under the authority conferred by this section shall be issued, registered, sold, delivered and retired in accordance with the provisions of the general bond law, and such bonds and the interest thereon shall be paid by general tax to be levied upon all the taxable tangible property within the taxing district of the hospital, including all territories attached as provided in K.S.A. 80-2522.

(e) At no time shall the total bonded indebtedness of any such taxing district exceed 15% of the assessed value of all of the taxable tangible property within the district as shown by the assessment books of the year next preceding the one in which a new issue of bonds is proposed to be made.

HISTORY: L. 1984, ch. 374, § 13; July 1.

80-2514. Same; construction projects; bids. No hospital building or addition shall be erected or constructed until the plans and specifications have been made therefor, adopted by the board, and bids advertised for according to law for county buildings.

HISTORY: L. 1984, ch. 374, § 14; July 1.

80-2515. Same; construction projects; architect; contracts; bids. The board shall have charge of the construction, erection, purchase and equipping of any hospital or addition to any hospital and shall employ an architect to prepare the plans and specifications, and to superintend the erection and construction thereof. The architect may be paid out of the proceeds of any bonds issued to provide funds for the erection or construction of such hospital or hospital addition. The architect shall file such plans and specifications, together with an estimate of the cost thereof, under oath, with the secretary of the board. No contract shall be awarded at a price in excess of such estimated costs. After considering and approving the plans and specifications prepared and filed, the board shall advertise for three consecutive weeks, in a newspaper of general circulation in the taxing district of the hospital, for sealed proposals for the doing of such work, in accordance with the plans and specifications therefor, and such contract shall be let to the lowest responsible bidder, the board reserving the right to reject any or all bids. Each bidder shall accompany the bid with a bid bond for 5% thereof issued by a surety company authorized to do business in the state of Kansas or a certified check for 5% thereof payable to the treasurer of the board, as a guaranty that if the contract is awarded to such bidder, such bidder will enter into a contract with the board to perform the same; and if such bidder fails to enter into such contract when awarded, the amount deposited shall be and become the property of the hospital, as liquidated damages, and shall be paid into the operation and maintenance fund of the hospital. The board may require the contractor to give to it a bond guaranteeing the faithful performance of the contract.

HISTORY: L. 1984, ch. 374, § 15; July 1.

80-2516. Same; levy for hospital; limit; increase in levy; election required; distribution of tax revenue.

(a) The board may determine and fix an annual tax to be levied for the purpose of operating, equipping, maintaining and improving the hospital. Subject to the provisions of subsection (b), such tax shall not exceed two mills or the amount authorized to be levied in the year 1983, whichever is the greater amount. The board shall certify such levy to the county clerk of the county wherein the greater portion of territory of the taxing district is located. The county clerk to whom the levy is certified shall certify the final tax levy rate computed pursuant to K.S.A. 79-1803 and amendments thereto of such taxing district to the county clerk of every other county in which a part of the territory of such taxing district is located. Such tax levy shall be in addition to all other tax levies authorized or limited by law and shall not be subject to the aggregate tax levy limitation imposed by law upon the political subdivision.

(b) No levy in excess of the limitation imposed under subsection (a) shall be made unless and until the board shall adopt a resolution authorizing a levy therefor in excess thereof. Thereafter such levy in an amount not to exceed that specified in the resolution may be made unless a petition in opposition thereto, signed by not less than 5% of the qualified electors of the taxing district, is filed with the county election officer of the county in which the greater portion of the area of such taxing district is located. In the event a petition in opposition to such levy is filed hereunder, no levy in excess of the amount previously authorized shall be made until the question of making the same has been submitted to the qualified electors of the taxing district at a special election called for that purpose and a majority of those voting thereon shall have voted in favor thereof. All such elections shall be called and held in the manner provided for the calling and holding of elections upon the question of the issuance of bonds under the general bond law.

(c) All taxes collected for a hospital district shall be distributed and paid to the treasurer of the board of such hospital district in the manner provided for distribution of taxes pursuant to K.S.A. 12-1678a and amendments thereto. The treasurer of the hospital district upon receiving such money shall issue a receipt to the county treasurer and the county clerk of the county sending such money. The county clerk of the county sending such money, upon receiving such a receipt, shall notify the board of county commissioners of such county, and it shall give the county treasurer proper credit therefor.

HISTORY: L. 1984, ch. 374, § 16; July 1.

80-2517. Same; lease of hospital property; contracts for management of hospital; authority to sue.

(a) The board may enter into written contracts for:

(1) The lease of any hospital property to any person, corporation, society or association upon such terms and conditions as deemed necessary by the board;

(2) the lease of real property to be used for hospital purposes from any person, corporation, society or association upon such terms and conditions as deemed necessary by the board;

(3) the lease of personal property from any person, corporation, society or association upon such terms and conditions as deemed necessary by the board. Any such contract may provide for the payment as compensation for use of such personal property a sum substantially equivalent to or in excess of the value of the personal property under an agreement that the hospital shall become, or for no further or a merely nominal consideration has the option of becoming, the owner of the personal property upon full compliance with the provisions of the contract;

(4) the management of any hospital with any person, corporation, society or association upon such terms and conditions as deemed necessary by the board.

(b) The board may sue in its own name or in the name of the hospital. The board may be sued and may defend any action brought against it or the hospital.

(c) The board is not subject to the cash-basis law.

HISTORY: L. 1984, ch. 374, § 17; July 1.

80-2518. Hospital districts; hospital moneys; gifts and other donations; investment of moneys; financial records; transfer of moneys or property to not-for-profit corporation.

(a) All hospital moneys, except moneys acquired through the issuance of revenue bonds, shall be paid to the treasurer of the board, shall be allocated to and accounted for in separate funds or accounts of the hospital, and shall be paid out only upon claims and warrants or warrant checks as provided in K.S.A. 10-801 to 10-806, inclusive, and K.S.A. 12-105a and 12-105b, and amendments to these statutes. The board may designate a person or persons to sign such claims and warrants or warrant checks.

(b) The board may accept any grants, donations, bequests or gifts to be used for hospital purposes and may accept federal and state aid. Such moneys shall be used in accordance with the terms of the grant, donation, bequest, gift or aid and if no terms are imposed in connection therewith such moneys may be used to provide additional funds for any improvement for which bonds have been issued or taxes levied.

(c) Hospital moneys shall be deemed public moneys and hospital moneys not immediately required for the purposes for which acquired may be invested in accordance with the provisions of K.S.A. 12-1675 and amendments thereto. Hospital moneys acquired through the receipt of grants, donations, bequests or gifts and deposited pursuant to the provisions of K.S.A. 12-1675 and amendments thereto need not be secured as required under K.S.A. 9-1402 and amendments thereto. In addition, hospital moneys may be invested in joint enterprises for the provision of health care services as permitted by subsection (b) of K.S.A. 80-2501 and amendments thereto.

(d) Hospital moneys which are deposited to the credit of funds and accounts which are not restricted to expenditure for specified purposes may be transferred to the general fund of the hospital and used for operation of the hospital or to a special fund for additional equipment and capital improvements for the hospital.

(e) The board shall keep and maintain complete financial records in a form consistent with generally accepted accounting principles, and such records shall be available for public inspection at any reasonable time.

(f) Notwithstanding subsections (a) to (e), inclusive, the board may transfer any moneys or property a hospital receives by donation, contribution, gift, devise or bequest to a Kansas not-for-profit corporation which meets each of the following requirements:

(1) The corporation is exempt from federal income taxation under the provisions of section 501(a) by reason of section 501(c)(3) of the internal revenue code of 1954, as amended;

(2) the corporation has been determined not to be a private foundation within the meaning of section 509(a)(1) of the internal revenue code of 1954, as amended; and

(3) the corporation has been organized for the purpose of the charitable support of health care, hospital and related services, including the support of ambulance, emergency medical care, first responder systems, medical and hospital staff recruitment, health education and training of the public and other related purposes.

(g) The board may transfer gifts under subsection (f) in such amounts and subject to such terms, conditions, restrictions and limitations as the board determines but only if the terms of the gift do not otherwise restrict such transfer. Before making any such transfer, the board shall determine that the amount of money or the property to be transferred is not required by the hospital to maintain its operations and meet its obligations. In addition, the board shall determine that the transfer is in the best interests of the hospital and the residents within the district the hospital has been organized to serve.

HISTORY: L. 1984, ch. 374, § 18; L. 1985, ch. 103, § 2; L. 2003, ch. 51, § 4; July 1.

80-2519. Same; no-fund warrants; procedure; election; limitation.

(a) During any budget year, the board of any hospital is hereby authorized to issue no-fund warrants for the purpose of raising money for financing any insufficiency in the operation and maintenance budget of the hospital during such year and is hereby authorized to expend such money for such purposes. In no case shall the amount of no-fund warrants issued under this section exceed the amount deemed necessary for such purposes. Warrants issued under this section shall be issued, registered, redeemed and shall bear interest in the manner and be in the form prescribed by K.S.A. 79-2940 and amendments thereto.

Prior to the issuance of any no-fund warrants under the authority of this section, the board shall cause to be published once in a newspaper of general circulation within the taxing district of the hospital a notice of the intention of the board to issue such no-fund warrants. If within 60 days after the publication of such notice, a petition requesting an election on the question of the issuance of the no-fund warrants signed by not less than 5% of the qualified electors residing within the taxing district is filed with the county election officer of the county in which the greater portion of the taxing district of the hospital is located, the board shall be required to submit the question of the issuance of such no-fund warrants at an election held under the provisions of the general bond law.

(b) Whenever no-fund warrants are issued under the authority of this section, the board each year shall make a tax levy, in addition to the tax levy authorized under K.S.A. 80-2516, sufficient to pay not less than 25% of the total amount of the warrants issued under this section and the interest thereon until all of the warrants and the interest thereon has been paid. If there is money available from the operation of the hospital over and above the amount needed for the adopted budget, such money shall be used to pay for such warrants and the interest thereon, and the tax levy shall be only the difference, if any, between the money available to pay for such warrants and the interest thereon each year and the amount of the warrants and interest thereon to be paid each year.

HISTORY: L. 1984, ch. 374, § 19; July 1.

80-2520. Same; sale of hospital property.

(a) Except as provided in subsection (c), the board of any hospital is hereby authorized to:

(1) Sell personal property of the hospital in the value of less than $10,000, either in the open market or upon bids in the manner provided in subsection (b); and

(2) subject to the provisions of subsection (b), sell and convey any real or personal property of the hospital in the value of $10,000 or more.

(b) Before selling and conveying any real or personal property designated in provision (2) of subsection (a), the board shall negotiate a sale thereof and no such sale shall be completed and conveyance made until:

(1) The board has solicited sealed bids by public notice inserted in one publication in a newspaper of general circulation in the taxing district of the hospital and such sale shall be to the highest responsible bidder after such notice, except such board may reject any or all bids, and, in any such case, new bids may be called for as in the first instance; and

(2) the bid has been accepted and a resolution accepting the same has been made a part of the records of the board. Thereupon, the board, by its chairperson and secretary, is hereby authorized to make, execute and deliver a good and sufficient deed or deeds of conveyance to the purchaser or purchasers thereof.

(c) (1) in lieu of following the procedures established in subsection (a), the Board may adopt a resolution establishing an alternate methodology for the disposal of property. Such alternate methodology for the disposal of property shall contain, at a minimum, procedures for:

(A) notification of the public of the property to be sold;

(B) describing the property to be sold;

(C) the method of sale, including, but not limited to, fixed price, negotiated bid, sealed bid, public auction or any other method of sale which allows public participation; and

(D) public notice inserted in one publication in a newspaper of general circulation in the taxing district of the hospital.

(2) any methodology for the disposal of property established pursuant to this subsection may contain different procedures for real property and personal property.

(d) Notwithstanding any provision of Article 25 of Chapter 80 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, the board of a hospital district is hereby authorized to obtain financing for the construction of a hospital facility to be located in the hospital district, secured by a mortgage on any or all hospital property, provided such mortgage is insured pursuant to the United States Department of Housing and Urban Development's mortgage insurance program, section 242 of the National Housing Act, 12 U.S.C. 1715Z-7, section 242, as amended.

HISTORY: L. 1984, ch. 374, § 20; July 1.

80-2521. Same; title to property. Title to any real or personal hospital property shall be vested in the board.

HISTORY: L. 1984, ch. 374, § 21; July 1.

80-2522. Same; attachment of territory to district; procedure; petition. Any one or more political subdivisions desiring to be attached to and become a part of any hospital district, or any remaining portion of any political subdivision which is a part of the hospital district desiring to be attached to and become a part of such a hospital district as one area, may do so in the manner provided in this section. A political subdivision desiring to be attached to and become a part of a hospital district need not be contiguous to the territory of such hospital district so long as the political subdivision is located wholly within the county in which the hospital for the district is located and does not include within its territory, in whole or in part, the taxing area of another hospital. Upon the presentation to the board of county commissioners, of

the county in which the hospital is located, of a petition setting forth the boundaries of the territory which desires to be attached to the taxing district of the hospital, stating that a person who has signed the petition may withdraw such person's name from the petition by giving written notice thereof at any time within three days following the date of signing the petition, excluding Saturdays, Sundays and legal holidays, to the county election officer of the county in which the hospital is located and signed by not less than 51% of the qualified electors of the territory, to be determined by enumeration taken and verified for this purpose by the county election officer of the county in which the hospital is located, it shall be the duty of the board of county commissioners, at its next regular meeting, to examine the petition. If the board of county commissioners finds that the petition is sufficient, regular and in due form as provided in this section, the board shall enter an order in its proceedings attaching the area described in the petition to the existing taxing district. The petition shall be accompanied by a copy of a resolution adopted by the board, which resolution shall state that the board desires such area to be attached to the taxing district of the hospital. For tax purposes attachment as provided herein shall be effective as provided in K.S.A. 79-1807 and amendments thereto.

HISTORY: L. 1984, ch. 374, § 22; L. 1987, ch. 398, § 1; July 1.

80-2523. Same; attachment of territory located in another district. If the petition under K.S.A. 80-2522 includes within the boundaries set out in the petition territory of another hospital district operating and maintaining a hospital, the petition shall also be accompanied by a copy of a resolution by the board of such other hospital stating the board's desire that such territory be detached from the taxing district of their hospital. For tax purposes, detachment as provided herein shall be effective as provided in K.S.A. 79-1807 and amendments thereto. Such territory so detached shall not be liable for payment of outstanding bonded indebtedness of the taxing district of the hospital, except for payment of bonds issued during the period such area was attached to the district. If any such taxing district has authorized the issuance of bonds at a special election, the election shall be in no way affected by the passage of this act, and the bonds authorized at the election may be legally issued notwithstanding the detachment of any portion of the taxing district which was included at the date of the bond election.

HISTORY: L. 1984, ch. 374, § 23; July 1.

80-2524. Same; disorganization of hospital, when.

(a) Any hospital, or board thereof, which holds no property other than books, records and any remaining hospital moneys may disorganize in the manner provided in this section.

(b) When all debts and obligations of such hospital and board have been paid, and the board finds it is in the best interests of such hospital that its operation be closed and terminated, the treasurer of the board shall proceed to apportion the funds of the hospital among the political subdivisions or portions thereof comprising the taxing district of the hospital. The treasurer shall pay to each political subdivision comprising such district an amount equal to the proportion that the assessed valuation of each political subdivision or portion thereof bears to the total assessed valuation of the district.

(c) Upon the payment of funds in accordance with the provisions of this section, the board shall pass a resolution closing and terminating operation of the hospital, which resolution shall be published once in a newspaper of general circulation in the area, after which the taxing district of the hospital shall be considered disorganized and all books and records of the district shall be delivered to the custody of the board of county commissioners of the county in which the greater portion of the hospital property was located.

HISTORY: L. 1984, ch. 374, § 24; July 1.

80-2525. Revenue bonds; procedure to issue; petition; election. The board may issue and sell revenue bonds for the purpose of acquiring an existing hospital building or buildings and improving, remodeling or repairing and equipping the same, or for the purpose of acquiring a site, constructing, equipping and furnishing an addition to an existing hospital building, or for the purpose of acquiring a site, constructing, equipping and furnishing a new hospital building, separate and apart from an existing hospital building. Before any such bonds shall be issued, the board shall publish a resolution

declaring its intention to issue such bonds, stating the purpose for which such bonds are to be issued, and the amount thereof. Such resolution shall be published, once each week for two consecutive weeks, in a newspaper of general circulation in the taxing district of the hospital. After publication, such bonds may be issued unless a petition requesting an election on the proposition, signed by qualified electors equal in number to not less than 5% of the qualified electors of the district, is filed with the board within 20 days following the last publication of such resolution. If such a petition is filed, the board shall submit the proposition to the qualified voters at an election called for such purpose and held within 90 days after the last publication of the resolution, and no bonds shall be issued unless such proposition shall receive the approval of a majority of the votes cast thereon. Such election shall be called and held in the manner provided by the general bond law.

HISTORY: L. 1984, ch. 374, § 25; L. 1991, ch. 289, § 2; April 25.

80-2526. Same; revenue bonds; pledge of certain revenues. At or prior to the issuance of revenue bonds under authority of this act, the board shall pledge either the gross or the net income and revenues of the hospital to the payment of principal and interest of such revenue bonds and shall covenant to fix, maintain and collect such fees and charges for the use of the hospital as will produce revenues sufficient to pay the reasonable cost of operating and maintaining the hospital and to provide and maintain an interest and sinking fund in an amount adequate to promptly pay both principal and interest on such bonds and to provide a reasonable reserve fund. The board may agree to pay the cost of operation and maintenance of the hospital from any other revenues of the hospital or of the board legally available for such purpose. In addition, the board in its discretion may pledge to the payment of principal and interest of such revenue bonds the proceeds of any gift, grant, donation or bequest which may be received by the hospital or board from any source.

HISTORY: L. 1984, ch. 374, § 26; July 1.

80-2527. Same; revenue bonds; not an indebtedness of hospital; exempt from debt limit. Revenue bonds issued under authority of this act shall not be an indebtedness of the taxing district of the hospital or the hospital or of the board or the individual members of the board, and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

HISTORY: L. 1984, ch. 374, § 27; July 1.

80-2528. Same; revenue bonds; negotiability; interest rate; terms. Revenue bonds issued under authority of this act shall have all of the qualities and incidents of negotiable instruments, may bear interest at a rate not exceeding the maximum rate for revenue bonds prescribed in K.S.A. 10-1009 and amendments thereto, may bear such date, may mature at such time or times not exceeding 40 years from their date, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment and may be subject to such terms of redemption, with or without premium, as may be provided by resolution adopted by the board.

Such bonds may be sold in such manner and at such price or prices not less than 95% of par and accrued interest to date of delivery as may be considered advisable by the board.

HISTORY: L. 1984, ch. 374, § 28; July 1.

80-2529. Same; revenue bonds; covenants and agreements. In order to secure the prompt payment of the principal and interest upon revenue bonds and the proper application of the revenue pledged thereto, the board is authorized to:

(a) Covenant as to the use and disposition of the proceeds of the sale of such bonds;

(b) covenant as to the operation of the hospital and the collection and disposition of the revenues derived from such operation;

(c) covenant as to the rights, liabilities, powers and duties arising from the pledge of any covenant and agreement into which it may enter in authorizing and issuing the bonds;

(d) covenant and agree to carry such insurance on the hospital and the use and occupancy thereof as may be considered desirable, and in its discretion to provide that the cost of such insurance shall be considered a part of the expense of operating the hospital;

(e) fix charges and fees to be imposed in connection with and for the use of the hospital and the facilities supplied thereby, which charges and fees shall be considered to be income and revenues derived from the operation of the hospital, and to make and enforce such rules and regulations with reference to the use of the hospital for the accomplishment of the purposes of this act;

(f) appoint a trustee to act under the terms of the resolution authorizing the issuance of the revenue bonds;

(g) covenant against the issuance of any other obligations payable on a parity from the revenues to be derived from the hospital;

(h) make covenants other than and in addition to those herein expressly mentioned of such character as may be considered necessary or advisable to effect the purposes of this act.

All such agreements and covenants entered into by the board shall be binding in all respects upon the board and its officers, agents, employees, and upon their successors, and all such agreements and covenants shall be enforceable by appropriate action or suit at law or in equity which may be brought by any holder or holders of bonds issued hereunder against the board, or its officials, agents, employees, or their successors. The rents, charges and fees to be imposed under the provisions of this act shall not be limited by the provisions of any prior act.

HISTORY: L. 1984, ch. 374, § 29; July 1.

80-2530. Same; revenue bonds; deposit of proceeds. The proceeds derived from the sale of the revenue bonds herein authorized shall be deposited to the credit of the board in a bank, banks or other depositories designated by the board and kept in a separate fund and used solely for the purpose for which the bonds are authorized. The board is authorized to make all contracts and execute all instruments which in its discretion may be deemed necessary or advisable to provide for the purposes for which the bonds were issued, and to provide for the manner of disbursement of the funds for such purposes. Nothing contained in this act shall be construed as placing in the general fund of any political subdivision in the taxing district of the hospital or other fund thereof any moneys collected under this act or requiring such action.

HISTORY: L. 1984, ch. 374, § 30; July 1.

80-2531. Same; revenue bonds; tax exemptions. The interest on the revenue bonds issued hereunder shall be exempt from all state, county and municipal taxation in the state of Kansas, except inheritance taxes of the state of Kansas.

HISTORY: L. 1984, ch. 374, § 31; July 1.

80-2532. Same; revenue bonds; investment of proceeds. Any officer or officers, board or boards, having charge of any sinking fund or any other fund of the state of Kansas, or any department, agency or institution thereof, or any county, municipality or other public corporation or political subdivision, may invest such funds in bonds issued under the provisions of this act. Any bank, trust or insurance company organized under the laws of the state of Kansas may invest

in revenue bonds issued under the provisions of this act. Such bonds shall also be approved as collateral security for the deposit of any public funds and for the investment of trust funds.

HISTORY: L. 1984, ch. 374, § 32; July 1.

80-2533. Same; eminent domain. If the board and the owner of any real property desired by the board for hospital purposes cannot agree as to the price to be paid therefor, the board may institute condemnation proceedings in the manner prescribed by article 5 of chapter 26 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto.

HISTORY: L. 1984, ch. 374, § 33; July 1.

80-2550. Definitions. As used in this act:

(a) "Board" means a board which is vested with the management and control of a health care facilities and services hospital district;

(b) "health care facilities and services hospital district" means a hospital district, city hospital or county hospital:

(1) Which was established under the laws of this state in effect at the time established as a hospital district, city hospital or county hospital;

(2) in which no hospital is being operated and maintained or in which the operation of a hospital has been terminated; and

(3) in which health care facilities and services are being operated and maintained;

(c) "health care facilities and services" means any clinic, long-term care facility, home for the aged, outpatient services, in-home health services, child-care services, respite care services, adult day care services, dietary services, alcohol and drug abuse services and emergency medical or ambulance services;

(d) "hospital" means a medical care facility as defined in K.S.A. 65-425 and amendments thereto.

HISTORY: L. 1984, ch. 369, § 1; L. 1986, ch. 390, § 1; L. 1989, ch. 306, § 1; July 1.

80-2551. Health care facilities and services hospital districts; existence continued under act.

(a) Any health care facilities and services hospital district existing on the effective date of this act is hereby continued in existence, and any existing board shall be deemed to be the board for purposes of this act unless and until a new board is selected.

(b) This act shall not affect any judicial proceeding pending or any contract, tax levy, bond issuance or other legal obligation existing on the effective date of this act and any tax levy or bond issuance made under authority of article 21 of chapter 80 of Kansas Statutes Annotated prior to the effective date of this act is hereby validated and confirmed.

HISTORY: L. 1984, ch. 369, § 2; July 1.

80-2552. Health care facilities and services hospital districts; subject to provisions of general law. Any health care facilities and services hospital district shall be deemed a hospital to the same extent as though the same were a hospital which is being operated and maintained as a hospital and shall be controlled, financed, operated, managed and maintained as provided by the general law relating to such hospital immediately prior to the time the hospital became a

health care facilities and services hospital district, and shall be subject to the limitations and restrictions provided by such general law. The determination of the number of board members of any existing health care facilities and services hospital district, the method of selection and the terms, qualifications, organization, meetings and compensation thereof shall be as provided by the general law relating to hospital boards under which such hospital was operated and maintained immediately prior to the time the hospital became a health care facilities and services hospital district, and every such board of an existing health care facilities and services hospital district shall have the same powers, duties and functions that are prescribed for boards of hospitals by the law under which such hospital was operated and maintained immediately prior to the time the hospital became a health care facilities and services hospital district.

HISTORY: L. 1984, ch. 369, § 3; L. 1986, ch. 390, § 2; L. 1989, ch. 306, § 2; July 1.

80-2553. Provisions of act supplemental to general hospital laws. The provisions of K.S.A. 80-2550 through 80-2553, and amendments thereto, are supplemental to the general law relating to hospital districts, city hospitals or county hospitals in which a hospital is being operated and maintained and are not intended to modify or repeal any provision of any such law.

HISTORY: L. 1984, ch. 369, § 4; L. 1989, ch. 306, § 3; July 1.