

Approved: 3/31/09
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 12, 2009, in Room 143-N of the Capitol.

All members were present except:

- Representative Bob Brookens- excused
- Representative Raj Goyle- excused
- Representative Jason Watkins- excused
- Representative Kevin Yoder- excused

Committee staff present:

- Melissa Doeblin, Office of the Revisor of Statutes
- Matt Sterling, Office of the Revisor of Statutes
- Jill Wolters, Office of the Revisor of Statutes
- Athena Andaya, Kansas Legislative Research Department
- Jerry Donaldson, Kansas Legislative Research Department
- Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

- Thomas R. Stanton, Kansas County and District Attorneys Association
- Kathy Porter, Executive Assistant to the Judicial Association
- Roger Werholtz, Secretary-Department of Corrections
- Jeff Cowger, Deputy General Counsel-Juvenile Justice Authority
- Ray Dalton, Deputy Secretary of Disability and Behavioral Health Services
- Chuck Simmons, Deputy Secretary-Department of Corrections

Others attending:

See attached list.

The hearing on **SB 68 - Docket fees; prosecuting attorneys' training fund** was opened.

Thomas R. Stanton, President, Kansas County and District Attorneys Association (KCDAA) appeared as a proponent of this bill. He explained that currently a portion of the docket fee paid in certain cases is placed into a prosecutor's training fund pursuant to K.S.A. 20-362 and K.S.A. 28-172a for the training of prosecutors throughout the State of Kansas. The elected prosecutor in each county may use the funds available from that docket fee for continuing legal education of the attorneys in his or her office. Members of the KCDAA assign a portion of those funds to the training corporation affiliated with the KCDAA to provide training for prosecutors across the State. The KCDAA presents this training via two conferences per year. The pooling of these funds allows for the high quality education for Kansas prosecutors; centralization of training allows for consistent, state-specific education of issues of interest to all Kansas prosecutors, including newly enacted legislation. Since 1987, the docket fee paid to the prosecutor's training fund has been one dollar per case. The cost of providing the training has risen significantly in the years since and the amount of training funds available through the one dollar docket fee is now insufficient to keep up with the cost. This bill will increase the one dollar to two dollars per case. This would double the amount of training funds available. The additional dollar would be added to the court costs of those convicted of violating the law and therefore not increase any current tax from any source. (Attachment 1)

Kathy Porter, Executive Assistant to the Judicial Association appeared as an opponent to the bill as written. She explained as the bill was originally drafted, the additional dollar increase was taken "off the top" of the current amount paid for each specified docket fee and the docket fee itself was not increased and would have had the effect of short-changing every fund specified in K.S.A. 2008 Sup-367, and attached supporting documentation. She urged the Committee to retain the Senate floor amendment so that the PATF is not enriched to the detriment of the other funds, including the State General Fund. In addition she presented a balloon amendment to make this bill effective upon publication in the statute book on July 1, rather than upon publication in the Kansas Register. She further provided information that addresses the issue if docket fees are appropriate funding for a majority of the Funds. She also offered a suggestion of another source of revenue for the funding of PATF under K.S.A. 22-2902. (Attachment 2)

The hearing was closed on **SB 68**.

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Minutes of the House Judiciary Committee at 3:30 p.m. on March 12, 2009, in Room 143-N of the Capitol.

The hearing on **SB 61 - Prison-made goods act; additional authorization to contract for certain work projects** was opened.

Roger Werholtz, Secretary-Department of Corrections spoke as a proponent to this bill. He explained this bill would allow the secretary to contract with private landlords to repair their rental property damaged by tenants under the department's release supervision. Allowing inmate work crews to repair property that was damaged by released offenders will provide much needed incentives for landlords to rent to offenders and also allow the inmate to use skills that could help them enter the workforce. (Attachment 3)

Ashley Jones, Local Initiatives Support Corporation (LISC), provided written testimony in support of the bill. (Attachment 4)

There were no opponents.

The hearing on **SB 61** was closed.

The hearing on **SB 95 - Trafficking in contraband in a correctional institution or treatment care facility** was opened.

Jeff Cowger, Deputy General Counsel-Juvenile Justice Authority appeared as a proponent. He explained contraband in correctional institutions, which includes drugs, weapons, and other items, creates a dangerous environment for officers and residents alike. Currently K.S.A. 21-3826 provides that it is a Level 5 nonperson felony to, introduce or attempt to introduce, into or upon, the grounds of a juvenile correctional facility, firearms, ammunition, explosives or certain controlled substances. Traffic in all other items of contraband is a Level 6 nonperson felony. JJA seeks this bill to provide that traffic in contraband, as defined by rules and regulations of the commissioner, by an employee of a juvenile correctional facility would be a Level 5 nonperson felony. This change would bring juvenile correctional facility employees in line with adult correctional facility employees. (Attachment 5)

Ray Dalton, Deputy Secretary of Disability and Behavioral Health Services spoke as a proponent and supports the intent of this bill that will enhance and support patient and staff safety and security. He further explained why it is important to make a distinction between a correctional institution and a care and treatment facility. This bill then allows for the Secretary of Corrections to determine what contraband is for each facility because the nature of medical treatment facilities is much different than in correctional facilities. (Attachment 6)

Chuck Simmons, Deputy Secretary -Department of Corrections appeared in support of the bill as proposed by the attached balloon. The proposed amendment was provided to their department by the National Rifle Association. He explained that **SB 95** as amended by the Senate excludes facility parking lots from the facility contraband statute and would not include the introduction of drugs, cell phones, tobacco and other items of contraband left outside of a secured vehicle in a facility parking lot. Parking lots are locations conducive to the delivery of contraband. Excluding parking lots from the coverage of the facility contraband statute for all items of contraband would adversely impact the overall security of correctional facilities. The Departments urges amendment of this bill in conformity with the NRA's proposal. (Attachment 7)

There were no opponents.

The hearing on **SB 95** was closed.

SB 85 - Secretary of State; return of filings.

Representative Pauls made the motion to report SB85 favorably for passage. Representative King seconded the motion.

Representative Pauls made a motion to amend the bill to correct the striking of the word "certified" in a previous amendment by the Senate Judiciary Committee. The Secretary of State testified many of their customers rely on the certification and requested the certification be added back into the bill. The amendment also includes some technical changes to accommodate enhanced changes from "original signed instrument"

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 12, 2009, in Room 143-N of the Capitol.

to "electronic" type of wording. The amendment will also make the effective date July 1, 2010 in order to allow time to complete design and implementation of a new filing process.

Representative Kuethers seconded the motion. (Attachment 8)

Motion carried.

Representative Pauls made the motion to pass **SB 85** as amended. Representative Kuether seconded the motion. Motion passed as amended.

SB 156 - Close corporations; increasing the limit on the number of stockholders in a close corporation.

Representative Whitham made the motion to report **SB 156** Be Passed and Placed on Consent Calendar.

Representative Talia seconded the motion. Motion carried.

HB 2082 - Musical performing groups; advertising; restrictions.

Representative Pauls made the motion to report **HB 2082** favorably for passage. Representative Ward seconded the motion.

Representative Pauls made the substitute motion to amend the bill, identified as Balloon 1. (Attachment 9)

This balloon provides the following:

- 1) Section 1 adds "This act shall be part of and supplemental to the Kansas Consumer Protection Act"
- 2) Section 4c removes "of not less than \$5000 nor more than \$15,000 per violation" and adds "as provided in subsection (a) of K.S.A. 50-636, and amendments thereto".
- 3) Section 5 adds "It shall be an affirmative defense to a violation of this act if the person described in Section 3, and amendments thereto, has a written contract with the performing or recording group, that states that:
(a) The performing group is an authorized registrant pursuant to subsection (a) of Section 3, and amendments thereto; or (b) at least one member of the performing group was a member of the recording group pursuant to subsection (b) of Section 3, and amendments thereto.

Representative Ward seconded the motion. Motion carried.

Representative Pauls made the motion to report **HB 2082** favorably for passage as amended.

Representative Ward seconded. Motion carried.

SB 66 - Change of venue in care and treatment cases; transmittal of documents.

Melissa Doeblin, Staff Revisor gave an overview of the bill.

Representative Ward made the motion to report **SB 66** favorably for passage. Representative King seconded the motion.

Representative Ward made a substitute motion to amend the bill to unstrike lines 27 thru 31 and give the option to either fax, send electronic copy and option to mail. Representative King seconded the motion. Motion failed.

Representative Pauls made a motion to amend the bill to read " Upon request of the receiving district court or upon an order of the district transferring venue, the transferring district court shall send to the receiving district court the entire original file of the case by mail". Representative Colloton seconded the motion. Motion carried.

Representative Whitham made the motion to report **SB 66** favorably for passage as amended.

Representative Colloton seconded. Motion carried.

SB 159 - Enforcement of tobacco settlement.

Representative King made the motion to report **SB 159** favorably for passage. Representative Colloton seconded the motion.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 12, 2009, in Room 143-N of the Capitol.

Representative King made a substitute motion to amend the bill to accept changes requested by the Attorney General, as identified in Balloon 1. (Attachment 10)

Representative Colloton seconded the motion. Motion carried.

Representative Whitham made the motion to report **SB 159** favorably for passage as amended. Representative Kuether seconded the motion. Motion carried.

The next meeting is scheduled for March 16, 2009.

The meeting was adjourned at 4:40 p.m.



Kansas County & District Attorneys Association

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www.kcdaa.org

TO: The Honorable Representatives of the House Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney
President, Kansas County and District Attorneys Association

DATE: March 9, 2009

RE: Senate Bill 68

Chairman Kinzer and Members of the Committee:

Thank you for allowing me to submit testimony regarding Senate Bill 68. As many of you probably know, a portion of the docket fee paid in certain cases is placed into a prosecutor's training fund pursuant to K.S.A. 20-362 and K.S.A. 28-172a for the training of prosecutors throughout the State of Kansas. The elected prosecutor in each county may use the funds available from that docket fee for continuing legal education of the attorneys in his or her office.

Members of the Kansas County and District Attorneys Association (KCDA) assign a portion of those funds to the training corporation affiliated with the KCDA to provide training for prosecutors across the State. The KCDA presents this training via two conferences per year. The pooling of these funds allows for high quality education for Kansas prosecutors. Centralization of training allows for consistent, state-specific education on issues of interest to all Kansas prosecutors, including newly enacted legislation.

Prosecutors are held to extremely high standards of professional responsibility, and the people of this State deserve a high level of legal proficiency in their elected prosecutors. Since 1987, the docket fee paid to the prosecutor's training fund has been \$1 per case. The cost of providing high-quality legal training for prosecutors has risen significantly in the years since 1987, and the amount of training funds available through the \$1 docket fee is now insufficient to keep up with that cost.

We are now requesting that this body raise the portion of the docket fee placed into the prosecutor's training fund in order to insure continued high-quality legal education for Kansas prosecutors. Senate Bill 68 will raise the amount paid into the prosecutor's training fund from

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Attachment # 1

\$1 to \$2. This would double the amount of training funds available to train Kansas prosecutors. The increase would come from an additional dollar added to the court costs of those convicted of violating the law, and would not require this body to increase any current tax from any source. Moreover, this would not effect the funding available to any other government entity.

The citizens of this state will benefit from the training made available by the passage of Senate Bill 68. We urge your full support and favorable recommendation of SB 68. I would be happy to stand for questions.

Respectfully submitted,

Thomas R. Stanton



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

House Judiciary Committee
Monday, March 9, 2009

Testimony in Opposition to SB 68

Kathy Porter

SB 68 would increase from \$1 to \$2 the amount deducted from docket fees in specified cases to be credited to the Prosecuting Attorneys' Training Fund (PATF). These cases include misdemeanor and felony criminal cases, traffic cases, fish and game cases, and cigarette and tobacco infractions. Under the Senate amendment, \$1 would continue to be contributed to the PATF from the docket fees in child in need of care cases, juvenile offender cases, and mental illness, drug abuse, or alcoholism treatment actions.

As the bill was originally drafted, the additional dollar for the PATF was taken "off the top" of the **current** amount paid for each specified docket fee. The docket fee itself was not increased. This would have had the effect of short-changing every fund specified in K.S.A. 2008 Supp. 20-367, a copy of which is included as Attachment A. The percentage splits attributed to each of those funds is noted in the fiscal note included as Attachment B, which also illustrates that point that 47.71% of the balance is credited to the State General Fund. In FY 2008, approximately \$186,239 was deposited into the PATF. Because the bill would have given the PATF an additional \$1 per docket fee without raising the docket fee, therefore cutting into the amounts distributed to other funds, in the aggregate these funds would lose approximately \$186,239 and the State General Fund would have lost approximately \$88,855 of that total.

This \$186,239 short-changing of these funds was corrected by the Senate floor amendment. I would urge you to retain the amendment so that the PATF is not enriched to the detriment of these other funds, including the State General Fund. The Senate amendment, which increases only some of the docket fees for benefit of the PATF, does not significantly alter the fiscal note in terms of new funding for the PATF. This is because most of the docket fees collected come from traffic cases. Leaving the contribution to the PATF at \$1, rather than increasing it to \$2, from the docket fees in child in need of care cases, juvenile offender cases, and mental illness, drug abuse, or alcoholism treatment actions will result an increase of \$176,900 to the PATF, or \$9,339 less than the \$186,239

I am also requesting an amendment to make this bill effective upon publication in the statute book on July 1, rather than upon publication in the *Kansas Register*. If the bill is effective upon publication in the *Kansas Register*, the Judicial Branch will have to i of reprogramming its case management software twice – once to make this change

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is published, and a second time to make all of the other changes that will be mandated by legislation that will be enacted this year. From past experience, reprogramming of this sort will cost approximately \$5,000, a cost which the Judicial Branch will have to bear once, but definitely should not be expected to bear twice. This is a process that also takes a significant amount of staff time, and this is not an amendment that justifies that cost of time or money. The cost of publication in the *Kansas Register* is also a factor to consider.

Moreover, making this bill effective upon publication would require that Kansas Highway Patrol officers and sheriffs' deputies have new ticket books printed or that they amend their current tickets. They must be instructed to begin using the new books on the date of publication in the *Kansas Register*. If any other changes that are effective July 1 are made to the Uniform Traffic Schedule or to the docket fee, as they are in most years, this would mean that troopers and sheriffs would have to bear the costs of printing and distributing new ticket books twice, as well as instructing troopers and officers.

I have attached a balloon amendment to reflect publication in the statute book on July 1, rather than publication in the *Kansas Register*.

As illustrated in Attachment B, through the years the Legislature has credited a portion of the docket fee to a variety of funds, each of which made a compelling argument for that funding. However, there also has been legislative recognition that docket fee funding may not be appropriate for a majority of these funds. In 2005, the Interim Special Committee on Judiciary concluded that "other entities outside the judicial system that receive docket fees should go through the regular appropriations process as do other agencies for funding purposes." In 2006, the Interim Special Committee on Judiciary recommended the introduction of legislation that would delete all funds then receiving docket fee funding, with the exception of the Access to Justice Fund, the Judicial Branch Nonjudicial Salary Initiative Fund, the Judicial Branch Education Fund, the Judicial Technology Fund, the Dispute Resolution Fund, the Judicial Council Fund, and the Judicial Performance Fund. A copy of both interim reports is included as Attachment C.

It is obvious to everyone in this room that this is a year in which cuts have been or will be made to every state budget. The Judicial Branch has had a hiring freeze in place since the beginning of the fiscal year, has eliminated funding for a significant portion of temporary help, has eliminated funding for retired judges, and has made a variety of other cuts. If these cuts are not sufficient to meet the budget cuts that will be mandated by the 2009 Legislature, and I suspect they will not be, the Judicial Branch, with a budget that is almost 98% salaries and wages, will have no choice other than to shut down the court system by furloughing its employees. In addition to numerous other duties, clerks of the district court collect, receipt, subject to accounting, and direct docket fees and numerous other fines and fees to the appropriate funds. As was concluded by the Interim Special Committees on Judiciary in 2005 and 2006, docket fees should be used to address needs that directly impact the courts, rather than for other related uses.

Testimony in Opposition to SB 68
March 9, 2009
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Prosecuting attorneys would seem to have at least one other significant source of revenue that is authorized, but not limited, by statute. K.S.A. 22-2909 provides that county and district attorneys may enter into diversion agreements in lieu of prosecution, and provides for "diversion costs." From the diversion fee paid, the amount of the docket fee should be paid to the clerk of the district court, but the fine amount and any additional "diversion costs" (which are unlimited by statute) are retained by the county or the county or district attorney. Because this funding is paid to the county and district attorneys, rather than to the clerks of the district court, we do not know how much is collected annually. However, we know anecdotally that these amounts are significant. I know of no reason why diversion costs could not be used to provide training funds.

Thank you for the opportunity to testify on SB 68, and I would be happy to stand for any questions.

- (3) 2.31% to the juvenile detention facilities fund;
- (4) 1.78% to the judicial branch education fund;
- (5) .47% to the crime victims assistance fund;
- (6) 2.27% to the protection from abuse fund;
- (7) 3.60% to the judiciary technology fund;
- (8) .29% to the dispute resolution fund;
- (9) 1.05% to the Kansas juvenile delinquency prevention trust fund;
- (10) .18% to the permanent families account in the family and children investment fund;
- (11) 1.25% to the trauma fund;
- (12) .94% to the judicial council fund;
- (13) .57% to the child exchange and visitation centers fund;
- (14) 15.29% to the judicial branch nonjudicial salary adjustment fund;
- (15) 15.12% to the judicial branch nonjudicial salary initiative fund; and
- (16) the balance to the state general fund.

(b) On and after July 1, 2010, of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit:

- (1) 4.30% to the access to justice fund;
- (2) 2.38% to the juvenile detention facilities fund;
- (3) 1.83% to the judicial branch education fund;
- (4) .48% to the crime victims assistance fund;
- (5) 2.34% to the protection from abuse fund;
- (6) 3.71% to the judiciary technology fund;
- (7) .30% to the dispute resolution fund;
- (8) 1.08% to the Kansas juvenile delinquency prevention trust fund;
- (9) .19% to the the permanent families account in the family and children investment fund;
- (10) 1.29% to the trauma fund;
- (11) .97% to the judicial council fund;
- (12) .59% to the child exchange and visitation centers fund;
- (13) 15.75% to the judicial branch nonjudicial salary adjustment fund;
- (14) 15.57% to the judicial branch nonjudicial salary incentive fund; and
- (15) the balance to the state general fund.

History: L. 1992, ch. 315, § 2; L. 1994, ch. 335, § 4; L. 1996, ch. 234, § 3; L. 1996, ch. 234, § 4; L. 1999, ch. 127, § 10; L. 2000, ch. 177, § 4; L. 2001, ch. 5, § 78; L. 2002, ch. 51, § 1; L. 2003,

ch. 101, § 8; L. 2004, ch. 95, § 1; L. 2006, ch. 195, § 8; L. 2008, ch. 95, § 5; July 1.

Attorney General's Opinions:

Statute prohibiting disclosure of judicial survey data of elected judges violates first amendment. 2007-27.

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20-367. Disposition of docket fees. (a)

On and after July 1, 2008 through June 30, 2010, of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit:

- (1) 3.00% to the judicial performance fund;
- (2) 4.17% to the access to justice fund;




State of Kansas
Office of Judicial Administration
 Kansas Judicial Center
 301 SW 10th
 Topeka, Kansas 66612-1507

(785) 296-2256

January 26, 2009

To: Duane Goossen
 Director of the Budget

From: Jerry Sloan 
 Budget & Fiscal Officer

Re: SB 68

Senate Bill 68 would increase the amount from each docket fee that is deposited into the local prosecuting attorneys' training fund from \$1 to \$2.

The bill does not propose an increase in docket fees to fund this initiative resulting in a decrease to all funds receiving a portion of the docket fees. Last fiscal year, approximately \$186,239 was deposited into the prosecuting attorneys' training funds from docket fees. Since SB 68 would double the amount deposited, we are estimating a total of \$372,478 would be deposited into the fund.

The following table contains the funds that currently receive a portion of docket fees and the percentage of fees deposited into the fund as well as the estimated decrease in receipts.

Judicial Performance Fund	3.00%	-\$5,587
Access to Justice Fund	4.17%	-\$7,766
Juvenile Detention Facilities Fund	2.31%	-\$4,302
Judicial Branch Education Fund	1.78%	-\$3,315
Crime Victims Assistance Fund	0.47%	-\$875
Protection from Abuse Fund	2.27%	-\$4,228
Judiciary Technology Fund	3.60%	-\$6,705
Dispute Resolution Fund	0.29%	-\$540
Kansas Juvenile Delinquency Prevention Trust Fund	1.05%	-\$1,955
Permanent Families Acct in the Family & Children's Investment Fund	0.18%	-\$335
Trauma Fund	1.25%	-\$2,328
Judicial Council Fund	0.94%	-\$1,751
Child Exchange and Visitation Centers Fund	0.57%	-\$1,062
Judicial Branch Nonjudicial Salary Adjustment Fund	15.29%	-\$28,476
Judicial Branch Nonjudicial Salary Initiative Fund	15.12%	-\$28,159
State General Fund	47.71%	-\$88,855

Should SB 68 be enacted the above funds would see a decrease in revenue should filings remain consistent.

JS:mr

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Special Committee on Judiciary

COURT DOCKET FEES

CONCLUSIONS AND RECOMMENDATIONS

The Committee reviewed the various aspects of the court docket fees issue and agreed to introduce a bill that would delete certain funds from district court docket fees as follows:

- Indigents' Defense Services Fund;
- Crime Victims Assistance Fund;
- Protection from Abuse Fund;
- Kansas Juvenile Delinquency Prevention Trust Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Centers Fund;
- Juvenile Detention Facilities Fund;
- Trauma Fund; and
- Law Enforcement Training Center Fund.

Those funds that would continue to be funded by docket fees include the funds that are related to the functioning of the courts as follows:

- Access to Justice Fund;
- Judicial Branch Nonjudicial Salary Initiative Fund;
- Judicial Branch Education Fund;
- Judicial Technology Fund;
- Dispute Resolution Fund;
- Judicial Council Fund; and
- Judicial Performance Fund.

Proposed Legislation: The Committee recommends one bill to be introduced in the Senate.

BACKGROUND

The Special Committee on Judiciary was charged to review the amount of each docket fee; how Kansas docket fees compare to those of other states; the impact on litigants and our judicial system of increasing or decreasing docket fees; whether docket fee revenue should be used solely for funding the Judicial Branch; whether non-judicial recipients of docket fee revenue should be required to annually justify their receipt of that revenue; and the impact on non-judicial docket fee recipients of submitting their annual revenue request to the appropriations process.

COMMITTEE ACTIVITIES

The Committee held a hearing on the issue of docket fees on November 16, 2006. Conferees included Alicia Lange, Grants Administrator, Attorney General's Office; Randy Hearrell, Judicial Council; Richard Hayse, Kansas Bar Association; Don Jordan, Commissioner, Juvenile Justice Authority; Lee Woodard, Sedgwick County Law Library; John Pickett, Johnson County Law Library; Dick Morrissey, Deputy Director, Kansas Department of Health and Environment; Joyce Grover and Dodie Wellshear, Kansas Coalition Against Sexual and Domestic Violence; and Marilyn Harp, Kansas Legal Services.

Carolyn Rampey, Kansas Legislative Research Department, provided an overview of the disposition of district court docket fees along with the distribution breakdown of which funds receive docket fees, the percentage they receive and the dollar amounts they will receive in FY 2007.

Alicia Lange addressed the mechanisms of the five funds that the Attorney General's Office oversees. The conferee stated that individuals from each of the funds has to reapply every year for a grant. The Attorney General holds a percentage of docket fee funds out each month to make sure there are enough funds to last throughout the year.

Randy Hearrell explained the mechanism of the Judicial Council's funding process. Part of the Judicial Council's operating expenses come from the sale of its publications. In addition, the Judicial Council does receive some State General Funds.

Rich Hayse supported uniform docket fees but stated a belief that only court related activities should receive docket fee funding.

Don Jordan stated that, whatever the source, juvenile justice programs need to be adequately funded. In addition, written testimony was provided by J. Russell Dennings regarding funding for regional juvenile detention centers.

Lee Woodard and John Pickett addressed the funding of their respective county law libraries. Each library charges a registration fee to attorneys.

Joyce Grover focused on funding for sexual and domestic battery programs that are funded through the Attorney General's Office. Application for funding needs to be made each year.

Dick Morrissey explained the need for funding to establish and maintain the infrastructure for a statewide trauma system.

Marilyn Harp supported continuation of docket fee funds for the Access to Justice Fund and the need for certain legal services to be available for those who cannot afford it.

The Kansas Trial Lawyers Association submitted written testimony encouraging the Legislature to require programs that receive docket fees to go through the budget process.

J. Russell Jennings provided written testimony and advocated continued funding for the Juvenile Detention Facilities Fund.

CONCLUSIONS AND RECOMMENDATIONS

The Committee reviewed the various aspects of the court docket fees issue and agreed to introduce a bill that would delete certain funds from district court docket fees as follows:

- Indigents' Defense Services Fund;
- Crime Victims Assistance Fund;
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- Kansas Juvenile Delinquency Prevention Trust Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Centers Fund;
- Juvenile Detention Facilities Fund; and
- Trauma Fund.

Those funds that would continue to be funded by docket fees include the funds that are related to the functioning of the courts as follows:

- Access to Justice Fund;
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- Judicial Branch Education Fund;
- Judicial Technology Fund;
- Dispute Resolution Fund;
- Judicial Council Fund; and
- Judicial Performance Fund.

Special Committee on Judiciary

DOCKET FEES IN KANSAS

CONCLUSIONS AND RECOMMENDATIONS

In discussion on the topic of docket fees and increases in the fees, the Committee indicated disappointment regarding the lack in the number of conferees whose programs are partially financed by docket fees. The Committee concluded that other entities outside the judicial system that receive docket fees should go through the regular appropriations process as do other agencies for funding purposes.

Further discussion reflected the fact that the training of law enforcement officers at the Kansas Law Enforcement Training Center (KLETC) is financed by the state. The Committee encouraged KLETC to charge a user fee to help fund expenses.

The Committee made two recommendations on these matters as follows:

- Increase docket fees, as proposed by the District Court Judges Association, to provide for an additional \$9,000 for district court judges and district magistrate judges salaries; and
- Increase by \$2.00 the motor vehicle registration fee to be used for KLETC purposes and to recommend that KLETC be granted authority to promulgate rules and regulations to impose a user fee.

Proposed Legislation: The Committee recommends the introduction of two bills.

BACKGROUND

The charge to the Committee included the study of the current status of docket fees in Kansas. In addition, a review of 2005 HB 2491, which proposes to finance a 10 percent increase for judicial salaries through increased docket fees and review a docket fee proposal for funding of the continued operation of KLETC was presented. The fiscal note on HB 2491, as proposed, would be neutral. The bill was introduced by the House Appropriations Committee and then was referred to that Committee.

2005 SB 296 also dealt with an increase in docket fees. It was introduced by the Senate Ways and Means Committee and was referred to that Committee where the bill had a hearing and eventually passed out of the Committee. The bill was then amended

by the Senate Committee of the Whole by adjusting the increase in salaries of judges downward. The change still resulted in a proposed overall increase in judicial salaries. SB 296 was then referred to the House Appropriations Committee. As introduced, the two bills, HB 2491 and SB 296, were identical.

COMMITTEE ACTIVITIES

Staff presented a memorandum dealing with how docket fees are collected from district courts and distributed among various state and local entities.

Proponents of the measure to increase docket fees for judicial salaries included District Court Judge Meryl Wilson, 21st judicial district; Chief District Court Judge

Richard Smith of the 6th judicial district, with both judges testifying on behalf of the Kansas District Judges Association; and District Magistrate Judge Timarie Walters on behalf of the Kansas District Magistrate Judges Association. Ed Pavey from KLETC also supported an increase in docket fees, as well as an increase in the vehicle registration fee of \$2.00. Jim Clark with the Kansas Bar Association and Doug Smith, Kansas Credit Attorneys Association also spoke in favor of an increase in docket fees for judicial purposes. Connie Sanchez, Child Exchange Visitation, YMCA, spoke on behalf of a \$25 fee assessment for all marriage dissolution filings in Kansas.

The Committee proceeded to discuss whether the use of docket fees for other purposes than those related to the operation of the judicial system was appropriate.

CONCLUSIONS AND RECOMMENDATIONS

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are partially financed by docket fees. The Committee concluded that other entities outside the judicial system that receive docket fees should go through the regular appropriations process as do other agencies for funding purposes.

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SENATE BILL No. 68

By Committee on Judiciary

1-22

10 AN ACT concerning docket fees; relating to the prosecuting attorneys'
11 training fund; amending K.S.A. 20-362 *[and K.S.A. 2008 Supp. 28-*
12 *172a]* and repealing the existing ~~section~~ *[sections]*.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 20-362 is hereby amended to read as follows: 20-
16 362. The clerk of the district court shall remit all revenues received from
17 docket fees as follows:

18 (a) At least monthly to the county treasurer, for deposit in the county
19 treasury and credit to the county general fund:

20 (1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A.
21 60-2001 and 60-3005, and amendments thereto, during the preceding
22 calendar month;

23 (2) a sum equal to \$10 for each \$46 or \$76 docket fee paid pursuant
24 to K.S.A. 61-4001, or K.S.A. 61-2704 or 61-2709, and amendments
25 thereto; and

26 (3) a sum equal to \$5 for each \$26 docket fee paid pursuant to K.S.A.
27 61-4001 or K.S.A. 61-2704, and amendments thereto, during the preced-
28 ing calendar month.

29 (b) At least monthly to the board of trustees of the county law library
30 fund, for deposit in the fund, a sum equal to the library fees paid during
31 the preceding calendar month for cases filed in the county.

32 (c) At least monthly to the county treasurer, for deposit in the county
33 treasury and credit to the prosecuting attorneys' training fund, a sum
34 equal to ~~\$1~~ \$2 for each docket fee paid pursuant to K.S.A. 28-172a, and
35 amendments thereto, during the preceding calendar month for cases filed
36 in the county and *[a sum equal to \$1]* for each fee paid pursuant to
37 subsection (c) of K.S.A. 28-170, and amendments thereto, during the
38 preceding calendar month for cases filed in the county.

39 (d) To the state treasurer, in accordance with the provisions of K.S.A.
40 75-4215, and amendments thereto, for deposit in the state treasury and
41 credit to the indigents' defense services fund, a sum equal to \$.50 for
42 each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of
43 K.S.A. 28-170, and amendments thereto, during the preceding calendar

1 month.

2 (e) To the state treasurer, in accordance with the provisions of K.S.A.
3 75-4215, and amendments thereto, for deposit in the state treasury and
4 credit to the law enforcement training center fund a sum equal to \$15
5 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments
6 thereto, during the preceding calendar month.

7 (f) To the state treasurer, in accordance with the provisions of K.S.A.
8 75-4215, and amendments thereto, for deposit in the state treasury and
9 distribution according to K.S.A. 20-367, and amendments thereto, a sum
10 equal to the balance which remains from all docket fees paid during the
11 preceding calendar month after deduction of the amounts specified in
12 subsections (a), (b), (c), (d) and (e).

13 *[Sec. 2. K.S.A. 2008 Supp. 28-172a is hereby amended to read*
14 *as follows: 28-172a. (a) Except as otherwise provided in this section,*
15 *whenever the prosecuting witness or defendant is adjudged to pay*
16 *the costs in a criminal proceeding in any county, a docket fee shall*
17 *be taxed as follows:*

18 *[(1) On and after July 1, 2008 through June 30, 2010:*

19	<i>[Murder or manslaughter.....</i>	\$181.50	<i>\$182.50</i>
20	<i>[Other felony.....</i>	172.00	<i>173.00</i>
21	<i>[Misdemeanor.....</i>	137.00	<i>138.00</i>
22	<i>[Forfeited recognizance.....</i>	73.50	<i>74.50</i>
23	<i>[Appeals from other courts.....</i>	73.50	<i>74.50</i>

24 *[(2) On and after July 1, 2010:*

25	<i>[Murder or manslaughter.....</i>	\$179.50	<i>\$180.50</i>
26	<i>[Other felony.....</i>	170.00	<i>171.00</i>
27	<i>[Misdemeanor.....</i>	135.00	<i>136.00</i>
28	<i>[Forfeited recognizance.....</i>	71.50	<i>72.50</i>
29	<i>[Appeals from other courts.....</i>	71.50	<i>72.50</i>

30 *[(b) (1) Except as provided in paragraph (2), in actions involv-*
31 *ing the violation of any of the laws of this state regulating traffic*
32 *on highways (including those listed in subsection (c) of K.S.A. 8-*
33 *2118, and amendments thereto), a cigarette or tobacco infraction,*
34 *any act declared a crime pursuant to the statutes contained in chap-*
35 *ter 32 of Kansas Statutes Annotated and amendments thereto or any*
36 *act declared a crime pursuant to the statutes contained in article 8*
37 *of chapter 82a of the Kansas Statutes Annotated, and amendments*
38 *thereto, whenever the prosecuting witness or defendant is adjudged*
39 *to pay the costs in the action, on and after July 1, 2008 through*
40 *June 30, 2010, a docket fee of ~~\$75~~ \$76 shall be charged, and on and*
41 *after July 1, 2010, a docket fee of ~~\$73~~ \$74 shall be charged. When*
42 *an action is disposed of under subsections (a) and (b) of K.S.A. 8-*
43 *2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto,*

1 *whether by mail or in person, on and after July 1, 2008 through*
2 *June 30, 2010, the docket fee to be paid as court costs shall be ~~75~~*
3 *\$76, and on and after July 1, 2010, the docket fee to be paid as court*
4 *costs shall be ~~73~~ \$74.*

5 *[(2) In actions involving the violation of a moving traffic vio-*
6 *lation under K.S.A. 8-2118, and amendments thereto, as defined by*
7 *rules and regulations adopted under K.S.A. 8-249, and amendments*
8 *thereto, whenever the prosecuting witness or defendant is adjudged*
9 *to pay the costs in the action, on and after July 1, 2008 through*
10 *June 30, 2010, a docket fee of ~~75~~ \$76 shall be charged, and on and*
11 *after July 1, 2010, a docket fee of ~~73~~ \$74 shall be charged. When*
12 *an action is disposed of under subsection (a) and (b) of K.S.A. 8-*
13 *2118, and amendments thereto, whether by mail or in person, on*
14 *and after July 1, 2008 through June 30, 2010, the docket fee to be*
15 *paid as court costs shall be ~~75~~ \$76, and on and after July 1, 2010,*
16 *the docket fee to be paid as court costs shall be ~~73~~ \$74.*

17 *[(c) If a conviction is on more than one count, the docket fee*
18 *shall be the highest one applicable to any one of the counts. The*
19 *prosecuting witness or defendant, if assessed the costs, shall pay*
20 *only one fee. Multiple defendants shall each pay one fee.*

21 *[(d) Statutory charges for law library funds, the law enforce-*
22 *ment training center fund, the prosecuting attorneys' training fund,*
23 *the juvenile detention facilities fund, the judicial branch education*
24 *fund, the emergency medical services operating fund and the judi-*
25 *ciary technology fund shall be paid from the docket fee; the family*
26 *violence and child abuse and neglect assistance and prevention fund*
27 *fee shall be paid from criminal proceedings docket fees. All other*
28 *fees and expenses to be assessed as additional court costs shall be*
29 *approved by the court, unless specifically fixed by statute. Addi-*
30 *tional fees shall include, but are not limited to, fees for Kansas bu-*
31 *reau of investigation forensic or laboratory analyses, fees for de-*
32 *tention facility processing pursuant to K.S.A. 12-16,119, and*
33 *amendments thereto, fees for the sexual assault evidence collection*
34 *kit, fees for conducting an examination of a sexual assault victim,*
35 *fees for service of process outside the state, witness fees, fees for*
36 *transcripts and depositions, costs from other courts, doctors' fees*
37 *and examination and evaluation fees. No sheriff in this state shall*
38 *charge any district court of this state a fee or mileage for serving*
39 *any paper or process.*

40 *[(e) In each case charging a violation of the laws relating to*
41 *parking of motor vehicles on the statehouse grounds or other state-*
42 *owned or operated property in Shawnee county, Kansas, as speci-*
43 *fied in K.S.A. 75-4510a, and amendments thereto, or as specified in*

1 *K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee*
2 *of \$2 which shall constitute the entire costs in the case, except that*
3 *witness fees, mileage and expenses incurred in serving a warrant*
4 *shall be in addition to the fee. Appearance bond for a parking vio-*
5 *lation of K.S.A. 75-4508 or 75-4510a, and amendments thereto,*
6 *shall be \$3, unless a warrant is issued. The judge may order the*
7 *bond forfeited upon the defendant's failure to appear, and \$2 of any*
8 *bond so forfeited shall be regarded as court costs.*
9 *[(f) The docket fee established in this section shall be the only*
10 *fee collected or moneys in the nature of a fee collected for the docket*
11 *fee. Such fee shall only be established by an act of the legislature*
12 *and no other authority is established by law or otherwise to collect*
13 *a fee.*
14 *Sec. ~~2~~ [3.] K.S.A. 20-362 is [and K.S.A. 2008 Supp. 28-172a are]*
15 *hereby repealed.*
16 *Sec. ~~3~~ [4.] This act shall take effect and be in force from and after*
17 *its publication in the Kansas register.*

statute book.

Testimony on SB 61
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 12, 2009

The Department of Corrections supports SB 61. SB 61 passed the Senate by a vote of 39-0. This bill would amend K.S.A. 75-5275 (The Prison Made Goods Act) to allow the secretary to contract with private landlords to repair their rental property damaged by tenants under the department's release supervision. The department would utilize inmate work crews on these work projects. The department believes that the ability for the department to provide limited assistance in the repair of property damaged by released offenders would aid in released offenders obtaining suitable housing by providing an incentive to landlords to rent to released offenders.

The department believes that it should not become an insurer for landlords and thus would limit its obligation in terms of both cost and scope of the repairs that would be conducted by department. The use of inmate work crews would allow the contractual obligation of the department to be cost neutral.

The department urges favorable consideration of SB 61.



Ashley Jones
Director of State Policy
Local Initiatives Support Corporation
913.375.7264
www.lisc.org/KansasCity

**Written Testimony
Before the House Judiciary Committee
Senate Bill No. 61
March 11, 2009**

Mr. Chairman and Members of the Judiciary Committee,

I want to thank you for the opportunity to submit written testimony. My name is Ashley Jones and I am Director of State Policy at Greater Kansas City LISC. Greater Kansas City LISC is a program area of the Local Initiatives Support Corporation, the nation's largest community development organization, dedicated to revitalizing urban core and rural neighborhoods.

Greater Kansas City LISC started the Kansas Housing Policy Network about a year and a half ago. Although it began with only a hand-full of individuals from across the state interested in the creation of community development tools, it has grown to include over 400 members to date. The Kansas Housing Policy Network includes representations from the Homebuilders, Realtors, Homeless Providers and Advocates, Community Development Corporations, and many other interested entities.

Currently, Greater Kansas City LISC's signature program, NeighborhoodsNOW, serves three Kansas City, Kansas Neighborhoods: Douglas Sumner, Downtown KCK and St. Peters, Waterway. Now in its fourth year, NeighborhoodsNOW has invested more than \$13 million in these neighborhoods.

One of the greatest challenges we face as we work to revitalize our neighborhoods has been finding housing for offenders as the reenter society. Landlords and public housing agencies have traditionally been reluctant to rent to past offenders. One concern is the ability to repair/recover damages to the housing unit when the tenant moves out. Allowing inmate work crews to repair property that was damaged by released offenders will provide much needed incentives for landlords to rent to offenders. It will also allow the inmates to garner skills that could help them enter the workforce upon release.

Creating tools and programs to help offenders successfully reenter society is something that LISC is currently engaged in, with many other community partners. As you can imagine, housing is critical component for these programs.

We encourage you to support Senate Bill No. 61, as it will help to ensure that all Kansans have access to safe, affordable and decent housing.

House Judiciary
Date 3-12-09
Attachment # 4

TESTIMONY ON SB95
HOUSE JUDICIARY COMMITTEE

March 12, 2009



Jeff Cowger
Deputy General Counsel
785-296-1964
jcowger@jja.ks.gov

House Judiciary
Date 3-12-09
Attachment # 5

Contraband in correctional institutions, which includes drugs, weapons, and other items, creates a dangerous environment for officers and residents alike. For this reason, under Kansas law it is a felony to introduce contraband into or upon the grounds of any state correctional institution.

K.S.A. 21-3826 currently provides that it is a level 5 nonperson felony to introduce or attempt to introduce into or upon the grounds of a juvenile correctional facility firearms, ammunition, explosives or certain controlled substances. Traffic in all other items of contraband is a level 6 nonperson felony.

JJA seeks to amend K.S.A. 21-3826 to provide that traffic in contraband, as defined by rules and regulations of the commissioner, by an employee of a juvenile correctional facility would be a level 5 nonperson felony. This change would bring juvenile correctional facility employees in line with adult correctional facility employees.

Like the Kansas Department of Corrections, JJA has a strong interest in interdicting contraband inside of correctional institutions. Sound public policy and safety and security concerns dictate that criminal penalties should be heightened for juvenile correctional employees who traffic in contraband because of their accessibility to correctional property and youth residents

There would be negligible, if any, fiscal impact with this amendment. Contraband interdiction practices at the juvenile correctional facilities will not change and no additional staff or equipment would be required. Further, the number of prosecutions would not rise because the employee would have been prosecuted in any event, this amendment merely raises the penalty one severity level.



DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Don Jordan, Secretary

House Judiciary Committee
March 12, 2009

SB 95- Traffic in Contraband
in a Correctional Facility or Care & Treatment
Center

Disability & Behavioral Health Services
Ray Dalton, Deputy Secretary

For Additional Information Contact:
Katy Belot, Director of Public Policy
Docking State Office Building, 6th Floor North
(785) 296-3271

House Judiciary
Date 3-12-09
Attachment # 6

SB 95 – Traffic in Contraband in a Correctional Facility or Care & Treatment Center

House Judiciary Committee
March 12, 2009

Chairman Kinzer and members of the Committee, I am Ray Dalton, Deputy Secretary of SRS. Thank you for the opportunity to appear before you today to discuss SB 95.

SRS supports the intent of this bill which will enhance and support patient and staff safety and security.

This bill concerns operations at Larned State Hospital (LSH). LSH operates three distinct programs on their campus. They operate the State Security Hospital, which provides mental health services to the criminally insane, as well as provides mental health services to Department of Corrections inmates, and is already included in the contraband statutes. The second program they operate is the Psychiatric Services Program, a civil program, which provides mental health services to adults, children and adolescents living in the western portion of the state. This program is not included in these statutes and the proposed changes will not affect this program.

The last program operated by LSH is the Sexual Predator Treatment Program (SPTP). SB 95 incorporates the SPTP into the bill as it concerns contraband. The bill makes a distinction between a correctional institution and a care and treatment facility. It is important to ensure the SPTP at Larned is not considered a correctional institution, as this could put the constitutionality of the program in jeopardy. The constitutional requirements of this program require the program to be for the care and treatment of the people committed to the program.

The bill then allows for the Secretary of Corrections to determine what contraband is for a correctional institution, and allows the Secretary of SRS to determine what contraband is in a care and treatment facility. The nature of medical treatment facilities is much different than in correctional institutions. Hospitals are a therapeutic/treatment environment and some items that might be considered contraband in the Department of Corrections environment would not be considered contraband in hospitals. An example would be as residents move along the treatment continuum they would prepare meals for themselves and be allowed to have knives for cooking. Conversely, movies that might be appropriate to show to a general population of inmates might not be appropriate for viewing by pedophiles.

SRS supports this bill, and I would be glad answer any questions the Committee may have.



KANSAS

Chuck Simmons

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 95
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections
March 12, 2009

The Department of Corrections supports SB 95 as it is proposed to be amended by the attached balloon. The proposed amendment has been provided to the department by the National Rifle Association.

The department is of the opinion that SB 95 as amended by the Senate, which excludes facility parking lots from the facility contraband statute, is too broad, since it would not include the introduction of drugs, cellphones, tobacco and other items of contraband left outside of a secured vehicle in a facility parking lot. Facility parking lots are an integral part of a correctional institution. Correctional facility parking lots are locations where the public has a high degree of access and where surveillance is difficult. Minimum custody inmates on work details also have access to parking lots. Thus, facility parking lots are locations conducive to the delivery of contraband. Contraband may be left in the parking lot for pick up by inmate work details or thrown over the facility perimeter fence by persons in the parking lot. Excluding parking lots from the coverage of the facility contraband statute for all items of contraband would adversely impact the overall security of correctional facilities.

The department believes that any firearm left in a vehicle in a correctional facility parking lot poses a risk to the security of the facility and the public due to the presence of inmate work details or an escapee being able to gain access to a firearm. However, to address the concern raised by the Senate, the department and the National Rifle Association have agreed to the attached proposed amendment.

The proposed amendment to SB 95 would allow for the application of facility contraband statute to the facility parking lot, but would allow the possession of a firearm and ammunition by a person licensed through the Personal and Family Protection Act. The proposed amendment would permit persons licensed to carry a concealed firearm to have possession of the firearm while the licensee is in the vehicle and while engaged in securing the firearm, and to leave their firearm secured in a locked vehicle.

SB 95 amends K.S.A. 21-3826, which was last amended in 1997. The criminal prohibition of K.S.A. 21-3826 against the possession of contraband in and on the grounds of a correctional facility has served the public safety issues of the department. The department appreciates SRS's interest in extending the application of K.S.A. 21-3826 beyond the State Security Hospital to include its care and treatment facilities.

The department urges amendment of SB 95 in conformity with the NRA's proposal by:

- Deleting "'Correctional institution' does not include any parking lot open to the public." at page 1, lines 32 and 33; and
- Deleting "'Care and treatment facility' does not include any parking lot open to the public." at page 1, lines 39 and 40.
- Inserting after the end of line 1, page 2; "This paragraph shall not apply to the possession of a firearm or ammunition by a person licensed under the Personal and Family Protection Act, K.S.A. 75-7c01 et seq., in a parking lot open to the public if the firearm or ammunition is carried on the person while in a vehicle or while securing the firearm or ammunition in the vehicle, or stored out of plain view in a locked but unoccupied vehicle."

The department appreciates the Committee's consideration of this proposed amendment to SB 95.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2009

SENATE BILL No. 95

By Committee on Ways and Means

1-27

12 AN ACT concerning crimes and punishment; relating to traffic in con-
13 traband in a correctional institution or care and treatment facility;
14 amending K.S.A. 21-3826 and repealing the existing section.
15

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

17 Section 1. K.S.A. 21-3826 is hereby amended to read as follows: 21-
18 3826. (a) Traffic in contraband in a correctional institution *or care and*
19 *treatment facility* is introducing or attempting to introduce into or upon
20 the grounds of any correctional institution *or care and treatment facility*
21 or taking, sending, attempting to take or attempting to send from any
22 correctional institution *or care and treatment facility* or any unauthorized
23 possession while in any correctional institution *or care and treatment fa-*
24 *cility* or distributing within any correctional institution *or care and treat-*
25 *ment facility*, any item without the consent of the administrator of the
26 correctional institution *or care and treatment facility*.

27 (b) For purposes of this section:

28 (1) "Correctional institution" means any state correctional institution
29 or facility, conservation camp, ~~state security hospital~~, juvenile correctional
30 facility, community correction center or facility for detention or confine-
31 ment, juvenile detention facility or jail. ~~"Correctional institution" does~~
32 ~~not include any parking lot open to the public. ["Correctional institu-~~
33 ~~tion" does not include any parking lot open to the public.]~~

34 (2) "Care and treatment facility" means the state security hospital
35 provided for under K.S.A. 76-1305 et seq., and amendments thereto, and
36 a facility operated by the department of social and rehabilitation services
37 for the purposes provided for under K.S.A. 59-29a02 et seq., and amend-
38 ments thereto. ~~"Care and treatment facility" does not include any parking~~
39 ~~lot open to the public. ["Care and treatment facility" does not include~~
40 ~~any parking lot open to the public.]~~

41 (c) (1) Traffic in contraband in a correctional institution *or care and*
42 *treatment facility* of firearms, ammunition, explosives or a controlled sub-
43 stance which is defined in subsection (e) of K.S.A. 65-4101, and amend-

Delete

Delete

- 1 ments thereto, is a severity level 5, nonperson felony. ✓
- 2 (2) Traffic in any contraband, as defined by rules and regulations
- 3 adopted by the secretary, in a correctional institution by an employee of
- 4 a correctional institution is a severity level 5, nonperson felony.
- 5 (3) *Traffic in any contraband, as defined by rules and regulations*
- 6 *adopted by the secretary of social and rehabilitation services, in a care*
- 7 *and treatment facility by an employee of a care and treatment facility is*
- 8 *a severity level 5, nonperson felony.*
- 9 (d) Except as provided in subsection (c), traffic in contraband in a
- 10 correctional institution *or care and treatment facility* is a severity level 6,
- 11 nonperson felony.
- 12 Sec. 2. K.S.A. 21-3826 is hereby repealed.
- 13 Sec. 3. This act shall take effect and be in force from and after its
- 14 publication in the statute book.

This paragraph shall not apply to the possession of a firearm or ammunition by a person licensed under the Personal and Family Protection Act, K.S.A. 75-7c01 et seq., in a parking lot open to the public if the firearm or ammunition is carried on the person while in a vehicle or while securing the firearm or ammunition in the vehicle, or stored out of plain view in a locked but unoccupied vehicle.

SENATE BILL No. 85

By Committee on Judiciary

1-23

10 AN ACT concerning the secretary of state; relating to return of filings to
11 corporations and limited partnerships; amending K.S.A. 17-6003, 17-
12 7301, 17-7678 and 56-1a156 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 17-6003 is hereby amended to read as follows: 17-
16 6003. (a) When any provision of this act requires any instrument to be
17 filed with the secretary of state or in accordance with this section, such
18 instrument shall be executed as follows:

19 (1) The articles of incorporation shall be signed by the incorporator
20 or incorporators, and any other instrument to be filed before the election
21 of the initial board of directors, if the initial directors were not named in
22 the articles of incorporation, shall be signed by the incorporator or in-
23 corporators. If any incorporator is not available by reason of death, in-
24 capacity, refusal or neglect to act, then the instrument may be signed by
25 any person for whom or on whose behalf such incorporator was acting as
26 employee or agent. The instrument shall state that the incorporator is not
27 available and the reason therefor; that such incorporator was acting as
28 employee or agent for or on behalf of such person; and that such person's
29 signature is authorized.

30 (2) All other instruments shall be signed: (i) By any authorized officer
31 of the corporation; (ii) if it appears from the instrument that there are no
32 such officers, by a majority of the directors or by such directors as may
33 be designated by the board; (iii) if it appears from the instrument that
34 there are no such officers or directors, by the holders of record, or such
35 of them as may be designated by the holders of record, of a majority of
36 all outstanding shares of stock; or (iv) by the holders of record of all
37 outstanding shares of stock.

38 (b) The execution of any document required to be filed with the
39 secretary of state pursuant to chapter 17 of the Kansas Statutes Annotated
40 shall constitute an oath or affirmation, under the penalties of perjury, that
41 the facts stated in the document are true.

42 (c) When any provision of this act requires any instrument to be filed
43 with the secretary of state or in accordance with this section, such re-

House Judiciary
Date 3-12-09
Attachment # 8

26 X
8

1 quirement means that:

2 (1) The original signed instrument shall be delivered to the office of
3 the secretary of state. Any signature on documents authorized to be filed
4 with the secretary of state under the provisions of this act may be a fac-
5 simile, a conformed signature or an electronically transmitted signature;

, where the instrument shall be recorded in an electronic
medium.

6 (2) all taxes and fees authorized by law to be collected by the secretary
7 of state in connection with the filing of the instrument shall be tendered
8 to the secretary of state;

9 (3) upon delivery of the instrument, and upon tender of the required
10 taxes and fees, the secretary of state shall certify that the instrument has
11 been filed in the office of secretary of state by endorsing upon the original
12 signed instrument, the word "Filed" and the date and hour of its filing.
13 This endorsement is the "filing date" of the instrument and is conclusive
14 of the date and time of its filing in the absence of actual fraud. The
15 secretary of state shall thereupon record the endorsed instrument in an
16 electronic medium; and

electronically-recorded document

17 (4) the secretary of state shall return the original instrument as a
18 certified copy of the original recorded instrument document, except this
19 provision shall not apply to annual reports.

certified

20 (d) Any instrument filed in accordance with subsection (c) shall be
21 effective upon its filing date. Except where it has been determined oth-
22 erwise by a court of competent jurisdiction, any instrument filed in ac-
23 cordance with subsections (c)(1) through (c)(4) prior to July 1, 1998, shall
24 be deemed to be effective on the date it was so filed, unless a different
25 effective date was specified for the instrument in accordance with this
26 subsection, and the recording of such instrument with a register of deeds
27 shall not be required in order for the instrument to take effect. Any
28 instrument may provide that it is not to become effective until a specified
29 date subsequent to its filing date, but such date shall not be later than 90
30 days after its filing date. If any instrument filed in accordance with sub-
31 section (c) provides for a future effective date and the transaction is ter-
32 minated or its terms are amended to change the future effective date
33 prior to the future effective date, the instrument shall be terminated or
34 amended by the filing, prior to the future effective date, of a certificate
35 of termination or a certificate of amendment of the original instrument,
36 executed and filed in accordance with this section. The certificate shall
37 identify the instrument which has been terminated or amended, and shall
38 state that the instrument has been terminated or the manner in which it
39 has been amended.

40 (e) If another section of this act or any other law of this state specif-
41 ically prescribes a manner of executing or filing a specified instrument or
42 a time when such instrument shall become effective, which differs from
43 the corresponding provisions of this section, then the provisions of such

E-8

1 other section shall govern.

2 (f) When any instrument authorized to be filed with the secretary of
3 state under any provision of this act has been so filed and is an inaccurate
4 record of the corporate action therein referred to, or was defectively or
5 erroneously executed, such instrument may be corrected by filing with
6 the secretary of state a certificate of correction of such instrument which
7 shall be executed and filed in accordance with this section. The certificate
8 of correction shall specify the inaccuracy or defect to be corrected and
9 shall set forth the portion of the instrument in corrected form. In lieu of
10 filing a certificate of correction, the instrument may be corrected by filing
11 with the secretary of state a corrected instrument which shall be executed
12 and filed in accordance with this section. The corrected instrument shall
13 be specifically designated as such in its heading, shall specify the inac-
14 curacy or defect to be corrected, and shall set forth the entire instrument
15 in corrected form. An instrument corrected in accordance with this sec-
16 tion shall be effective as of the date the original instrument was filed,
17 except as to those persons who are substantially and adversely affected
18 by the correction and as to those persons, the corrected instrument shall
19 be effective from the filing date.

20 (g) When any corporation conveys any lands or interests therein by
21 deed or other appropriate instrument of conveyance, such deed or in-
22 strument shall be executed on behalf of the corporation by any authorized
23 officer of the corporation. Such deed or instrument, when acknowledged
24 by such officer to be the act of the corporation, or proved in the same
25 manner provided for other conveyances of lands, may be recorded in the
26 same manner and with the same effect as other deeds. Corporations like-
27 wise shall have power to convey by an agent or attorney so authorized
28 under power of attorney or other instrument containing a power to convey
29 real estate or any interest therein, which power of attorney shall be exe-
30 cuted by the corporation in the same manner as herein provided for the
31 execution of deeds or other instruments of conveyance.

32 (h) If any instrument authorized to be filed with the secretary of state
33 is filed and is inaccurately, defectively or erroneously executed or oth-
34 erwise defective in any respect, the secretary of state shall not be liable
35 to any person for the preclearance for filing, the acceptance for filing or
36 the filing and indexing such instrument.

37 Sec. 2. K.S.A. 17-7301 is hereby amended to read as follows: 17-
38 7301. (a) As used in this act, the words "foreign corporation" mean a
39 corporation organized under the laws of any jurisdiction other than this
40 state.

41 (b) No foreign corporation shall do any business in this state, through
42 or by branch offices, agents or representatives located in this state, until
43 it has filed in the office of the secretary of state of this state an application

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1 for authority to engage in business in this state as a foreign corporation.
2 Such application shall be filed in accordance with K.S.A. 17-6003 and
3 amendments thereto and shall include:

4 (1) A certificate issued within 90 days of the date of application by
5 the proper officer of the jurisdiction where such corporation is incorpo-
6 rated or by a third-party agent authorized by the secretary of state at-
7 testing to the fact that such corporation is a corporation in good standing
8 in such jurisdiction;

9 (2) a statement that the corporation is in good standing in the state
10 of incorporation as of the date the application is signed;

11 (3) the address of the principal office of the corporation;

12 (4) the full nature and character of the business the corporation pro-
13 poses to conduct in this state, including whether the corporation operates
14 for profit or not for profit;

15 (5) the location of the registered office of the corporation in this state
16 and the name of its resident agent for service of process required to be
17 maintained by this act;

18 (6) the date on which the corporation commenced, or intends to com-
19 mence, doing business in this state; and

20 (7) an irrevocable written consent of the foreign corporation that ac-
21 tions may be commenced against it in the proper court of any county
22 where there is proper venue by service of process on the secretary of state
23 as provided for in K.S.A. 60-304, and amendments thereto, and stipulat-
24 ing and agreeing that such service shall be taken and held, in all courts,
25 to be as valid and binding as if due service had been made upon an officer
26 of the corporation.

27 The application shall be executed and filed in accordance with K.S.A.
28 17-6003, and amendments thereto.

29 (c) After receipt of the application and fee, if the secretary of state
30 finds that it complies with the provisions of this section, the secretary of
31 state shall record the original application and return ~~the original, a cer-~~
32 ~~tified~~ copy of the recorded document in accordance with K.S.A. 17-6003,
33 and amendments thereto. The ~~certified~~ copy of the application recorded
34 document shall be prima facie evidence of the right of the corporation to
35 do business in this state. The secretary of state shall not file such appli-
36 cation unless:

certified

37 (1) The name of the corporation is such as to distinguish it upon the
38 records of the office of the secretary of state from the name of any other
39 corporation, limited liability company or limited partnership organized
40 under the laws of this state or reserved or registered as a foreign corpo-
41 ration, limited liability company or limited partnership under the laws of
42 this state;

43 (2) the corporation has obtained the written consent of such other

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1 entity, which has the same name and such consent has been executed
2 and filed with the secretary of state; or

3 (3) the corporation indicates, as a means of identification and in its
4 advertising within this state, the state in which it is incorporated.

5 Sec. 3. K.S.A. 17-7678 is hereby amended to read as follows: 17-
6 7678. (a) The original signed copy of articles of organization or any cer-
7 tificate to be filed pursuant to this act, shall be filed with the secretary of
8 state. A person who executes a certificate, statement or articles as an agent
9 or fiduciary shall not be required to exhibit evidence of the person's au-
10 thority as a prerequisite to filing. Any signature on any articles or certifi-
11 cate authorized to be filed with the secretary of state under any provision
12 of this act may be a facsimile, a conformed signature or an electronically
13 transmitted signature. Unless the secretary of state finds that any filing
14 does not conform to law, upon receipt of all filing fees required by law,
15 the secretary of state shall:

, where the instrument shall be recorded in an electronic
medium.

16 (1) Certify that such document has been filed in the secretary of
17 state's office by endorsing upon the original filing the word "filed" and
18 the date and hour of the filing; in the absence of actual fraud, this en-
19 dorsement is conclusive of the date and time of its filing;

electronically-recorded document

20 (2) record the endorsed document in an electronic medium; and

and that electronic document shall become the original document

21 (3) return the original document, certified as a true a certified copy
22 of the recorded document, to the person who filed it or such person's
23 representative.

24 (b) The articles of organization shall be amended as provided in a
25 certificate of amendment or judicial decree of amendment upon the filing
26 of the certificate of amendment or judicial decree of amendment with
27 the secretary of state or upon the future effective date specified in the
28 certificate of amendment. An inaccuracy in the articles of organization
29 may be corrected by filing a certificate of correction with the secretary
30 of state as provided in K.S.A. 17-7683, and amendments thereto. The
31 articles of organization are canceled upon the issuance of a certificate of
32 cancellation or certificate of merger or consolidation where the limited
33 liability company is not the surviving or resulting entity by the secretary
34 of state.

35 (c) The fee required by this act shall be paid at the time of the filing
36 of any articles of organization or any certificate to be filed pursuant to
37 this act.

38 (d) The fee required by this act shall be paid for a certified copy of
39 any paper on file pursuant to this act and the fee fixed pursuant to this
40 act shall be paid for each page copied.

41 (e) The secretary of state may prescribe a telefacsimile communica-
42 tion fee in addition to any filing fees to cover the cost of such services.
43 This fee must be paid prior to acceptance of a telefacsimile communi-

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1 cation and shall be deposited into the information and copy service fee
2 fund.

3 (f) Upon filing the articles of organization of a limited liability com-
4 pany organized to exercise powers of a professional association or pro-
5 fessional corporation, the limited liability company shall file with the sec-
6 retary of state a certificate by the licensing body, as defined in K.S.A.
7 74-146, and amendments thereto, of the profession involved that each of
8 the members is duly licensed to practice that profession, and that the
9 proposed company name has been approved.

10 Sec. 4. K.S.A. 56-1a156 is hereby amended to read as follows: 56-
11 1a156. (a) The original signed copy of the certificate of limited partner-
12 ship, any certificates of amendment or cancellation and any judicial de-
13 crece of amendment or cancellation shall be delivered to the secretary of
14 state. A person who executes a certificate as an agent or fiduciary shall
15 not be required to exhibit evidence of the person's authority as a prereq-
16 uisite to filing. Unless the secretary of state finds that any certificate does
17 not conform to law, upon receipt of all filing fees required by law, the
18 secretary of state shall:

, where the instrument shall be recorded in an electronic medium.

19 (1) Certify that the certificate of limited partnership, certificate of
20 amendment, certificate of cancellation or judicial decree of amendment
21 or cancellation has been filed in the secretary of state's office by endorsing
22 upon the ~~original certificate~~ the word "Filed" and the date and hour of
23 the filing; in the absence of actual fraud this endorsement is conclusive
24 of the date and time of its filing;

electronically-recorded document

25 (2) record the endorsed certificate in an electronic medium; and
26 (3) return the ~~original document certified as a true a certified~~ copy
27 of the recorded document, to the person who filed it or that person's
28 representative.

and that electronic document shall become the original document

certified

29 (b) The certificate of limited partnership shall be amended as pro-
30 vided in a certificate of amendment or decree of amendment upon the
31 filing of the certificate of amendment or judicial decree of amendment
32 in the office of the secretary of state or upon the future effective date
33 specified in the certificate of amendment or judicial decree of amend-
34 ment. The certificate of limited partnership is canceled upon the filing of
35 a certificate of cancellation or a judicial decree of amendment in the office
36 of the secretary of state, upon the future effective date specified in the
37 certificate of cancellation or a judicial decree or as specified in this act.

38 (c) The fee required by K.S.A. 56-1a605, and amendments thereto,
39 shall be paid at the time of the filing of a certificate of limited partnership,
40 a certificate of amendment or a certificate of cancellation.

41 (d) The fee required by K.S.A. 56-1a605, and amendments thereto,
42 shall be paid for a certified copy of any paper on file pursuant to this act,
43 and the fee fixed pursuant to K.S.A. 56-1a605, and amendments thereto,

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1 shall be paid for each page copied.

2 Sec. 5. K.S.A. 17-6003, 17-7301, 17-7678 and 56-1a156 are hereby
3 repealed.

4 Sec. 6. This act shall take effect and be in force from and after, its July 1, 2010, and
5 publication in the statute book.

HOUSE BILL No. 2082

By Committee on Federal and State Affairs

Balloon 1

1-26

9 AN ACT concerning the advertising and conducting of certain live mu-
10 sical performances or productions; providing for certain restrictions
11 enforcement and penalties.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. This act shall be known and may be cited as the truth in
15 musical performance advertising act.

16 Sec. 2. The following words and phrases when used in this act shall
17 have the meanings given to them in this section unless the context clearly
18 indicates otherwise:

19 (a) "Performing group" means a vocal or instrumental group seeking
20 to use the name of another group that has previously released a com-
21 mercial sound recording under that name.

22 (b) "Recording group" means a vocal or instrumental group at least
23 one of whose members has previously released a commercial sound re-
24 cording under that group's name and in which the member or members
25 have a legal right by virtue of use or operation under the group name
26 without having abandoned the name or affiliation with the group.

27 (c) "Sound recording" means a work that results from the fixation on
28 a material object of a series of musical, spoken or other sounds regardless
29 of the nature of the material object, such as a disk, tape or other phono-
30 record, in which the sounds are embodied.

31 Sec. 3. It shall be unlawful for any person to advertise or conduct a
32 live musical performance or production in this state through the use of a
33 false, deceptive or misleading affiliation, connection or association be-
34 tween a performing group and a recording group. This section does not
35 apply if any of the following apply:

36 (a) The performing group is the authorized registrant and owner of
37 a federal service mark for that group registered in the United States pat-
38 ent and trademark office.

39 (b) At least one member of the performing group was a member of
40 the recording group and has a legal right by virtue of use or operation
41 under the group name without having abandoned the name or affiliation
42 with the group.

(c) The live musical performance or production is identified in all

This act shall be part of and supplemental to the Kansas consumer protection act.

House Judiciary
Date 3-12-09
Attachment # 9

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1 advertising and promotion as a salute or tribute.

2 (d) The advertising does not relate to a live musical performance or
3 production taking place in this state.

4 (e) The performance or production is expressly authorized by the
5 recording group.

6 Sec. 4. (a) Whenever the attorney general or a county or district at-
7 torney has reason to believe that any person is advertising or conducting
8 or is about to advertise or conduct a live musical performance or pro-
9 duction in violation of section 3, and amendments thereto, and that pro-
10 ceedings would be in the public interest, the attorney general or county
11 or district attorney may bring an action against the person to restrain by
12 temporary or permanent injunction that practice.

13 (b) Whenever any court issues a permanent injunction to restrain and
14 prevent violations of this act as authorized in subsection (a), the court
15 may direct that the defendant restore to any person in interest any moneys
16 or property, real or personal, which may have been acquired by means
17 of any violation of this act, under terms and conditions to be established
18 by the court.

19 (c) Any person who violates this act shall be liable for a civil penalty
20 of not less than \$5,000 nor more than \$15,000 per violation, which civil
21 penalty shall be in addition to any other relief which may be granted.
22 Each performance or production declared unlawful shall constitute a sep-
23 arate violation.

24 Sec. 5. This act shall take effect and be in force from and after its
25 publication in the statute book.

as provided in subsection (a) of K.S.A. 50-636, and amendments thereto,

Section 5. It shall be an affirmative defense to a violation of this act if the person described in section 3, and amendments thereto, has a written contract with the performing or recording group, that states that:
(a) The performing group is an authorized registrant pursuant to subsection (a) of section 3, and amendments thereto; or
(b) at least one member of the performing group was a member of the recording group pursuant to subsection (b) of section 3, and amendments thereto.
[Renumber remaining section.]

SENATE BILL No. 159

By Committee on Judiciary

2-2

Balloon 1

9 AN ACT concerning tobacco; relating to the enforcement of the laws
10 regarding the sale of cigarettes; amending K.S.A. 50-6a04 and repeal-
11 ing the existing section.

12
13 Be it enacted by the Legislature of the State of Kansas:

14 New Section 1. As used in this act:

15 (a) "Act" means the provisions of K.S.A. 50-6a01 through 50-6a06,
16 and amendments thereto, and the provisions of sections 1 through 15,
17 and amendments thereto.

18 (b) "Brand family" means all styles of cigarettes sold under the same
19 trademark and differentiated from one another by means of additional
20 modifiers or descriptors, including, but not limited to, "menthol,"
21 "lights," "kings," and "100s," and includes any brand name (alone or in
22 conjunction with any other word), trademark, logo, symbol, motto, selling
23 message, recognizable pattern of colors or any other indicia of product
24 identification identical, similar to or identifiable with a previously known
25 brand of cigarettes.

26 (c) "Cigarette" has the same meaning given that term in subsection
27 (d) of K.S.A. 50-6a02, and amendments thereto.

28 (d) "Director" means the director of taxation.

29 (e) "Master settlement agreement" has the same meaning given that
30 term in subsection (e) of K.S.A. 50-6a02, and amendments thereto.

31 (f) "Non-participating manufacturer" means any tobacco product
32 manufacturer that is not a participating manufacturer.

33 (g) "Participating manufacturer" has the meaning given that term in
34 subsection (i)(1) of K.S.A. 50-6a02, and amendments thereto.

35 (h) "Qualified escrow fund" has the same meaning given that term
36 in subsection (f) of K.S.A. 50-6a02, and amendments thereto.

37 (i) "Retail dealer" has the same meaning given that term in subsec-
38 tion (q) of K.S.A. 79-3301, and amendments thereto.

39 (j) "Stamping agent" means a person who is authorized to affix tax
40 indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amend-
41 ments thereto, or any person who is required to pay the tax on the priv-
42 ilege of selling or dealing in roll-your-own tobacco products pursuant to
43 K.S.A. 79-3371, and amendments thereto.

"Resident agent" means a domestic corporation, a domestic
limited partnership, a domestic limited liability company or a
domestic business trust or a foreign corporation, a foreign limited
partnership, a foreign limited liability company or a foreign
business trust authorized to transact business in this state, and
which is generally open during regular business hours to accept
service of process on behalf of a non-participating manufacturer.
[Reletter remaining subsections.]

House Judiciary
Date 3-12-09
Attachment # 10

1 (k) "Tax indicia" has the same meaning given that term in subsection
2 (u) of K.S.A. 79-3301, and amendments thereto.

3 (l) "Tobacco product manufacturer" has the same meaning given that
4 term in subsection (i) of K.S.A. 50-6a02, and amendments thereto.

5 (m) "Units sold" has the same meaning given that term in subsection
6 (j) of K.S.A. 50-6a02, and amendments thereto.

7 (n) "Vending machine operator" has the same meaning given that
8 term in subsection (y) of K.S.A. 79-3301, and amendments thereto.

9 New Sec. 2. (a) Any non-participating manufacturer that has not reg-
10 istered with the secretary of state to do business in the state as a foreign
11 corporation or business entity shall, as a condition precedent to having
12 its brand families included or retained in the directory, appoint and con-
13 tinually engage without interruption the services of an agent in this state
14 to act as agent for the service of process on whom all process, and any
15 action or proceeding against it concerning or arising out of the enforce-
16 ment of this act may be served in any manner authorized by law. Such
17 service shall constitute legal and valid service of process on the non-
18 participating manufacturer. The non-participating manufacturer shall
19 provide to the attorney general the name, address, phone number, proof
20 of the appointment and availability of such resident agent, and such in-
21 formation shall be provided to the satisfaction of the attorney general.

22 (b) (1) A non-participating manufacturer may substitute its ~~regis-~~
23 ~~tered~~ agent for another by notifying, in writing sent via certified or reg- resident
24 istered mail, the attorney general of such termination of the authority of
25 the current agent and providing proof to the satisfaction of the attorney
26 general of the appointment of a new agent. Such substitution shall not
27 become effective until 30 days after receipt of such notification by the
28 attorney general.

29 (2) A resident agent of a non-participating manufacturer that wishes
30 to resign shall notify the attorney general, in writing via certified or reg-
31 istered mail, and provide to the attorney general the name and address
32 of the successor agent. There shall be attached to the notification a state-
33 ment of each affected non-participating manufacturer ratifying such
34 change of resident agent. Upon receipt of such notification by the attor-
35 ney general, the successor resident agent shall become the resident agent
36 of such non-participating manufacturers that have ratified and approved
37 the substitution.

38 (3) (A) A resident agent of a non-participating manufacturer may re-
39 sign without appointing a successor by notifying, in writing sent via cer-
40 tified or registered mail, the attorney general. Such resignation shall not
41 become effective until 60 days after receipt of such notification by the
42 attorney general. There shall be attached to the notification an affidavit
43 by the resident agent, if an individual, or by the authorized officer, if a

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1 corporation or other business entity, attesting that at least 30 days prior
2 to the expiration of the 60 day period, notice was sent via certified or
3 registered mail to the designated contact of the non-participating man-
4 ufacturer for which such resident agent was acting that such agent was
5 resigning its position.

6 (B) After receipt of the notice of resignation of its resident agent, the
7 non-participating manufacturer for which such resident agent was acting
8 shall obtain and designate a new resident agent to take the place of the
9 resigning resident agent. If such non-participating manufacturer fails to
10 obtain and designate a new resident agent and provide notice thereof, in
11 writing via certified or registered mail, to the attorney general prior to
12 the expiration of the 60-day period provided in subparagraph (A), such
13 non-participating manufacturer shall be removed from the directory.

14 (4) If a ~~registered~~ agent of a non-participating manufacturer dies, the
15 non-participating manufacturer shall have 30 days after the death of such
16 ~~registered~~ agent to appoint and notify, in writing via certified or registered
17 mail, the attorney general of the non-participating manufacturer's new
18 ~~registered~~ agent. Service upon the non-participating manufacturer after
19 the death of such agent but prior to the appointment of a new agent shall
20 be had upon the secretary of state. Failure by the non-participating man-
21 ufacturer to appoint a new resident agent, and provide proof of such
22 appointment to the satisfaction of the attorney general prior to the ex-
23 piration of the 30-day period shall result in removal from the directory.

resident

24 (5) After the resignation of the resident agent becomes effective as
25 provided in subparagraph (3)(A), or after the death of such resident agent
26 as provided in paragraph (4), and if no new resident agent is obtained
27 and notification is provided in the time and manner required in this sec-
28 tion, then service of process against the non-participating manufacturer
29 for which the previous resident agent had been acting shall thereafter be
30 made upon the secretary of state in the manner prescribed by K.S.A. 60-
31 304, and amendments thereto.

32 (c) A non-participating manufacturer shall provide irrevocable writ-
33 ten consent that actions brought under this act may be commenced
34 against it in the district court of the third judicial district, Shawnee county,
35 Kansas, by service of process on the appointed service of process agent
36 designated pursuant to this section.

37 New Sec. 3. (a) (1) ~~No later than 10 calendar days after the end of~~
38 ~~each calendar month, and more frequently if so directed by the attorney~~
39 ~~general or director, each stamping agent shall submit such information~~
40 ~~as the attorney general or the director requires to facilitate compliance~~
41 ~~with this act including, but not limited to, a list by brand family of the~~
42 ~~total number of cigarettes or the equivalent stick count to which the~~
43 ~~stamping agent affixed tax indicia, caused tax indicia to be affixed or oth-~~

(d) A resident agent may change the resident agent's address when appointed to accept service of process on behalf of a non-participating manufacturer for which such agent is a resident agent, to another address in this state by mailing a letter, via certified or registered mail, to the attorney general. The letter shall be on company letterhead and executed by the resident agent. The letter shall contain the following:
(1) The names of all non-participating manufacturers represented by the resident agent;
(2) the address at which the resident agent has maintained the resident agent's office for each manufacturer;
(3) a certification of the new address to which the resident agent's address will be changed to on a given day; and
(4) a certification at which the resident agent will thereafter maintain the resident agent's address for each of the non-participating manufactures recited in the letter.

Upon the filing of the letter with the attorney general and thereafter or until further change of address, as authorized by law, the office address of the resident agent recited in the letter shall be located at the new address of the resident agent as provided in the letter.

1 ~~erwise paid the tax due for such cigarettes during the previous calendar~~
2 ~~month.~~

3 (2) Invoices and documentation of sales of all non-participating man-
4 ufacturer cigarettes, and any other information relied upon in reporting
5 to ~~the attorney general or~~ the director shall, upon request, be made avail-
6 able to ~~the attorney general or~~ the director. Such invoices and documents
7 shall be maintained;

- 8 ~~(A) On or after January 1, 2010, for a period of at least three years;~~
- 9 ~~(B) on or after January 1, 2011, for a period of at least four years; and~~
- 10 ~~(C) on or after January 1, 2012, for a period of at least five years;~~

11 (b) At any time, the attorney general may request from the non-parti-
12 cipating manufacturer or the financial institution at which such manu-
13 facturer has established a qualified escrow fund for the purpose of com-
14 pliance with subsection (b) of K.S.A. 50-6a03, and amendments thereto,
15 proof of the amount of money in such fund, exclusive of interest, the
16 amount and date of each deposit to such fund and the amount and date
17 of each withdrawal from such fund.

18 (c) In addition to the information required to be submitted pursuant
19 to subsections (a) and (b) and subsection (c) of K.S.A. 50-6a04, and
20 amendments thereto, the attorney general or the director may require a
21 stamping agent or tobacco product manufacturer to submit any additional
22 information including, but not limited to, samples of the packaging or
23 labeling of each brand family as is necessary to enable the attorney general
24 to determine whether a tobacco product manufacturer is in compliance
25 with this act.

26 (d) A stamping agent or non-participating manufacturer receiving a
27 request pursuant to subsection (c) shall provide the requested informa-
28 tion within 30 calendar days from receipt of the request.

29 New Sec. 4. (a) The director is authorized to disclose to the attorney
30 general any information received under this act, as requested by the at-
31 torney general for purposes of determining compliance with or enforcing
32 the provisions of this act. The director and attorney general shall share
33 with each other information received under this act and the director and
34 the attorney general may share such information with federal agencies,
35 attorneys general of other states or directors of taxation or their equiva-
36 lents of other states, for purposes of enforcement of this act, the corre-
37 sponding federal laws or the corresponding laws of other states.

38 (b) Except as otherwise provided, any information provided to the
39 attorney general or director for purposes of enforcement of this act may
40 be shared between the attorney general and the director and shall not be
41 disclosed publicly by the attorney general or the director except when
42 necessary to facilitate compliance with and enforcement of this act.

43 (c) On a quarterly basis, and upon request made in writing by a to-

No later than 10 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent authorized to affix tax indicia to packages of cigarettes pursuant to K.S.A. 79-3311, and amendments thereto, shall submit such information as the attorney general or director requires. No later than 20 calendar days after the end of each calendar month, and more frequently if so directed by the attorney general or director, each stamping agent who is required to pay the tax on the privilege of selling or dealing in roll-your-own tobacco products pursuant to K.S.A. 79-3371, and amendments thereto, shall submit such information as the attorney general or director requires.

for a period of at least three years

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1 bacco product manufacturer, the attorney general or the director may
2 provide the name of any stamping agent who reports selling the tobacco
3 product manufacturer's products.

4 (d) On a quarterly basis, and upon request made in writing by a to-
5 bacco product manufacturer, a stamping agent shall provide to the re-
6 questing tobacco product manufacturer the total number of cigarettes,
7 by brand family, which the stamping agent reported to the attorney gen-
8 eral, pursuant to section 3, and amendments thereto, provided that such
9 information provided by the stamping agent to a tobacco manufacturer
10 shall be limited to the brand families of that manufacturer as listed in the
11 directory established in subsection (b) of K.S.A. 50-6a04, and amend-
12 ments thereto.

or director

product

13 (e) Unless disclosure is authorized under this section, all information
14 obtained by the director and disclosed to the attorney general or shared
15 with federal agencies, attorneys general of other states or directors of
16 taxation or their equivalents of other states for purposes of enforcement
17 of this act, the corresponding federal laws or the corresponding laws of
18 other states, shall be confidential. The penalties provided under K.S.A.
19 75-5133, and amendments thereto, shall not apply when information is
20 lawfully disclosed pursuant to this section.

21 New Sec. 5. (a) Notwithstanding any other provision of law, if a
22 newly qualified non-participating manufacturer is to be listed in the di-
23 rectory, or if the attorney general reasonably determines that any non-
24 participating manufacturer who has filed a certification pursuant to sub-
25 section (c) of K.S.A. 50-6a04, and amendments thereto, poses an elevated
26 risk for noncompliance with this act neither such non-participating man-
27 ufacturer nor any of its brand families shall be included or retained in the
28 directory unless and until such non-participating manufacturer, or its
29 United States importer that undertakes joint and several liability for the
30 manufacturer's performance in accordance with subsection (c)(3)(I) of
31 K.S.A. 50-6a04, and amendments thereto, has posted a bond in accord-
32 ance with this section.

33 (b) The bond required by this section shall be posted by corporate
34 surety located within the United States in an amount equal to the greater
35 of \$50,000 or the amount of escrow the non-participating manufacturer
36 in either its current or predecessor form was required to deposit for sales
37 of cigarettes in this state during the previous calendar year. The bond
38 shall be written in favor of the state of Kansas and shall be conditioned
39 on the performance by the non-participating manufacturer, or its United
40 States importer that undertakes joint and several liability for the manu-
41 facturer's performance in accordance with subsection (c)(3)(I) of K.S.A.
42 50-6a04, and amendments thereto, of all of its duties and obligations
43 under this act during the year in which the certification is filed and the

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1 next succeeding calendar year.

2 (c) A non-participating manufacturer may be deemed to pose an el-
3 evated risk for noncompliance with this act if:

4 (1) The non-participating manufacturer, or any affiliate thereof, has
5 underpaid an escrow obligation with respect to any other state or jurisd-
6 diction that is a party to the master settlement agreement at any time
7 within the three calendar years prior to the date of submission or approval
8 of the most recent certification, unless:

9 (A) The non-participating manufacturer did not make the underpay-
10 ment knowingly or recklessly and the non-participating manufacturer
11 promptly cured the underpayment within 180 calendar days of notice of
12 the underpayment; or

13 (B) the underpayment or lack of payment is the subject of a good
14 faith dispute as documented to the satisfaction of the attorney general
15 and the underpayment is cured within 90 calendar days of entry of a final
16 order establishing the amount of the required escrow payment;

17 (2) any state or jurisdiction that is party to the master settlement
18 agreement has removed the non-participating manufacturer, or its brands
19 or brand families, or an affiliate, or such affiliate's brands or brand fam-
20 ilies, from the state's directory for noncompliance with the corresponding
21 laws of such other state or jurisdiction at any time within three calendar
22 years prior to the date of submission or approval of the most recent cer-
23 tification; or

24 (3) any state or jurisdiction that is party to the master settlement
25 agreement has pending litigation, or an unsatisfied judgment against the
26 non-participating manufacturer, or any affiliate thereof, for unpaid escrow
27 obligations, or associated penalties, costs or attorney fees.

28 (d) As used in this section, "newly qualified non-participating man-
29 ufacturer" means a non-participating manufacturer that has not previ-
30 ously been listed in the directory. Such non-participating manufacturer
31 may be required to post a bond in accordance with this section for the
32 first five years of its listing, or longer, if they have been deemed to pose
33 an elevated risk for noncompliance.

wholesale dealer, as defined in K.S.A. 79-3301, and
amendments thereto, or distributor, as defined in K.S.A.
79-3301, and amendments thereto, of cigarettes, as defined
in K.S.A. 50-6a02, and amendments thereto,

34 New Sec. 6. No ~~person~~ shall be issued a license or granted a renewal
35 of a license by the Kansas department of revenue ~~as a stamping agent~~
36 unless such ~~person~~ has provided to the ~~attorney general~~ reasonable as-
37 surances, in writing and under penalty of perjury, that such person will
38 comply fully with the stamping agent requirements in this act.

director

39 New Sec. 7. (a) In addition to or in lieu of any other civil or criminal
40 remedy provided by law, the director or the director's designee, upon a
41 finding that a stamping agent has violated subsection (a) of K.S.A. 50-
42 6a04, and amendments thereto, or any rules or regulations adopted pur-
43 suant to this act, may revoke or suspend the license of any licensee in the

wholesale dealer or distributor

1 manner provided by K.S.A.79-3309, and amendments thereto. Each
2 package of cigarettes to which tax indicia is affixed, is caused to be affixed
3 or tax is paid thereupon, and each sale or offer to sell cigarettes in violation
4 of subsection (a) of K.S.A. 50-6a04, and amendments thereto, shall consti-
5 tute a separate violation. The director may also impose a civil penalty
6 in an amount not to exceed the greater of 500% of the retail value of the
7 cigarettes involved or \$5,000 upon a finding of violation of subsection (a)
8 of K.S.A. 50-6a04, and amendments thereto, or a violation of any rules
9 or regulations adopted pursuant to this act. Such fine shall be imposed
10 in the manner provided by K.S.A. 79-3391, and amendments thereto. Any
11 fine collected pursuant to this subsection shall be remitted to the state
12 treasurer in accordance with the provisions of K.S.A. 75-4215, and
13 amendments thereto. Upon receipt of each such remittance, the state
14 treasurer shall deposit the entire amount in the state treasury to the credit
15 of the cigarette and tobacco products regulation fund created pursuant
16 to subsection (e) of K.S.A. 79-3391, and amendments thereto. The mon-
17 eys credited to this fund shall be used for the purposes of enforcement
18 of this act, or K.S.A. 79-3301 et seq., and amendments thereto.

19 (b) The attorney general or the attorney general's duly authorized
20 designee shall, when requested by the director, assist the director in a
21 hearing to suspend or revoke a stamping agent's license for a violation of
22 this act.

23 New Sec. 8. (a) The following shall be deemed contraband under
24 K.S.A. 79-3323, and amendments thereto:

25 (1) Any cigarettes that have been sold, offered for sale or possessed
26 for sale in this state in violation of subsection (a) of K.S.A. 50-6a04, and
27 amendments thereto; and

28 (2) any cigarettes to which tax indicia has been affixed, was caused to
29 be affixed or the tax paid thereupon as required by K.S.A. 79-3311 or 79-
30 3371, and amendments thereto, in violation of subsection (a) of K.S.A.
31 50-6a04, and amendments thereto.

32 (b) Any cigarettes constituting contraband may be seized by the at-
33 torney general or attorney general's authorized agent, the director or di-
34 rector's authorized agent or any law enforcement officer. All such ciga-
35 rettes shall be subject to seizure, with or without process or warrant, and
36 forfeiture, as provided herein and in K.S.A. 79-3324a, and amendments
37 thereto, and shall be destroyed and not resold. Such cigarettes shall be
38 deemed contraband whether the violation of subsection (a) of K.S.A. 50-
39 6a04, and amendments thereto, is knowing or otherwise.

40 (c) (1) Any stamping agent that distributes cigarettes in a state other
41 than Kansas may store in its Kansas warehouse cigarettes made contra-
42 band pursuant to this section if such stamping agent has affixed the tax
43 indicia of such other state to each package of cigarettes or can provide

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1 evidence that it has paid the required tax thereupon.

2 (2) Cigarettes made contraband pursuant to this section, without be-
3 ing subject to seizure or forfeiture, may be transported in, into or through
4 the state either:

5 (A) On a commercial carrier with a proper bill of lading with an out-
6 of-state destination;

7 (B) when the tax indicia of another state is affixed to each package of
8 cigarettes; or

9 (C) on a commercial carrier with a proper bill of lading to a licensed
10 Kansas stamping agent who affixes tax indicia to cigarettes for sale in a
11 state other than Kansas if the packing slip accompanying the shipment
12 indicates the shipment is for sale in a state other than Kansas and iden-
13 tifies the state in which the shipment is to be sold. The time of delivery
14 of the shipments shall be indicated on the bill of lading of the common
15 carrier when delivery is completed. The receiving Kansas stamping agent
16 must, within 24 hours of receiving the delivery, affix or caused to be
17 affixed to each package of cigarettes the stamp of the state in which they
18 are to be sold.

19 New Sec. 9. The attorney general, on behalf of the director, may seek
20 an injunction to restrain a threatened or actual violation of this act by a
21 stamping agent and to compel the stamping agent to comply with this act.

22 New Sec. 10. (a) It shall be unlawful for a person to sell or distribute
23 cigarettes, or acquire, hold, own, possess, transport, import or cause to
24 be imported cigarettes that the person knows or should know are in-
25 tended for distribution or sale in this state in violation of subsection (a)
26 of K.S.A. 50-6a04, and amendments thereto. A violation of this subsection
27 shall be a class B misdemeanor.

28 (b) It shall be unlawful for a non-participating manufacturer, directly
29 or indirectly, to falsely represent to any person in Kansas:

- 30 (1) Any information about a brand family listed on the directory;
- 31 (2) that it is a participating manufacturer;
- 32 (3) that it has made all required escrow payments; or
- 33 (4) that it has satisfied any other requirements imposed pursuant to
34 this act.

35 A violation of this subsection is a class A nonperson misdemeanor.

36 (c) The attorney general shall have concurrent authority with any
37 county or district attorney to prosecute any violation of this section.

38 New Sec. 11. (a) Any violation of this act involving the sale or at-
39 tempted sale of cigarettes by a stamping agent to a retail dealer, or con-
40 sumer, or by a retail dealer, to a consumer, shall constitute an unlawful
41 and deceptive trade practice as provided in K.S.A. 50-626, and amend-
42 ments thereto, and shall be subject to the penalties provided for in K.S.A.
43 50-623 et seq., and amendments thereto, in lieu of or in addition to any

, vending machine operator

or vending machine operator

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1 penalties provided in this act.

2 (b) For purposes of this section, a stamping agent shall be deemed a
3 "supplier" for purposes of a consumer transaction, as defined in subsec-
4 tion (c) of K.S.A. 50-624, and amendments thereto, regardless of whether
5 the stamping agent sells to a retail dealer or consumer.

6 New Sec. 12. In any action brought by the state to enforce the pro-
7 visions of this act the state shall be entitled to recover the costs of inves-
8 tigation, expert witness fees, costs of the action and reasonable attorney
9 fees. Recovery of such costs and fees shall be remitted to the state agency
10 or agencies who initiated and brought such action.

11 New Sec. 13. In any action under K.S.A. 50-6a03, and amendments
12 thereto, reports of the numbers of ~~cigarettes stamped~~ submitted to the
13 attorney general pursuant to subsection (a) of section 3, and amendments
14 thereto, shall be admissible in evidence and shall be presumed to accu-
15 rately account for the number of cigarettes ~~stamped~~ during the time pe-
16 riod by the stamping agent that submitted the report absent a contrary
17 showing by the non-participating manufacturer or importer. Nothing in
18 this section shall be construed as limiting or otherwise affecting the state's
19 right to maintain that such reports are incorrect or do not accurately
20 reflect a non-participating manufacturer's sales in the state during the
21 time period in question, and the presumption shall not apply in the event
22 the state does so maintain.

23 New Sec. 14. Notwithstanding subsection (j) of K.S.A. 50-6a02, and
24 amendments thereto, the attorney general may promulgate rules and reg-
25 ulations necessary to effect the purposes of this act for the regulation of
26 tobacco product manufacturers. The director may promulgate rules and
27 regulations necessary to effect the purposes of this act for the regulation
28 of stamping agents, retail dealers and vending machine operators.

29 New Sec. 15. If a court of competent jurisdiction finds that the pro-
30 visions of K.S.A. 50-6a01 through 50-6a03, and amendments thereto, con-
31 flict with and cannot be reconciled with any other provisions of this act,
32 then such provisions of K.S.A. 50-6a01 thru 50-6a03, and amendments
33 thereto, shall control. If any provision of this act causes K.S.A. 50-6a01
34 through 50-6a03, and amendments thereto, to no longer constitute a qual-
35 ifying or model statute as those terms are defined in the master settlement
36 agreement, then that portion of this act shall not be valid. If any provision
37 of this act is for any reason held to be invalid, unlawful or unconstitutional,
38 such decision shall not affect the validity of the remaining portions of this
39 act or any part thereof.

40 Sec. 16. K.S.A. 50-6a04 is hereby amended to read as follows: 50-
41 6a04. (a) ~~No person may affix, or cause to be affixed, tax stamps or meter~~
42 ~~impressions to individual packages of cigarettes or pay the required tax~~
43 ~~on roll-your-own tobacco in accordance with K.S.A. 79-3371, and amend-~~

(c) If a court determines that a person has violated this act, the court shall order any profits, gains, gross receipts or other benefit from the violation be surrendered. Any profits, gains, gross receipts or other benefit surrendered from the violation shall be collected pursuant to this subsection and 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 cigarette and tobacco products regulation fund created pursuant to subsection (e) of K.S.A. 79-3391, and amendments thereto. (d) Unless otherwise expressly provided, the remedies or penalties provided by this act are cumulative to each other and to the remedies or penalties under all other laws of this state.

non-participating manufacturers'

or director

. These reports

on which state taxes were paid

1 ments thereto, unless the tobacco product manufacturer that makes or
2 sells such cigarettes or roll-your-own tobacco has:

3 —(1) Become a participating manufacturer, or

4 —(2) made all required escrow payments.

5 No person may:

6 (1) Affix, or cause to be affixed, tax indicia to a package of cigarettes,
7 or otherwise pay the tax due upon such cigarettes, of a tobacco product
8 manufacturer brand family not included in the directory; or

9 (2) sell, offer, possess for sale or import for personal consumption in
10 this state, cigarettes of a tobacco product manufacturer brand family not
11 included in the directory.

12 (b) (1) Not later than July 1, ~~2002~~ 2009, the attorney general shall
13 develop a list directory, to be posted on the attorney general's website,
14 of all tobacco product manufacturers that have become participating man-
15 ufacturers or made all required escrow payments. This list shall include
16 the brand families identified by each such tobacco product manufacturer
17 under subsection (c). The list shall be updated as necessary. A person
18 may rely upon the attorney general's list in affixing or causing to be affixed
19 stamps or meter impressions to individual packages of cigarettes or paying
20 the tax on roll-your-own tobacco as required by K.S.A. 79-3371, and
21 amendments thereto, of any brand family included on the list. *Except as*
22 *otherwise provided, the directory shall list all tobacco product manufac-*
23 *turers and brand families of such tobacco product manufacturers that*
24 *have provided current and accurate certifications conforming to the*
25 *requirements of subsection (c).*

26 (2) *The attorney general shall not include or retain in the directory*
27 *any non-participating manufacturer, or non-participating manufacturer's*
28 *brand family, that has failed to provide the required certification, or*
29 *whose certification the attorney general determines is not in compliance*
30 *with subsection (c), unless such failure or noncompliance has been cured*
31 *to the satisfaction of the attorney general.*

32 (3) *In the case of a non-participating manufacturer, neither the to-*
33 *bacco product manufacturer nor a brand family shall be included or re-*
34 *tained in the directory if the attorney general concludes:*

35 (A) *That an escrow payment required pursuant to K.S.A. 50-6a03,*
36 *and amendments thereto, for any period for any brand family, whether*
37 *or not listed by such non-participating manufacturer, has not been fully*
38 *paid into a qualified escrow fund governed by an escrow agreement that*
39 *has been approved by the attorney general;*

40 (B) *that an outstanding final judgment, including interest thereon, for*
41 *a violation of K.S.A. 50-6a03, and amendments thereto, has not been fully*
42 *satisfied for such tobacco product manufacturer; or*

43 (C) *that, within three calendar years prior to the date of submission*

1 or approval of the most recent certification, such tobacco product man-
2 ufacturer has defaulted on escrow payments in any other state or juris-
3 diction that is a party to the master settlement agreement and the default
4 has not been cured within 90 calendar days of such default.

5 (4) The attorney general shall update the directory as necessary in
6 order to correct mistakes and to add or remove a tobacco product man-
7 ufacturer or brand family so as to keep the directory in conformity with
8 the requirements of this act.

9 (5) The attorney general shall promptly post in the directory and
10 transmit by electronic mail to each stamping agent that has provided an
11 electronic mail address, notice of removal from the directory of a tobacco
12 product manufacturer or brand family.

13 (6) Unless otherwise provided by agreement between a stamping
14 agent and a tobacco product manufacturer, the stamping agent shall be
15 entitled to a refund from a tobacco product manufacturer for any money
16 paid by the stamping agent to the tobacco product manufacturer for any
17 cigarettes of the tobacco product manufacturer in the possession of the
18 stamping agent on the effective date of removal from the directory of that
19 tobacco product manufacturer or brand family.

20 (7) Unless otherwise provided by agreement between a retail dealer
21 or a vending machine operator and a tobacco product manufacturer, a
22 retail dealer or a vending machine operator shall be entitled to a refund
23 from a tobacco product manufacturer for any money paid by the retail
24 dealer or vending machine operator to a stamping agent for any cigarettes
25 of the tobacco product manufacturer still in the possession of the retail
26 dealer or vending machine operator on the effective date of removal from
27 the directory of that tobacco product manufacturer or brand family.

28 (c) In order to be included on the list developed by the attorney
29 general under subsection (b), a tobacco product manufacturer shall (1)
30 submit to the attorney general a list of brand families whose cigarettes
31 are to be counted in calculating the participating manufacturer's annual
32 payments under the master settlement agreement or required escrow
33 payments whichever is applicable, (2) appoint a registered agent for serv-
34 ice of process in the state and identify such registered agent to the attor-
35 ney general, and (3) certify, under penalty of perjury, that all escrow
36 payments have been made by all other tobacco product manufacturers
37 that previously made or sold brand families identified under this subsec-
38 tion or brand style included within such brand families, except that, if the
39 brand family or brand style was made or sold by the manufacturer before
40 the effective date of this act, such manufacturer shall be required only to
41 identify such predecessor manufacturer or manufacturers. A tobacco
42 product manufacturer may update the list to reflect changes. (1) On or
43 before April 30 of each year, every tobacco product manufacturer whose

1 cigarettes are sold in this state, whether directly or through a stamping
2 agent or similar intermediary or intermediaries, shall execute and deliver
3 in the manner prescribed by the attorney general a certification to the
4 attorney general certifying under penalty of perjury that, as of the date
5 of such certification, such tobacco product manufacturer either is:

6 (A) A participating manufacturer; or

7 (B) in full compliance with K.S.A. 50-6a03, and amendments thereto,
8 including payment of all quarterly installment payments as may be re-
9 quired by subsection (d).

10 (2) A participating manufacturer shall include in its certification a
11 list of its brand families. The participating manufacturer shall update such
12 list 30 calendar days prior to any addition to, or modification of its brand
13 families by executing and delivering a supplemental certification to the
14 attorney general.

15 (3) A non-participating manufacturer shall include in its certification:

16 (A) The number of units sold for each brand family sold in the state
17 during the preceding calendar year;

18 (B) a list of all of its brand families sold in the state at any time during
19 the current calendar year, including any brand family sold in the state
20 during the preceding calendar year that is no longer being sold in the
21 state as of the date of such certification;

22 (C) the identity, by name and address, of any other tobacco product
23 manufacturer who manufactured such brand families in the preceding or
24 current calendar year;

25 (D) a declaration that such non-participating manufacturer is regis-
26 tered to do business in the state, or has appointed a resident agent for
27 service of process, and provided notice thereof as required by section 2,
28 and amendments thereto;

29 (E) a declaration that such non-participating manufacturer:

30 (i) Has established and continues to maintain a qualified escrow fund;
31 and

32 (ii) has executed an escrow agreement that governs the qualified es-
33 crow fund and that such escrow agreement has been reviewed and ap-
34 proved by the attorney general;

35 (F) a declaration that such non-participating manufacturer consents
36 to the jurisdiction of the district court of the third judicial district, Shaw-
37 nee county, Kansas, for purposes of enforcing this act, or rules or regu-
38 lations promulgated pursuant thereto, as required by subsection (c) of
39 section 2, and amendments thereto;

40 (G) a declaration that such non-participating manufacturer is in full
41 compliance with subsection (b) of K.S.A. 50-6a03, and amendments
42 thereto, and any rules or regulations promulgated pursuant to this act;

43 (H) (i) the name, address and telephone number of the financial in-

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1 *stitution where the non-participating manufacturer has established such*
2 *qualified escrow fund required pursuant to subsection (b) of K.S.A. 50-*
3 *6a03, and amendments thereto;*

4 *(ii) the account number of such qualified escrow fund and any sub-*
5 *account number for the state of Kansas;*

6 *(iii) the amount such non-participating manufacturer placed in such*
7 *qualified escrow fund for cigarettes sold in this state during the preceding*
8 *calendar year, the date and amount of each such deposit and such evi-*
9 *dence or verification as may be deemed necessary by the attorney general*
10 *to confirm the foregoing; and*

11 *(iv) the amount and date of any withdrawal or transfer of funds the*
12 *non-participating manufacturer made at any time from such qualified*
13 *escrow fund or from any other qualified escrow fund into which it ever*
14 *made escrow payments pursuant to subsection (b) of K.S.A. 50-6a03, and*
15 *amendments thereto; and*

16 *(I) in the case of a non-participating manufacturer located outside of*
17 *the United States, a declaration from each of its importers to the United*
18 *States of any of its brand families to be sold in Kansas that such importer*
19 *accepts joint and several liability with the non-participating manufacturer*
20 *for:*

21 *(i) All escrow deposits due under subsection (b) of K.S.A. 50-6a03,*
22 *and amendments thereto;*

23 *(ii) all penalties assessed under subsection (b) of K.S.A. 50-6a03, and*
24 *amendments thereto; and*

25 *(iii) payment of all costs and attorney fees pursuant to any successful*
26 *action under this act against said manufacturer.*

27 *Such declarations by importers of a non-participating manufacturer*
28 *shall appoint for the declarant a resident agent for service of process in*
29 *Kansas in accordance with section 2, and amendments thereto, and con-*
30 *sent to jurisdiction in accordance with section 2, and amendments thereto.*

31 *(4) A tobacco product manufacturer may not include a brand family*
32 *in its certification unless:*

33 *(A) In the case of a participating manufacturer, said participating*
34 *manufacturer affirms that the brand family shall be deemed to be its*
35 *cigarettes for purposes of calculating its payments under the master set-*
36 *tlement agreement for the relevant year in the volume and shares deter-*
37 *mined pursuant to the master settlement agreement; or*

38 *(B) in the case of a non-participating manufacturer, said non-partic-*
39 *ipating manufacturer affirms that the brand family shall be deemed to be*
40 *its cigarettes for purposes of subsection (b) of K.S.A. 50-6a03, and amend-*
41 *ments thereto.*

42 *Nothing in this paragraph shall be construed as limiting or otherwise*
43 *affecting the state's right to maintain that a brand family constitutes cig-*

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1 arettes of a different tobacco product manufacturer for purposes of cal-
2 culating payments under the master settlement agreement or subsection
3 (b) of K.S.A. 50-6a03, and amendments thereto.

4 (5) Invoices and documentation of sales and other such information
5 relied upon for such certification shall be maintained by tobacco product
6 manufacturers.

7 ~~(A) On or after January 1, 2010, for a period of at least three years,~~

8 ~~(B) on or after January 1, 2011, for a period of at least four years,~~

9 ~~and~~

10 ~~(C) on or after January 1, 2012, for a period of at least five years.~~

11 (d) In addition to or in lieu of any other civil or criminal penalty
12 provided by law, upon a finding that a licensee has violated subsection
13 (a) or any rules and regulations adopted pursuant thereto, the director
14 may revoke or suspend the license of any licensee in the manner provided
15 by K.S.A. 79-3309, and amendments thereto. The director may also im-
16 pose a civil fine in an amount not to exceed the greater of 500% of the
17 retail value of the cigarettes or roll-your-own tobacco involved or \$5,000
18 upon a finding of a violation of subsection (a) or any rules and regulations
19 adopted pursuant thereto. Such fine shall be imposed in the manner
20 provided by K.S.A. 79-3391, and amendments thereto. The attorney gen-
21 eral may require a tobacco product manufacturer subject to the require-
22 ments of subsection (c) to make the escrow deposits required by subsection
23 (b) of K.S.A. 50-6a03, and amendments thereto, in quarterly installments
24 during the calendar year in which the sales covered by such deposits are
25 made. The attorney general may require production of information suf-
26 ficient to enable the attorney general to determine the adequacy of the
27 amount of the installment deposit.

28 (e) Any cigarettes or roll-your-own tobacco that are stamped, to
29 which a meter impression is affixed or for which tax is paid as required
30 by K.S.A. 79-3371, and amendments thereto, in violation of subsection
31 (a) shall be deemed contraband under K.S.A. 79-3323, and amendments
32 thereto, and shall be subject to seizure and forfeiture as provided therein
33 and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes and
34 roll-your-own tobacco seized and forfeited shall be destroyed. Such cig-
35 arettes and roll-your-own tobacco shall be deemed contraband whether
36 the violation of subsection (a) is knowing or otherwise.

37 ~~(f) (1) The director may require wholesale dealers and distributors~~
38 ~~to submit such information as is necessary to enable the attorney general~~
39 ~~to determine whether a nonparticipating manufacturer has made the re-~~
40 ~~quired escrow payments.~~

41 ~~(2) The attorney general may require nonparticipating manufacturers~~
42 ~~to submit such information as the attorney general may determine is~~
43 ~~necessary to enable the attorney general to determine whether a non-~~

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1 participating manufacturer has made the required escrow payments.
2 ~~(g) The attorney general may require a nonparticipating manufac-~~
3 ~~turer to make the required escrow payments in quarterly installments~~
4 ~~during the year in which the sales covered by such payments are made~~
5 ~~in order to be placed on the list developed by the attorney general under~~
6 ~~subsection (b):~~
7 ~~(h) (1) It shall be unlawful for a nonparticipating manufacturer, di-~~
8 ~~rectly or indirectly, to falsely represent to any person in Kansas:~~
9 ~~(A) Any information about a brand family pursuant to the list sub-~~
10 ~~mitted pursuant to subsection (b);~~
11 ~~(B) that it is a participating manufacturer;~~
12 ~~(C) that it has made all required escrow payments; or~~
13 ~~(D) that it has satisfied any other requirements imposed pursuant to~~
14 ~~this statute.~~
15 ~~(2) Violation of this section is a class A, nonperson misdemeanor.~~
16 ~~(i) The director and the attorney general may enter into a written~~
17 ~~agreement authorizing the exchange of information reasonably necessary~~
18 ~~to the enforcement and administration of this section.~~
19 ~~(j) As used in this section:~~
20 ~~(1) "Participating manufacturer" has the meaning ascribed thereto in~~
21 ~~subsection (a) of K.S.A. 50-6a03, and amendments thereto.~~
22 ~~(2) "Required escrow payments" means the amounts described in~~
23 ~~subsection (b)(1) of K.S.A. 50-6a03, and amendments thereto.~~
24 ~~(3) "Director" means the director of taxation.~~
25 Sec. 17. K.S.A. 50-6a04 is hereby repealed.
26 Sec. 18. This act shall take effect and be in force from and after its
27 publication in the statute book.