

MINUTES OF THE HOUSE KANSAS 2000 SELECT COMMITTEE.

The meeting was called to order by Chairperson Kenny Wilk at 1:30 p.m. on February 16, 1999 in Room 526-S of the Capitol.

All members were present except: Representative Gwen Welshimer - excused

Committee staff present: Alan Conroy, Legislative Research Department  
Leah Robinson, Legislative Research Department  
Paul West, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Jim Wilson, Revisor of Statutes  
Janet Mosser, Committee Secretary

Conferees appearing before the committee: Irene Cumming, President, Kansas University Hospital Authority  
Jon Jackson, Chief Operating Officer, Kansas University Hospital Authority  
Deborah Hays, Vice President of Human Resources, Kansas University Hospital Authority  
Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry  
Matthew Goddard, Vice President, Heartland Community Bankers Association  
David Kreller, FirstBank, Manhattan, KS  
Patrick Nichols, Kansas Trial Lawyers Association  
Don Heiman, Chief Information Technology Officer, Executive Branch, State of Kansas

Others attending: See attached list

Irene Cumming, Jon Jackson, and Deborah Hays gave a briefing on the compensation system developed by the Kansas University Hospital Authority (**Attachment 1**).

Chairperson Wilk opened the hearing on **HB 2185 enacting the Kansas Y2K protection act.**

Leah Robinson, Legislative Research Department, gave a briefing on the bill (**Attachment 2**).

Terry Leatherman, Kansas Chamber of Commerce and Industry, proponent, was recognized by Chairperson Wilk and urged the Committee to adopt the bill as it provides a layer of legal protection for businesses actively engaged in fighting the Y2K problem (**Attachment 3**).

Chairperson Wilk recognized Matthew Goddard, Heartland Community Bankers Association, proponent, who requested that the Committee pass favorably on the bill because of the legal protections it provides for businesses that make reasonable efforts to prevent a computer date failure resulting from the coming of the new millennium in the year 2000 (**Attachment 4**).

Kavid Kreller, FirstBank of Manhattan, proponent, was recognized by Chairperson Wilk and on behalf of the organizations he represented (i.e., Kansas Chamber of Commerce and Industry, Heartland Community Bankers, Manhattan Chamber of Commerce, and FirstBank of Manhattan) requested passage of the bill because it offers legislative protection for those who are working hard to mitigate any controllable problems (**Attachment 5**).

Chairperson Wilk recognized Patrick Nichols, Kansas Trial Lawyers Association, opponent, who expressed his opposition to the bill because it elevates the rights of some at the cost of the rights of others and sends the wrong message about accountability for business decisions (**Attachment 6**).

Don Heiman, Chief Information Technology Officer, Executive Branch, State of Kansas, proponent, was then recognized by Chairperson Wilk. Mr Heiman expressed his support of the bill because it grants sovereign immunity to the State of Kansas and its political subdivisions, limits the damages for organizations and enterprises not part of State government or political subdivisions, and limits the fiscal impact of Y2K (Attachment 7).

Chairperson Wilk closed the hearing on **HB 2185**.

Chairperson Wilk brought to the Committee's attention the bill explainer "New State Employee Pay Plan for the New Millennium" (Attachment 8). The bill is still in draft form and the hope is to have it tomorrow but no later than Thursday. It is the intent that the bill will match the explainer.

Chairperson Wilk adjourned the meeting was adjourned at 3:15 p.m.

The next meeting is scheduled for February 17, 1999.



# **University of Kansas Hospital**

---

# **Authority**

## **Compensation Plan**

**February 16, 1999**





# Our Mission

- With a dedication to excellence, it is the mission of the University of Kansas Hospital along with its partner physicians to maintain and enhance the health of all people living within the communities that we serve and to facilitate and support the education, research and public service activities of the University of Kansas Medical Center.



# Our Vision

- The University of Kansas Hospital will be a role model in providing patient care and supporting healthy communities. We will deliver preferred quality care, while maintaining a profitability that allows for strategic growth and expansion. This will position us to provide an outstanding environment for the education of future health care professionals and health-related research.



# Our Values

- Our shared values set us apart and support KU Hospital as a place of caring and a place for caring.
  - Well delivered, compassionate service.
  - Excellence -- every day in every way.
  - Community involvement
  - Achievement through partnering
  - Responsibility and personal growth
  - Ethics, honesty and openness



My name is Jon Jackson, and I am the chief operating officer of the university of Kansas hospital authority. I will briefly outline some of the issues we identified from the state civil service classification and pay system as we evaluated the components of the system we desired for the new hospital authority. I will then talk about the philosophy and objectives we were attempting to meet with the new system as well as the process we used.

Our situation was somewhat different at the university of Kansas hospital in that we had three different categories of employees rather than the usual two. In addition to classified and unclassified categories, in 1989 the legislature established the "health care worker" as a third category of employee at the hospital to provide some flexibility in salaries and policies for employees who were direct patient-care givers. While this was helpful in responding to the competitive market, it added complexity to an already complex human resources system.

As part of an overall assessment of all of the various policies and procedures, regulations, local personnel practices and organizational structures which were applicable to the hospital as part of a state agency, we believed that the existing human resources system did not meet the needs of a business-oriented, high performing organization operating in a competitive environment.

Policies and procedures were not being maintained in a corporate environment in that there were multiple variations in the way personnel activities were carried out. For example, there were many different grievance procedures within a department depending upon which category of employee was involved, and whether or not that employee was part of a bargaining unit or not. There was fragmentation of other services and departments that affected the human resources system, such as employee safety, ergonomics and worker's compensation. Higher value was

placed upon grade level and title hierarchy, duties and responsibilities, tenure, number of employees supervised and budget rather than knowledge, skills and key behaviors, contributions to the success of the work unit, results and outcomes, support of organizational strategies and the ability to play multiple roles within the organization. In this context, we then looked at specific issues and areas we wanted to be sure to address as the new human resources and pay system was developed.

A key issue was that of consistency in policies and rules. With three different categories of employees, there were often policies which were different among the groups. Terms of hire or appointment, basic qualifications considered for an applicant, appropriate testing for pertinent skills, methods of evaluation of performance, discipline process and grievance process were some of the policies which were different from category to category. Many of these policies were not well suited for business needs in a competitive marketplace.

Another concern was the variance of compensation policies among the categories of employees. For example, unclassified and health care worker systems had more flexibility in recognition of experience or education in setting the starting salary for an employee, while in the classified service certain adjustments could be made only after an extensive review and approvals process. Recognition of local market factors for specific job responsibilities was also difficult, especially in a rapidly changing labor market of either shortages or oversupply of particular skills. The different personnel categories also had significantly different approaches to the rewarding of job performance, with the classified system being particularly unaccommodating to either individual or organizational performance, but rewarding longevity. Overall, compensation was generally

based upon job placement or longevity rather than performance, leading to an "entitlement" mentality versus one of performance and innovation.

Our goals in establishing the new human resources and pay system were to support the desired organizational culture, enable a rapid response to the competitive market and encourage employee practices which result in high performance, innovation and customer service. To do this we needed a linkage of policies, practices and compensation systems with the mission, vision and values of the organization. Irene has previously described the mission, vision and values statement to you, which is what we used as a base in designing the new system.

To assist with this process, we used an outside consultant for the compensation program design. We chose a national consulting firm which had sufficient resources available to accomplish the task in the time frame required, significant healthcare experience with specific academic and public hospital expertise, as well as a consulting team leader who had extensive experience directing a state human resources department. Working with the consultant, we determined that certain total compensation objectives would help us to further define our desired system. In addition to supporting our goals, mission, vision and values, we wanted a compensation system that would:

- minimize employee dissatisfaction
- reinforce broader employee business knowledge
- align pay with major management initiatives
- support productivity, quality and business performance
- encourage continuous improvement

- support the learning environment
- involve employees in benefit discussions
- ensure ongoing cost-effective use of total compensation dollars

From this basis, we worked through a series of discussions and questions which led to the development of the employee compensation philosophy for the university of Kansas hospital. That document is in your materials, as are some of the discussion guides, questions and agendas we used in its development. The employee compensation philosophy served as the means by which we measured the various design elements of the compensation plan that Deborah Hays will describe. I will be happy to address any questions you have at the conclusion of the presentation.

## University of Kansas Hospital Employee Compensation Philosophy

---

University of Kansas Hospital (KU Hospital), to support its Mission, Vision, Values and Goals, is committed to an employee total compensation program that allows the organization to recruit and retain a competent workforce and also:

- recognizes and respects the value of all employees within KU Hospital and their commitment to providing high quality, cost effective health and health care services;
- is market competitive for total compensation within the financial resources available for human resources investments;
- reflects the competitive market and business realities of the diverse business entities associated with KU Hospital;
- encourages employees to develop competencies that optimize operational efficiency, cost effectiveness, quality outcomes, customer service and satisfaction, and profitable revenue growth;
- supports innovation, creativity, and continuous improvement required in the dynamic healthcare industry;
- encourages teamwork within and among the business entities to maximize the quality of service and financial performance of KU Hospital;
- rewards exceptional team and individual performance, and
- provides employees a basic level of protection for life events such as illness, disability, and retirement, while offering employees an opportunity to make informed choices regarding the level of employee benefits they need and desire.

All total compensation components and their linkage to KU Hospital's Mission, Vision, Values and Goals will be clearly communicated to all employees.



DISCUSSION GUIDES AND QUESTIONS

PLANNING RETREAT AGENDA

**You can define your social contract and your culture and then use your policies, procedures, compensation, etc. to support and reinforce that culture or you can have your culture defined by a set of policies, procedures, plans, etc. that may or may not be consistent or linked.**

We want to define our culture, first on paper, and then through behavior, policies, practices and reinforcement. This is the first step in doing that.

*Questions to think about as we work to put the vision, goals, values and strategies on paper:*

Will the vision, goals, values and strategies, as stated, get us where we need to be over the short- and long-term?

Do the vision, goals, values and strategies, as stated, provide a picture of what it means to be an employee of KU Hospital? If I were an executive, a manager, a staff person, a potential employee...would I know, at a high level, what was expected of me?

How will the policies/practices, as written, help us reach our vision or the goals which have been established?

Are there changes that can be made to this policy/practice that will move us more quickly toward the vision or goals?

*Questions to ask in thinking about HR policies and practices:*

Would not implementing this policy or practice keep us from or slow our progress toward achieving our vision and goals?

Do we currently have the resources to fully implement this policy or practice? Might we need to phase in certain policies and practices (i.e., pay for performance would support accountability and risk taking, but there needs to be a strong performance management system in place for pay for performance to be effective.)

Are there certain policies and practices that are critical to achieving our vision and goals that need to be in place or planned for at time of transition?

Are there other policies and practices that will be needed at some point in the new organization, but which can wait until later?

**UNIVERSITY OF KANSAS HOSPITAL  
COMPENSATION PROGRAM DESIGN  
EXECUTIVE INPUT DISCUSSION GUIDE**

- What are the key Hospital business objectives which the compensation program should reinforce?
  
- Can we transition from an entitlement culture to a business-driven culture, especially at the employee level?
  
- How prepared are managers to take accountability for pay decisions, and how capable are they of communicating and administering the program?
  
- How creative should the Hospital be regarding the pay program design?
  
- Define what you believe should be the key components of the Hospital's new compensation philosophy.
  
- What role should incentives and gainsharing play in the compensation program?
  
- Which components of the total compensation package need to be evaluated and revised?

**TENTATIVE AGENDA  
EXECUTIVE HR PLANNING RETREAT**

**PURPOSE:**

To continue the process of defining the culture for the University of Kansas Hospital under the Public Authority and to use that definition in outlining the priorities for the compensation system and the Human Resource policies and practices which will be implemented.

**AGENDA:**

*We will work through as many of these agenda items as possible during the retreat. It is critical that we get through all of the issue related to compensation so that Mercer can begin building a plan that can be presented to this team in a timely manner.*

- Reach a basic level of consensus on the key elements of the culture document-
- Identify the drivers for the compensation system
- Identify the strategic issues/concerns related to compensation
- Determine the timetable for the development of a compensation plan
- Detail next steps in the development of the compensation system
- Identify the drivers for the HR policies and procedures
- Group the HR policies to be created/reviewed. Which policies should be considered together? Individually?
- Determine the priorities for the development of the HR policies and procedures (immediate, near-term, long-term)
- Identify next steps relative to HR issues

# Pay Structure

## Strategy

Job family pay ranges are established to reflect:

- Market
- Financial resources

## Objective

Retain and recruit competent employees

## Structure

Benchmark jobs are assigned to pay ranges.

Jobs are grouped into families:

- Clerical
- Service
- Technical
- Professional
- Management
- Information Systems
- Union

# Market Based Pay Increases

## Strategy

Base pay increases are based upon:

- Midpoint of each pay range
- Job family pay increase trends

Base pay hiring rates reflect:

- Comparable experience
- Competitive market pay trends
- Internal pay practices

## Objective

Retain and recruit competent employees.

Allow recruitment of experienced new employees.

## Structure

- Determine dollars available
- Determine % increase in competitive market
- Apply % to midpoint of each range
- Provide flat dollar increase to base pay

# Retention Pay Increase

## Strategy

Dollars are budgeted to increase an employee's base pay to competitive level.

## Objective

Recognize an employee's competencies that are substantially greater than the current base level.

Provide pay increases that reflect competitive market value to ensure retention of exceptional employees.

## Structure

Directors and managers work with Human Resources.

# Exceptional Service Bonus

## Strategy

Specific patient-focused behavior is rewarded on a timely basis (focus for year one).

## Objective

Reward exceptional efforts (motivational tool).

## Structure

- Nomination process
- Supervisory approval
- Committee review/approval
- Recognition of employee



# Gainsharing

## Strategy

Employee involvement in the Hospital's financial success and quality indicators is encouraged.

## Objectives

- Improve Hospital's financial performance
- Support strategic initiatives
- Focus on productivity, cost reduction and patient satisfaction
- Encourage employee involvement
- Increase employee understanding of dynamic healthcare industry
- Share the success

## Structure

Funded by financial gains above budget if quality measures are met.

## **The University of Kansas Hospital's New Compensation Program**

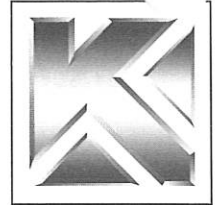
- **Eliminates separate categories of employees; groups jobs for appropriate market placement.**
- **Standardizes pay policies for all positions (pay will become a subject for collective bargaining).**
- **Focuses on competitive position in the market for jobs and individual employees (particularly important during periods of low unemployment).**
- **Rewards individuals (bonus) and groups (gainsharing).**
- **Allows available resources for compensation to be used as a management tool; promotes accountability.**
- **Complements new competency-based performance appraisal system.**
- **Requires on-going education and communication.**

**H.B. 2185**  
**The Kansas Y2K Protection Act**

- Provides that, when certain conditions are met, any action brought against a defendant (defined as a provider of services to a customer or client through the use, in part, of a computer system, program, or software) because of a computer date failure is limited as follows:
  - shall be brought only as an individual action and not as a class action;
  - be deemed to be based solely in contract to the exclusion of all other causes of action; and
  - if brought, shall only allow recovery for actual damages and not for consequential and remote damages
  
- The following conditions must be met:
  - a customer or client (plaintiff) has not suffered any personal injury, other than emotional harm, as a result of the computer date failure;
  - the service provider (defendant) has made reasonable efforts to protect its computer systems programs or software, which it uses to provide services to its customers and clients, by actually simulating the transition from December 31, 1999 to January 1, 2000 or other tests that a reasonable person would believe necessary to prevent computer date failure;
  - the service provider has in place, by October 1, 1999, a contingency plan that will provide for alternative methods of carrying out the services it provides in order to remedy any problem resulting from the date failure - the plan must be able to be implemented within 60 days of receipt of written notification of an actual problem caused by date failure;
  - the service provider has, by October 1, 1999, provided notice to its current known customers or clients of its efforts to avoid a date failure and had posted such notice prominently in its place of business for public review - for all new customers the defendant must provide the same notice within 60 days of the customer becoming known to the service provider
    - the notice is required to contain the following:
      - ▶ a general description of the provider's year 2000 compliance efforts;
      - ▶ the likelihood that it will make a transition to the year 2000 without a date failure;
      - ▶ the problems that could or will arise if the service provider experiences a date failure;
      - ▶ an explanation to customers and clients that all problems discovered by the customer should be reported to the provider in writing;
      - ▶ an explanation of the contingency plan;
      - ▶ an explanation indicating that any problems which do occur will be remedied within 60 days following written notification of a problem;
  - the provider has implemented or will implement the applicable portions of the contingency plan or otherwise remedy the problem within 60 days of receiving written notice from the customer or client of a potential date failure problem
  
- Neither the state of Kansas nor any political subdivision (office, agency, department, commission, board, division, and institution of any county or municipality in the state) shall have liability for any individual or class action brought against it related to year 2000 issues

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



web: [www.kansaschamber.org](http://www.kansaschamber.org)

835 SW Topeka Blvd. Topeka, KS 66612-1671 (785) 357-6321 FAX (785) 357-4732 e-mail: [kcci@kansaschamber.org](mailto:kcci@kansaschamber.org)

HB 2185

February 16, 1999

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Kansas 2000 Select Committee

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. On behalf of the members of the Kansas Chamber and many other associations and businesses concerned about the significant challenges we all could face when the calendar turns January 1, 2000, thank you for this opportunity to recommend passage of HB 2185.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Kansas 2000 Select Committee

Meeting Date 2-16-99

Attachment 3

HB 2185 concerns what is being called "the Y2K bug." That term refers to problems we could experience on January 1, when we learn whether decades of technology we have put in place will still work when the calendar reads 2000. The first wave of problems will surface when the clock strikes midnight, ending 1999. However, a second tidal wave could occur in the months that follow, if commerce is affected by the Y2K bug. That second wave will splash down in Kansas courtrooms, where lawsuits could flood our court system. It is this potential for runaway litigation that HB 2185 addresses.

HB 2185 would limit lawsuit awards to actual damages and eliminate class action litigation threats for employers who are diligent in addressing the potential Y2K problems. To receive the legal relief proposed in HB 2185 would require businesses to be testing their operations for potential problems by September, and preparing a contingency plan by October. It is important to stress that this bill does not hand lawsuit protection to businesses that are ignoring the potential for problems at the end of this year.

In a way, the Y2K problem is like a major storm that has been forecasted to strike at a specific time. There will be a storm. What we don't know is if the damage it causes will be a minor annoyance or catastrophic. Business in this country will literally spend billions this year in an attempt to limit the problems. However, there are also an army of lawyers who are preparing for the legal opportunity the Y2K bug presents. To illustrate this point is the following quote from the USA Today, from last October.

*"Litigation resulting from Year 2000 meltdowns will be more costly than asbestos, breast implant and Superfund combined, several reports say. Total litigation costs could exceed \$1 trillion, according to research firms Giga Information Group, Gartner Group, and others."*

The Y2K bug is a unique challenge facing this country. We have no idea how bad this problem will be. The only thing we really know is when it will happen. Because the countdown is now down to just 319 days, HB 2185 is unique in one other way. This is a bill that must receive action now to do any good. On behalf of the members of the Kansas Chamber of Commerce and Industry, we urge you to adopt this layer of legal protection for businesses actively engaged in fighting the Y2K problem by recommending HB 2185 for passage. I would be pleased to answer any questions.



To: Kansas 2000 Select Committee

From: Matthew Goddard  
Heartland Community Bankers Association

Date: February 16, 1999

Re: House Bill 2185

The Heartland Community Bankers Association appreciates the opportunity to appear before the Kansas 2000 Select Committee to express our support for House Bill 2185.

The bill offers legal protections for businesses that make reasonable efforts to prevent a computer date failure resulting from the coming of the new millennium in the Year 2000, or Y2K. An attachment entitled "The Millennium Bug" explains how many computers and computer programs will not be able to properly process dates in the 21<sup>st</sup> century. American business and government are expected to spend several hundred billion dollars to solve the problem before January 1, 2000.

Hanging like a dark cloud over efforts to prepare computers for the Year 2000 is the threat of litigation. Lloyd's of London and others have estimated the total cost of Y2K lawsuit claims could be in excess of \$1 trillion. If the Y2K problem has been blown out of proportion and nothing malfunctions, then the issue of litigation is rendered moot. If Y2K does cause problems, however, many businesses that have already spent valuable resources attempting to correct it will also be forced to spend more resources defending themselves in court.

**House Bill 2185** is intended to protect businesses that make reasonable efforts to prevent a computer date failure from frivolous lawsuits. Please note at the outset that the legislation offers no protections to companies that do not seriously address the Year 2000 problem. The bill only protects companies that have prepared themselves by meeting the criteria set forth in HB 2185. The criteria in the bill are taken in large part from regulations issued by various federal agencies for regulated industries.

With HB 2185, the protections made available to defendants in legal actions are as follows:

1. The action must be brought as an individual action, not as a class action.
2. The action must be based exclusively in contract.
3. Recovery is allowed only for actual damages, not consequential and remote damages.

The need for protection against class action lawsuits is very important. For example, a financial institution that shorts account holders \$3.92 because of a Y2K computer problem could be subjected to a class action lawsuit where the plaintiffs seek reimbursement, restitution, legal costs and punitive damages. This could happen even though the financial institution, or most any other business, would have corrected the problem and credited each account \$3.92 once the problem was brought to their

attention. If for some reason the business refused to correct the problem, HB 2185 would still allow individual lawsuits to be filed seeking \$3.92.

In order to receive the aforementioned protections, HB 2185 establishes the following requirements:

1. The plaintiff must not have suffered physical injury.
2. Defendant must make reasonable efforts to protect itself from a computer date failure.
3. Defendant must test for a computer date failure no later than September 1, 1999.
4. Defendant must develop a contingency plan for a computer date failure no later than October 1, 1999.
5. Defendant must notify its customers of its efforts to avoid a computer date failure no later than October 1, 1999.

The customer notifications referenced above must include summaries of the following:

1. A general description of the defendant's Year 2000 compliance efforts.
2. The likelihood the defendant will not suffer a computer date failure.
3. The possible problems that could result from a computer date failure.
4. An explanation that any problems possibly resulting from a computer date failure should be reported in writing.
5. An explanation of the defendant's contingency planning.
6. An explanation that any problems resulting from a computer date failure will be resolved within 60 days of written notification.

Both HB 2185 and federal law prevent the customer notification required by the bill from being admissible against the defendant except to serve as the basis of anticipatory breach or repudiation of contract. However, the notification may be admissible against the defendant if it amounted to bad faith or fraud.

The bill also writes into law that the State of Kansas and its political subdivisions have no liability for a computer date failure. Since the time this bill was drafted, another bill has been introduced to protect units of government.

Legal protections are necessary even if a business passes all of HB 2185's requirements with flying colors. In our technological society, many computer programs interact with other programs in a multitude of different environments. The best efforts of a company to be ready for Y2K could be complicated by another company in our interdependent economy not being ready. For example, a disruption in phone or electricity service could undermine all of a company's efforts to be ready for the year 2000. While many businesses are testing with companies they interact with, the enormity of the Y2K problem makes it impractical for everybody to test with everybody.

House Bill 2185 demands a great deal from businesses before its protections apply. It is designed to protect the consumer's ability to seek damages in court as much as it is designed to protect businesses from frivolous lawsuits. Companies that do not meet the standards in the bill could be subjected to class action lawsuits seeking punitive damages.

We respectfully request that the Kansas 2000 Select Committee recommend HB 2185 favorable for passage.

Thank you.

# The Millennium Bug

*Much attention is being given in the media, over the Internet and in casual conversation to the impact of the Year 2000 computer date change problem. In many instances, hype has overwhelmed reality. Often overlooked in all this is the actual cause of the millennium bug.*

## **Description of the Y2K Problem**

The Year 2000 problem stems from the early years of computer programming when computers were as big as rooms and every byte of input was critical. To save time and space, early computer programmers identified dates with six digit fields (YYMMDD). For example, December 31, 1999 would be represented by "991231" in computer code. This always assumes that the century is "19." The two-digit date field for the year is the basis for all calculation formulas within most computer systems.

Up until now, this two-digit date field has sufficed, using a subtraction of the current date from some future date. As we enter the year 2000, however, the two digit field "00" will no longer permit accurate calculations because dates in the 21<sup>st</sup> century won't be read as being larger numbers than those in the 20<sup>th</sup> century. For example, 2000 minus 1998 is two, but 00 minus 98 will equal a negative 98. Some computer programs will "error out" with the negative number while others will treat the answer as an absolute, i.e. positive 98. The end result of this might be that accounting software sees all account receivables as overdue since no payments have been made in 98 years. This same mistake could be made with other calculations, including age.

## **Leap Year Complications**

Leap years are calculated by a simple set of rules. Unfortunately, February 2000 will be the exception to the exception. A leap year is a leap year if it is divisible by four, but it is not a leap year if it is divisible by 100. However, a leap year is a leap year if it is divisible by 400. Thus the Year 2000 is a special case that happens once every four centuries.

## **Other Programming Problems**

The number "9999" also creates several potential problems. In order to write more efficient programs that allowed for less use of memory, date fields in older programs were often used to provide special functions. April 9, 1999 translates into an internal computer message of "9999" on some programs because it is the 99<sup>th</sup> day of 1999. September 9, 1999 would also be read by many programs as 9/9/99. Either way, in many computer programming languages "9999" means "end of data file." This would signal some programs to permanently close files on that day.

*Technically, the problem is simple to understand. The solution is also rather simple. The difficulty in addressing the problem lies in its scope. Every piece of computer hardware, software and embedded system must be reviewed. Everything must be examined for date-sensitivity and how those systems or programs interact with others in their environment.*



---

# AMERICAN BANKER

ONLINE

## WASHINGTON

Thursday, January 28, 1999

### Surprise! Agencies Flunk Only 16 Banks, Thrifts on Year-2000

By Scott Barancik

**WASHINGTON** -- The number of banks and thrifts with an "unsatisfactory" year-2000 grade fell to just 16 at yearend from 46 at June 30, the Federal Deposit Insurance Corp. reported Wednesday.

Roughly 97% of the 10,415 FDIC-insured banks and thrifts were rated "satisfactory" in preparing for the millennium date change and 3% received the next-best rating of "needs improvement."

The agencies had been predicting that more banks, not fewer, would fail to meet regulatory requirements during the second half of 1998. During those six months, institutions were required to fix the code on their internal computer programs, test those fixes, determine their customers' readiness for 2000, and assess the resulting credit risk.

"I'm surprised," said Frank A. Hartigan, year-2000 project manager at the FDIC. "I expected the numbers to take a significant turn away from satisfactory."

"It's like night and day," said a Federal Reserve Board official who asked not to be named.

Both officials credited the industry with taking an aggressive approach to the problem. Particularly surprising was the performance of community banks, given early surveys showing that small banks were not spending much on the problem.

After completing a second round of on-site exams at roughly 20% of the

6,000 state banks it supervises, the FDIC reported that not a single one has been rated unsatisfactory. The Fed, which has completed about two-thirds of the so-called Phase II exams, reported similar results for Fed-member state banks.

At the Office of Thrift Supervision, regional staff forecast that the percentage of "satisfactory" thrifts would fall to 85% or 90%. But "Y2K seems to have gotten thrift management's attention," said Dorothy Van Cleave, the agency's year-2000 coordinator.

As for national banks, the Office of the Comptroller of the Currency said that 97% received "satisfactory" ratings. But in comments last week at the Bank Administration Institute's Y2K Summit in Orlando, Mark O'Dell, director of year-2000 policy at the agency, cautioned that ratings "may fluctuate in 1999."

In addition, the yearend statistics largely fail to reflect the industry's performance in the crucial "testing" phase, where banks and thrifts test their renovated systems to make sure they work properly.

Though there are interim deadlines, the final deadline for banks to complete the testing phase is June 30.

*Carol Power contributed to this article from Orlando.*

---

Close This Window

# HOUSE BILL No. 2185

By Committee on Judiciary

1-28

4-6

9 AN ACT enacting the Kansas Y2K protection act.

10

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

12 Section 1. This act shall be known and may be cited as the Kansas  
13 Y2K protection act.

14 Sec. 2. As used in this act:

15 (a) "Defendant" means any individual, proprietor, firm, partnership,  
16 joint venturer, syndicate, business trust, company, corporation, limited  
17 liability company, association, committee and any other group of persons  
18 acting in concert who provides services to a customer or client through  
19 the use, in part, of a computer system, program, or software which may  
20 be affected by a computer date failure, but does not include any of the  
21 above entities who sell, manufacture, distribute or lease computer sys-  
22 tems, programs, or software.

, which includes the delivery of public utilities services,

23 (b) "Action" means any action to recover damages resulting directly  
24 or indirectly from a computer date failure, including an action based on  
25 a breach of contract for a computer date failure, a shareholder or deriv-  
26 ative action based on a computer date failure, or an action based on an  
27 alleged failure to properly detect, disclose, prevent, report on, or reme-  
28 diate a computer date failure.

29 (c) "Computer date failure" means either of the following:

30 (1) The present or future inability of the computer system or com-  
31 puter program or software to accurately store, process, provide or receive  
32 data from, into and between the years 1999 and 2000 and beyond, in-  
33 cluding leap year calculations, if all other technology used in combination  
34 with such system, program or software properly exchanges data therewith;  
35 or

36 (2) The possibility of the existence of any such inability or  
37 incompatibility.

38 (d) "Computer program or software" means a set of statements or  
39 instructions to be used directly or indirectly in a computer system in order  
40 to bring about a certain result.

41 (e) "Computer system" means any electronic device or collection of  
42 devices, including support devices, networks and embedded chips, and  
excluding calculators that are not programmable, that contain computer

To: House Kansas 2000 Committee

From: David J Kreller, FirstBank, Manhattan KS

Date: February 16, 1999

RE: House Bill 2185

I, on behalf of the Kansas Chamber of Commerce and Industry, Heartland Community Bankers, Manhattan Chamber of Commerce, and FirstBank of Manhattan, appreciate this opportunity to appear before this Committee related to support for House Bill 2185, Kansas Y2K Protection Act.

The list of organizations I represent is long, but they all share a common belief: To do the right thing and to live up to our responsibilities. Speaking as a bank manager, I can personally attest to enormous resources, both human and monetary, that have been expended thus far in preparation for Year 2000. In visiting with my fellow Manhattan Chamber of Commerce members, most I have talked with have taken steps to evaluate how Year 2000 might impact them. The degree of impact certainly varies based upon the business. All that I have visited with have noted some level of impact.

I recently heard someone say that the end will not come on January 1, 2000, but rather about April 1, 2000 when the court dockets will be overrun with Y2K related lawsuits. While this comment is blatantly negative, I found it distressing. As a Western Kansas native, I, as most Kansans, have been raised on the solid principles of 'doing what it takes to get the job done' and 'tending to ones responsibilities'. Just recall how Kansans can be counted upon to help others when there is a windstorm, tornado, flood, or other natural disaster.

As I see it, this legislation is not about making people perform, but rather it is about taking a common sense approach to the problem. There has been considerable media coverage on Y2K. As such, the citizens, business-owners and municipalities of Kansas know about the problems, and are taking corrective action. This legislation is not a wholesale exemption from responsibility. It does require reasonable action in attempting to prevent Y2K problems. It is imperative that we not strangle commerce and choke the judicial system, by penalizing those who have exercised due care.

When asking people's opinions about what will happen with Year 2000 problems, you will likely get as many answers as people you ask. I of course do not know precisely what will happen either. But I am confident that the people, businesses and public entities of Kansas will take care of those that depend upon them, and 'do the right thing'. To help this happen, the right thing to do now is to offer legislative protection for those who are working hard to mitigate any controllable problems.

On behalf of the organizations I speak for today, we respectfully request the House Kansas 2000 Committee recommend the Kansas Y2K Protection act for passage.

Thank you.

Kansas 2000 Select Committee

Meeting Date 2-16-99

Attachment 5

**TESTIMONY IN OPPOSITIONS, HB 2185 & 2281  
PRESENTED ON BEHALF OF KANSAS TRIAL LAWYERS ASSOCIATION  
PATRICK NICHOLS, ATTORNEY AT LAW**

My name is Patrick Nichols. Like my father and grandfather before him I own and operate a small Kansas business and have done so for 22 years. The same is true for my wife and family; we all work in small businesses of either retail or professional nature. I am also an attorney. However, my status as a small businessman is most important since the controversy over Y2K will center around equal justice between businesses for adequate compensation for the most easily predictable losses.

I speak in opposition of both of these bills, Procrastinators Protection Acts. At issue is not a "crisis," it has been known about for at least forty (40) years. It is not a "millennium bug" since computers are going to be doing precisely what they have been programmed to do either successfully coping with Y2K or failing to cope with the change. This bill sends the wrong message to the wrong people about accountability for poor business decisions made in the interest of profit. I oppose this bill because it asks too little of those that have created this problem and requires it of them too late.

We oppose this bill because it, like any immunity bill, elevates the rights of some at the cost of the rights of others. Here, the rights which are elevated are those who have consciously chosen the path of unpreparedness and now seek to avoid responsibility. Those whose rights are sacrificed are the small business owners of Kansas (and only Kansas) who, like all small business people, depend on a reliable stream of commerce to transact business. It is the business men and women who will suffer when vendors fail to provide needed products; it is businesses who will be forced into inactivity with crushing overhead and no sales; and it is the business person whose declining profits will force financial collapse. On behalf of Kansas businesses we oppose the bill.

The computer program defect that is known as "Y2K" is the essence of foreseeability. Its occurrence is based on the single immutable fact of our lives--time passes. As one day passes into another, one year passes into the next; we learn as children to anticipate this occurrence. The defect in software programming is based on failure to respond to this most basic fact.

The defect is not a "bug." A "bug" is an unanticipated response from computer software or hardware. This occurrence known as "Y2K" is going to be caused by computers performing precisely as they were programmed to perform. It is not a crisis because it has been foreseen for at least forty (40) years.

The Y2K defect is brought about because a great deal of computer software was designed to recognize years by just the final two digits rather than all four. These systems assume the first two digits of the year are 1 and 9. Without reprogramming, these systems will recognize "00" not as 2000 but as 1900. Those systems which have not been reprogrammed could stop functioning or shut down beginning at 12:01 a.m. on 01/01/2000. In the 1940s and 50s, computer programming was done on punch cards where space was at a premium. Using only two digits instead of four saved what was then very expensive space. By the 1960s, magnetic tape was in use and space was no longer the issue. Programmers were fully aware of potential Y2K problems but assumed technical advances would take care of it.

- 1960; Robert Bemer, a prominent computer scientist, began advocating the use of a four digit rather than a two digit date code. Forty-seven (47) other industry specialists joined with him to try to devise computer programming standards.
- 1964; IBM markets the revolutionary System 36 mainframe. It maintains the two digit date format.
- 1967; National Bureau of Standards is ordered to determine the national date standard. The Defense Department resists converting from two digit dates.
- 1970; the Bureau of Standards adopts the two date standard despite pleas from eighty-six (86) technical societies, President Nixon's Senior Science Advisor, and Robert Bemer to adopt the four digit standard to avoid Y2K failure.
- 1979; Bemer writes in *Interface Age* about inevitable Y2K problems unless the defect is remedied.
- 1983; early Y2K fix software marketed **2 copies sold**.
- 1984; prompted by the inability of computers to figure annuities beyond year 2000, two authors publish *Computers in Crisis: How to Avoid the Coming Worldwide Computer Collapse*.
- 1986; magazine ad by South African programmer Chris Anderson decries "The Time Bomb in your IBM Mainframe System." IBM responds, "IBM and other vendors have known about this for many years. This problem is fully understood by IBM software developers who anticipate no difficulty in programming around it."
- 1989; Social Security Administration computer experts find that over payment recoupment systems did not work for dates after 2000 and



realize the 35 million lines of code have to be reviewed.

- 1993; engineers at North American Aerospace Defense Command set computers to simulate midnight 1-1-2000. Every NORAD early warning computer screen freezes; also in 1993 Peter de Jager writes "Doomsday 2000" a piece in the magazine *Computerworld* about the Y2K defect. He states, "We and our computers are supposed to make life easier. This was our promise. What we have delivered is a catastrophe."
- 1994; Social Security begins three year review of software.
- 1996; Senator Moynahan requests CRS report on Y2K. It predicts widespread massive failures.
- 1997; Bill Gates blames Y2K on those who "love to tell tales of fear." At this time, Microsoft is still shipping products that are not Y2K compliant.

**Throughout this time frame Apple Computers has been delivering a product that has always been Y2K compliant.**

Thus the defect in programming was both foreseeable and foreseen, certainly as early as 1960. The issue has been in the forefront of computer programmers' minds. If they have consciously chosen to produce a defective product which causes harm to Kansas businesses, the legislature should not excuse such blatant disregard for foreseeable, potentially catastrophic events.

The bill as written provides for the avoidance of accountability by corporate procrastinators. In response it asks of them too little and it asks it too late. In order to secure the protections of the Bill, all a business needs to do is test its computers, then send out a statement of Y2K compliance or noncompliance. The Bill does not require the vendor to fix the problem, just notify its customers of the status. It must then have a "contingency plan" which merely requires "alternative methods of carrying out the services which it provides to clients and customers." Such an "alternative method" might be to direct the customer to other vendors who may or may not be Y2K compliant.

The little it asks comes too late. The law requires only that the software be tested by September 1, 1999. This problem has been anticipated for over 30 years. It is so important that it comes before the Legislature now, but no testing is required for another six months! It takes little imagination to understand that no computer programmers will be available during the final four months of this year. A company which has turned a blind eye to this problem for so long will have virtually no time to fix it. The only fix available will be to send a notice to its customers advising them of non

Y2K compliance, to identify a "contingency plan," and then wrap oneself in a blanket of Legislative permissiveness. Even that "contingency plan" allows them an additional 60 days to provide an alternative to the services they deliver. Few businesses can survive 60 days of ongoing overhead, labor costs, etc. without the opportunity to sell their products and earn their profits. Both of these time frames, September 1, 1999 and a 60 day contingency plan, are so insufficient as to border on bad faith.

In exchange for such minimal efforts at compliance, the opponents advance changes in the law which are neither wise nor justified. The consequence of these changes will send the wrong message to the business community; that it can ignore obvious problems in the interest of its own profits, and then avoid accountability to its customers through legislative intervention. This will punish responsible businesses and put the seal of approval on irresponsible businesses.

The provisions make radical limitations on all damages, rewriting long established rules. One change is to limit consequential damages stemming from these defective products. "Consequential Damages" are defined in the law regarding sales of goods (K.S.A. 84-2-715) as "any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know...." This includes the primary damage that will be done by defective computers, lost business profits. ( see La Villa Fair v. Lewis Carpet Mills, Inc., 219 Kan 395, 1976) It limits most other damages as well.

The loss of consequential damages could be devastating to private companies and the State of Kansas as well. Considering the number of its employees, the number of computers and the huge amount of proprietary software written for the state, it is very likely that the State of Kansas will suffer most from Y2K problems and will be the largest single plaintiff as a result. If the Department of Transportation has to idle its workers for a month, these consequential damages would not be recoverable. Again the careless programmers and vendors are insulated from the true consequences of their acts as a result of this bill.

This insulation extends only to Kansas consumers. If a Kansas corporation does business in Missouri and Nebraska as well, it can send any notice it wants into our sister states. However, if it breaches its warranties, commits negligence, or other actionable conduct, the citizens of those states will not have their rights effected. The law of those states will govern. Thus it will only be the residents of Kansas who will be deprived of their right to seek redress for lost profits and other damages arising out of Y2K defects.

The worst idea in the bill is the denial of class action status. Class actions were



created to allow plaintiffs with smaller claims to band together to litigate claims which would not, of themselves, justify the expense. The threat of a single plaintiff is nothing, the threat of hundreds or even thousands of plaintiffs forces corporate accountability as a simple consequence of the cost of doing business.

It is not known whether there will be nationwide class action litigation filed by State Attorney Generals over Y2K issues. If this Bill is passed, Kansas would not be able to participate. Shrewd defendants on a national scale will simply send the required notice into Kansas by September 1, 1999. Then Kansans will be the only citizens in the United States to be denied compensation for the losses caused by this defect.

The power of class action litigation regarding defective programming is highlighted by the Medical Manager Corp. case. Medical Manager is used by over 25,000 doctors to schedule appointments, track accounts, and transmit bills to Medicare. The average cost of software and hardware used is \$22,000.00. The company was selling noncompliant systems at least through May of 1997. Doctors were told they would have to purchase a "upgrade" costing approximately \$25,000.00. Class Action lawsuits were filed in Texas and other states. On August 31, 1998, Medical Manager Corporation agreed to provide a free "patch" to all its users. In the absence of Class Action Litigation, 25,000 doctors would have paid a total of \$625,000,000.00 to fix a corporate blunder with a "patch" that could be provided for free.

The main consequence of Y2K defects stems from the interrelated nature of American business. A Kansas corporation may have invested hundreds of thousands of dollars in becoming Y2K compliant well in advance of the deadline. It may have inquired of its suppliers to confirm Y2K compliance. They test and retest their systems and are certain that no problems exist. On October 1, 1999, they receive notice from a key vendor that it will not be Y2K compliant after all and as a "contingency plan" it is suggested that the business obtain the product from another vendor. This cannot be done nor does the business have time to send out its own Y2K compliance letter. Customers who suffer incidental damages can proceed in tort and contract against this responsible corporate citizen who in turn has no recourse against the vendor who has acted so irresponsibly. Bankruptcy seems the inevitable result for the good corporate citizen, a free pass under this immunity bill is the result for the irresponsible corporate citizen.

This is not a computer crisis, it is a crisis of responsibility. It is a crisis where good corporate citizens are punished and the irresponsible corporate citizens are protected from the consequences of their acts.

This is not a computer crisis, it is a crisis of accountability where small businesses will face lost profits, major disruptions and exposure to bankruptcy without the right to go to court because they live in Kansas, while those driven by the profit motive to provide a defective product are given a pass to walk away.

It is a crisis of leadership that business interest seem more concerned about dodging responsibility than in fixing the problem.

In conclusion, let's be realistic about the consequences of what we do today. If this Bill is passed, what will motivate any corporation to become Y2K complaint now rather than wait until September 1, 1999? This Bill does not even mandate that the providers of goods and services become Y2K compliant; they must only disclose their inability to do so. By following the specifics of the law, they insulate themselves from the harm they cause.

If this Bill is rejected, it will send a clear message to Kansas businesses that they , like everyone else in this state, have an obligation to provide quality goods and services to their customers. It will send a message that now is the time to test those computers, now is the time to begin the remediation process and see that it is completed while there is still adequate time to make these changes. If this Bill is rejected, the message is "Get it together-Get it fixed."

Presentation In Support of House Bill 2185  
Kansas Y2K Protection Act  
Y2K Select Committee

Prepared by: Don Heiman  
Chief Information Technology Officer  
Executive Branch

### Bill Summary

This bill grants sovereign immunity to the State of Kansas and its political subdivisions for any class action or for any individual suit arising from damages resulting directly or indirectly for Year 2000 related computer failures to include breach of contract or failure to properly detect, disclose, prevent, report on, or remediate failures. Existing contracts retain their viability under the bill.

The bill also limits the consequential and remote damages for organizations and enterprises not part of State government or political subdivisions. The limitation applies to class action suits and the bill limits exposure to recovery of only actual damages under the following conditions...

- Plaintiff has not suffered personal injury other than emotional harm;
- Defendant has made reasonable efforts to mitigate Y2K system failures;
- Defendant has tested systems on or before September 1, 1999 for Y2K related failure points;
- The defendant has prepared a contingency plan on or before October 1, 1999;
- The defendant has provided by mail proper notice to its known customers of efforts to mitigate Y2K problems. The notice must be mailed and publicly posted on or before October 1, 1999. The notice includes key disclosures as specified in the bill;
- All existing contractual agreements must be satisfied.

### Fiscal Impact

The Year 2000 computer and chip repair initiatives across the United States is a major national as well as international concern. The repair bill for Year 2000 is estimated by a number of experts to exceed \$800 Billion. Lurking behind this cost is another set of costs associated with litigation should computer and related technology systems fail. In March 1998 the Federal House Science and Technology Committee received testimony from legal experts that the cost for litigation would exceed \$1 trillion in the US alone. Gartner Group has published estimates that indicate the cost for legal services could be two to three times the cost of repair.

In Kansas State government our repair cost for Y2K is \$26.5 million. Based on Gartner's estimate, we face a potential legal exposure between \$50 million to \$100 million dollars.

Today, there are five States who have passed legislation to limit Year 2000 liability.

Florida (282.4045) has passed legislation granting immunity to State government, local governments and medical schools.

Georgia (50-21-24 and 36-60-19) has passed laws exempting State and local governments from liabilities for claims arising prior to 12/31/2003 as long as plans and precautions taken to identify and prevent errors were reasonable.

Hawaii (662-15) has a law that no action can be taken against any person or government entity for errors of government computer systems occurring before 6/30/99, with exceptions.

Nevada (NRS Chp 41) bars all actions against State and local governments, their employees, and prison medical service contractors.

Virginia 8.01-195.3 law invokes sovereign immunity.

This year bills are pending in eight more states to include:

California  
Illinois  
Indiana  
New Hampshire

Pennsylvania  
South Carolina  
Texas  
Washington

Based on Gartner Group's estimate for litigation cost, State of Kansas agencies would avoid an estimated \$100 million in potential litigation costs and settlements if this bill passes. In addition, political subdivisions could avoid as much as an estimated \$50 million in costs with passage of the bill.

The private sector disclosure portion of the bill will also save the State considerable money. The disclosures will allow State Information Technology Organizations to properly quantify risks associated with software systems and outsourced IT services. This portion of the bill has the potential to save taxpayers over \$25 million in estimated costs in performing repairs and avoiding disruption of services.

February 15, 1999

## NEW STATE EMPLOYEE PAY PLAN FOR THE NEW MILLENNIUM

### A Proposal to the Kansas 2000 Select Committee

#### Overview

##### Current State Employee Compensation System:

- The current state employee pay plan has not changed dramatically since 1941.
- The current system is based largely on longevity of the employee.
- The current system is not responsive to changing market needs of the state.
- The current system does not reward those state employees that are providing outstanding service to their agencies and in turn to the citizens of Kansas.
- The current system does not foster employee and supervisor interaction for meaningful performance standards and appraisals.

##### Proposed Improvements Through a Performance Based Pay System:

- The proposed change to a performance based pay system would:
  - value employees as a resource to provide efficient, effective, and creative public services to the people of Kansas;
  - create a compensation system that would facilitate equity across all state agencies and job classifications;
  - create two-way communications between supervisors and employees; and
  - utilize performance standards that would be used to set employee objectives, communicate objectives, review employee achievements, and support the employee in delivering outstanding service to the people of Kansas.

Kansas 2000 Select Committee

Meeting Date 2-16-99

Attachment 8

I. **Employee Pay Based on Performance:**

- A. Effective July 1, 2000 (FY 2001) the following agencies shall be shifted to a performance based pay system (see Table A which is attached to this document):
1. selected fee fund agencies (including the 20 biennial budget fee boards);
  2. Regents' institutions, including the Board of Regents; and
  3. the Judicial Branch.
- B. Effective July 1, 2001 (FY 2002) **all other agencies** will implement a performance based pay system. See Table A which is attached to this document.
- C. Performance based pay will be based on the employee's value to the employing agency, including the employee's contribution toward the agency's mission and service to the citizens of Kansas, and on similar jobs in the marketplace, including a compensation level that is necessary to attract and retain highly qualified employees.
- D. Four new pay matrices will be established. The pay matrices include:
1. **Public Safety**—Positions that have public safety powers (*i.e.*, law enforcement officers; adult and juvenile correctional officers);
  2. **Direct-Contact Public Service**—Positions that have regular and direct contact with members of the public (*i.e.*, positions at state institutions and other state agencies performing social, rehabilitation, health, environmental, and other services, including the construction or maintenance of highways and other public improvements);
  3. **Professional or Technical**—Positions that require professional or highly technical education or training, including those requiring professional or occupational licensure (*i.e.*, engineers, architects, attorneys, and highly specialized laboratory technicians).
  4. **System Support**—Positions that provide support services and generally have minimal direct contact with members of the public (*i.e.*, all other positions that are not public safety, direct-contact public service, or professional or technical).
- E. The pay matrices would not include pay steps. Employee salaries would be placed on a broad-band pay range by the agency head that takes into account the contributions to the agency and hence the citizens of Kansas, experience, special training or education, and job complexity. The number of pay ranges on a pay matrix would be substantially less than the current 24 pay grades. There are currently 15 pay steps on each pay grade.
- F. Agency heads may institute a maximum 15 percent regional compensation differential, if necessary, in order to recruit and retain qualified employees.

- G. Over a two-year period the existing classified employee pay matrix will be abolished.
- H. Employees that are converted to a performance based pay cannot receive a reduction in their pay (which would include longevity bonus payments).
- I. The head of an agency may convert any position from the classified service to the unclassified service. However, any currently filled position in the classified service that is converted to an unclassified position, shall remain in the classified service until the position is vacant.
- J. The Judicial Branch shall implement a similar performance based pay plan for nonjudicial employees.
- K. **Financing the Performance Based Pay System:**
  - 1. longevity bonus payments will be abolished and agencies will be permitted to utilize longevity bonus payment resources to help implement a performance based pay system; and
  - 2. fee agencies will be granted the ability to increase fees to finance any of the increased costs for the performance based pay system. However, any individual salary increases will be within the employee's broad band pay range. For larger agencies, if certain divisions or sections are fee financed, those divisions or sections may increase fees to finance the performance based pay within the division or section.
  - 3. other financing for the performance based pay will come from the State General Fund or other resources of the agencies.

**II. Employee and Supervisor Evaluations:**

- A. Employees shall be evaluated on the basis of exceptional, satisfactory, and unsatisfactory. Those employees rated unsatisfactory shall be counseled on how their performance may be improved to a satisfactory level. Two unsatisfactory evaluations within six months would be sufficient reason for termination.
- B. Agencies will be required to include peer group evaluations with the traditional supervisor evaluation system of employee goal setting and performance reviews when determining performance based pay increases.
- C. Agencies shall monitor employee evaluations to ensure that cross-manager differences are within a statistically normal distribution and that employees are not unduly denied or granted high or low ratings.
- D. A randomly selected group of employees from each agency shall be selected to evaluate the agency head's performance as an administrator. The results of that evaluation would remain confidential and (for executive branch agencies) provided to the Governor. The Department of Administration would randomly select the employees from each agency



and conduct the survey, except the Governor's staff would select the employees and conduct the survey for the Department of Administration. Elected officials would be exempt from this provision.

**III. Training for Performance Based Pay:**

- A. Agency heads will implement educational programs for supervisors, managers, and all other agency employees on the development and implementation of meaningful performance based compensation systems prior to July 1, 2000 for the Group I agencies and prior to July 1, 2001 for Group II agencies (see Table A).
- B. In cooperation with Business College faculty of Regents institutions and Washburn University, the Department of Administration would develop and institute regularly scheduled training for all state employees. The training would include goal setting, evaluation performance, and other issues on performance based pay as determined appropriate by the Department of Administration.
- C. The position of Director of Training will be created in the Department of Administration. The 1999 Legislature will provide funding for the office in FY 2000 and FY 2001.
- D. Employees that reach the maximum pay deemed appropriate for their positions will be provided counsel and assistance to retrain for a position with higher compensation. It will be the agency's responsibility to ensure that all employees continue to learn and earn during their tenure with the state. Employees may acknowledge yearly, in writing, that they do not wish additional responsibilities and voluntarily elect to remain in a maximum pay position.

**IV. Legislature's Role in Performance Based Pay:**

- A. The Legislature will approve or disapprove increases in the number of employees within each agency, but will not approve or disapprove the compensation levels of employees. A full-time equivalent (FTE) position limitation will be placed on all agencies.
- B. The Legislature will appropriate funds for the number of approved positions, but the Legislature will not approve or disapprove the compensation levels of individual employees or employee groups. Compensation levels will be deemed administrative decisions based on the agency head being accountable to the Governor, Legislature, and the people of Kansas for the performance of the agency's duties to the state.
- C. The Legislature, in consultation with the Governor or the appropriate elected officials, will continue to determine compensation rates for executive branch agency heads. The Legislature, in consultation with the Chief Justice, will determine by statute the compensation rate for justices.
- D. Creation of a legislative oversight committee to review and monitor the Department of Administration's implementation of the new performance based pay system. The State Employee Compensation System Oversight Committee would consist of nine members,



five from the House (three from the majority party and two from the minority party) and four from the Senate (two from the majority party and two from the minority party). The Committee could meet on the call of the chairperson and travel within the state at the Committee's discretion. The Committee would be abolished or sunset on January 1, 2003.

**V. Other Personnel Related Issues:**

- A. The **Retirement Reduction Act**, where one out of every four positions that become vacant through a retirement for selected positions and agencies, is repealed.
- B. The Department of Administration will retain rule-making authority on general personnel issues (*i.e.*, vacation, sick leave, other benefit-related policies, and Civil Service issues)
- C. The Department of Administration will provide to each employee an annual statement of the total value of their compensation package.
- D. **Cafeteria Style Benefits Cash-Out Option**—The Department of Administration is required to offer employees a "cafeteria style" benefit package from which the employees may select the benefits that the employees deem best. The optional benefit package must be in place by July 1, 2001. Employees would be able to receive up to one-half of their unspent benefit dollars as additional salary. An employee would be able to donate their unspent benefit dollars to a fund in which employees in need could access for assistance (*i.e.*, additional sick leave days to care for spouse or purchase additional health insurance coverage, etc.).

**TABLE A**

**Group I Agencies**  
Effective Date: July 1, 2000

**Fee Boards:**

Abstracters' Board of Examiners  
 Board of Accountancy  
 State Bank Commissioner  
 Kansas Board of Barbering  
 Behavioral Sciences Regulatory Board  
 State Board of Healing Arts  
 Kansas State Board of Cosmetology  
 State Department of Credit Unions  
 Kansas Dental Board  
 State Board of Mortuary Arts  
 Kansas Board of Examiners in Fitting  
 and Dispensing of Hearing Aids  
 Consumer Credit Commissioner  
 Board of Nursing  
 Board of Examiners in Optometry  
 State Board of Pharmacy  
 Real Estate Appraisal Board  
 Kansas Real Estate Commission  
 Office of the Securities Commissioner  
 of Kansas  
 State Board of Technical Professions  
 State Board of Veterinary Examiners

**Other Agencies:**

State Corporation Commissioner  
 Citizens' Utility Ratepayer Board  
 Judicial Branch  
 Judicial Council  
 Board of Regents  
 Fort Hays State University  
 Kansas State University  
 KSU Veterinary Medical Center  
 KSU Extension Systems and Agri-  
 cultural Research Programs  
 Emporia State University  
 Pittsburg State University  
 University of Kansas  
 University of Kansas Medical Center  
 Wichita State University  
 State Fire Marshal  
 Kansas Public Employees Retirement  
 System  
 Kansas Lottery  
 Kansas Racing and Gaming  
 Commission  
 Kansas Technology Enterprise  
 Corporation  
 Health Care Stabilization Fund Board  
 of Governors  
 Kansas Wheat Commission

**Group II Agencies**  
Effective Date: July 1, 2001

Department of Transportation  
 State Department of Education  
 Arts Commission  
 School for the Blind  
 School for the Deaf  
 Historical Society  
 State Library  
 Department of Agriculture  
 State Conservation Commission  
 Kansas State Fair  
 Kansas Water Office  
 Animal Health Department  
 Department of Wildlife and Parks  
 Department on Aging  
 Kansas Guardianship Program  
 Department of Health and  
 Environment  
 Homestead Property Tax Refunds  
 Larned State Hospital  
 Osawatomie State Hospital  
 Rainbow Mental Health Facility  
 Kansas Neurological Institute  
 Parsons State Hospital and  
 Training Center  
 Kansas Commission on Veterans'  
 Affairs  
 Department of Human Resources  
 Department of Social and Rehabilita-  
 tion Services  
 Department of Corrections  
 Ellsworth Correctional Facility  
 El Dorado Correctional Facility  
 Hutchinson Correctional Facility  
 Lansing Correctional Facility  
 Larned Correctional Facility  
 Norton Correctional Facility  
 Topeka Correctional Facility

Winfield Correctional Facility  
 Adjutant General  
 Kansas Bureau of Investigation  
 Ombudsman of Corrections  
 Kansas Parole Board  
 Kansas Sentencing Commission  
 Emergency Medical Services Board  
 Highway Patrol  
 Atchison Juvenile Correctional Facility  
 Beloit Juvenile Correctional Facility  
 Larned Juvenile Correctional Facility  
 Topeka Juvenile Correctional Facility  
 Juvenile Justice Authority  
 Board of Indigents' Defense Services  
 Department of Commerce and  
 Housing  
 Kansas, Inc.  
 Department of Revenue  
 Board of Tax Appeals  
 Governmental Ethics Commission  
 Department of Administration  
 State Treasurer  
 Secretary of State  
 Attorney General  
 Legislature  
 Legislative Coordinating Council  
 Kansas Legislative Research  
 Department  
 Revisor of Statutes  
 Legislative Division of Post Audit  
 Governor's Department  
 Office of Lieutenant Governor  
 Insurance Department  
 Commission on Human Rights  
 Kansas Development Finance  
 Authority