

Executive Reorganization Order No. 40

By Governor Sam Brownback

2-8

1 Section 1. (a) There is hereby established, within and as a part of
2 the Kansas department of agriculture, the agriculture marketing and
3 promotions program.

4 (b) (1) The secretary of agriculture shall appoint such employees as
5 may be needed to carry out the powers and duties of the program, and all
6 such officers and employees shall be within the classified or unclassified
7 service.

8 (2) All employees shall act for and exercise the powers of the
9 secretary of agriculture to the extent that authority to do so is delegated
10 by the secretary of agriculture.

11 Sec. 2. (a) The agriculture products development division within
12 the department of commerce created by K.S.A. 74-50,156, and
13 amendments thereto, is hereby abolished.

14 (b) Except as otherwise provided by this order, all powers, duties
15 and functions of the agriculture products development division within the
16 department of commerce created by K.S.A. 74-50,156, and amendments
17 thereto, are hereby transferred to and imposed upon the agriculture
18 marketing and promotions program within the Kansas department of
19 agriculture created herein.

20 Sec. 3. (a) The agriculture marketing and promotions program
21 within the Kansas department of agriculture shall be the successor in
22 every way to the powers, duties and functions of the agriculture products
23 development division within the department of commerce which were in
24 effect prior to the effective date of this order and that are transferred
25 pursuant to section 2. Every act performed in the exercise of such
26 transferred powers, duties and functions by or under the authority of the
27 agriculture marketing and promotions program within the Kansas
28 department of agriculture shall be deemed to have the same force and
29 effect as if performed by the agriculture products development division
30 within the department of commerce in which such powers, duties and
31 functions were in effect prior to the effective date of this order.

32 (b) Whenever the agriculture products development division or
33 words of like effect are referred to or designated by a statute, contract, or
34 other document and such reference is in regard to any of the powers,
35 duties, or functions transferred to the agriculture products marketing and
36 promotions program such reference or designation shall be deemed to

1 apply to the program or the secretary of agriculture.

2 (c) All rules and regulations, orders and directives of the agriculture
3 products development division within the department of commerce which
4 relate to the functions transferred by this order and which are in effect on
5 the effective date of this order shall continue to be effective and shall be
6 deemed to be rules and regulations, orders and directives of the
7 agriculture marketing and promotions program within the Kansas
8 department of agriculture transferred herein until revised, amended,
9 revoked or nullified pursuant to law.

10 Sec. 4. (a) The balances of all funds or accounts thereof
11 appropriated or reappropriated for the agriculture products development
12 division within the department of commerce relating to the powers, duties
13 and functions transferred by this order are hereby transferred within the
14 state treasury to the agriculture marketing and promotions program within
15 the Kansas department of agriculture transferred herein and shall be used
16 only for the purpose for which the appropriation was originally made.

17 (b) Subject to acts of the legislature, all fees, grant funds, and loan
18 repayment funds dedicated to the agriculture products development
19 division within the department of commerce prior to the effective date of
20 this order shall be transferred to the agriculture marketing and promotions
21 program within the department of agriculture.

22 (c) Liability for all accrued compensation or salaries of officers and
23 employees who are transferred from the agriculture products
24 development division within the department of commerce under this
25 order shall be assumed and paid by the agriculture marketing and
26 promotions program within the Kansas department of agriculture.

27 Sec. 5. (a) When any conflict arises as to the disposition of any
28 property, power, duty or function or the unexpended balance of any
29 appropriation as a result of any abolition or transfer made by or under the
30 authority of this order, such conflict shall be resolved by the governor,
31 whose decision shall be final.

32 (b) The agriculture marketing and promotions program within the
33 Kansas department of agriculture shall succeed to all property, property
34 rights and records which were used for or pertain to the performance of
35 powers, duties and functions transferred to the division. Any conflict as to
36 the proper disposition of property, personnel, or records arising under this
37 order shall be determined by the governor, whose decision shall be final.

38 Sec. 6. (a) No suit, action, or other proceeding, judicial or
39 administrative, lawfully commenced or which could have been
40 commenced, by or against any state agency or program mentioned in this
41 order, or by or against any officer of the state in such officer's official
42 duties, shall abate by reason of the governmental reorganization effected
43 under the provisions of this order. The court may allow any such suit,

1 action or other proceeding to be maintained by or against the successor of
2 any such state agency or any officer affected.

3 (b) No criminal action commenced or which could have been
4 commenced by the state shall abate by the taking effect of this order.

5 Sec. 7. (a) The secretary of agriculture shall determine such
6 employees as are necessary to enable the secretary to carry out the duties
7 of the agriculture marketing and promotions program. All officers and
8 employees of the agriculture products development division within the
9 department of commerce who, immediately prior to the effective date of
10 this order, are engaged in the exercise and performance of the powers,
11 duties and functions transferred by this order, who are determined by the
12 secretary of agriculture to be engaged in providing administrative,
13 technical or other support services that are essential to the exercise and
14 performance of the powers, duties and functions transferred by this order,
15 are hereby transferred to the agriculture marketing and promotions
16 program within the Kansas department of agriculture. All classified
17 employees so transferred shall retain their status as classified employees.
18 Thereafter, the secretary of agriculture may convert vacant classified
19 positions to positions in the unclassified service under the Kansas civil
20 service act.

21 (b) Officers and employees of the agriculture products development
22 division within the department of commerce transferred by this order
23 shall retain all retirement benefits and leave balances and rights which
24 had accrued or vested prior to the date of transfer. The service of each
25 such officer and employee so transferred shall be deemed to have been
26 continuous. Any subsequent transfers, layoffs or abolition of classified
27 service positions under the Kansas civil service act shall be made in
28 accordance with the civil service laws and any rules and regulations
29 adopted thereunder. Nothing in this order shall affect the classified status
30 of any transferred person employed by the agriculture products
31 development division of the department of commerce prior to the date of
32 transfer.

33 Sec. 8. (a) The division of animal health is hereby established
34 within the Kansas department of agriculture. The division of animal
35 health shall be a continuation of the Kansas animal health department and
36 the animal health commissioner shall be a continuation of the livestock
37 commissioner of the Kansas animal health department. The division shall
38 be administered under the supervision of the secretary of agriculture, by
39 the animal health commissioner, who shall be the chief administrative
40 officer of the division. On the effective date of this order, the Secretary of
41 Agriculture shall appoint the animal health commissioner. Thereafter,
42 upon a vacancy in the office of animal health commissioner, the Kansas
43 animal health board shall submit three nominations to the secretary of

1 agriculture for the office of animal health commissioner, and the secretary
2 of agriculture shall choose one of the three nominations to appoint as the
3 animal health commissioner. The animal health commissioner shall serve
4 at the pleasure of the secretary and the animal health board. The animal
5 health commissioner shall be in the unclassified service under the Kansas
6 civil service act and shall receive an annual salary fixed by the secretary
7 of agriculture, with the approval of the governor.

8 (b) All of the powers, duties and functions of the existing Kansas
9 animal health department and the existing livestock commissioner of the
10 Kansas animal health department are hereby transferred to and imposed
11 upon the animal health division within the Kansas department of
12 agriculture and the animal health commissioner, respectively.

13 (c) The secretary of agriculture shall appoint such employees as may
14 be needed to carry out the powers and duties of the program, and all such
15 officers and employees shall be within the classified or unclassified
16 service.

17 Sec. 9. The Kansas animal health department and the office of
18 livestock commissioner as established by K.S.A. 75-1901, and
19 amendments thereto, are hereby abolished.

20 Sec. 10. (a) The animal health commissioner of the Kansas
21 department of agriculture shall be the successor in every way to the
22 powers, duties and functions of the Kansas animal health department and
23 the livestock commissioner of the Kansas animal health department in
24 which the same were vested prior to the effective date of this order. Every
25 act performed in the exercise of such powers, duties and functions by or
26 under the authority of the secretary of agriculture shall be deemed to have
27 the same force and effect as if performed by the Kansas animal health
28 department and the livestock commissioner of the Kansas animal health
29 department in which such powers, duties and functions were vested prior
30 to the effective date of this order.

31 (b) Whenever the Kansas animal health department or the livestock
32 commissioner of the Kansas animal health department, or words of like
33 effect, are referred to or designated by a statute, contract, memorandum
34 of understanding, plan, grant, waiver or other document, such reference
35 or designation shall be deemed to apply to the animal health division of
36 the Kansas department of agriculture or the animal health commissioner
37 under the secretary of agriculture.

38 (c) All rules and regulations, orders and directives of the livestock
39 commissioner of the Kansas animal health department that are in effect
40 on the effective date of this order shall continue to be effective and shall
41 be deemed to be rules and regulations, orders and directives of the animal
42 health division of the Kansas department of agriculture until revised,
43 amended, revoked or nullified pursuant to law, by the secretary of

1 agriculture.

2 (d) Before any proposed rules and regulations of the animal health
3 commissioner of the division of animal health of the department of
4 agriculture are submitted to the secretary of administration or the attorney
5 general pursuant to K.S.A. 77-420, and amendments thereto:

6 (1) The animal health commissioner shall submit such rules and
7 regulations to the animal health board; and

8 (2) the animal health board shall review and make recommendations
9 to the animal health commissioner and the secretary of agriculture
10 regarding such proposed rules and regulations.

11 Sec. 11. (a) The Kansas animal health board, created by K.S.A.
12 74-4001, and amendments thereto, is hereby continued in existence
13 within the animal health division of the department of agriculture with
14 respect to powers, duties and functions of the Kansas animal health
15 department that are transferred under this order. Persons who are
16 members of the Kansas animal health board on the effective date of this
17 order shall continue to hold such offices under the conditions and
18 limitations provided under K.S.A. 74-4001, and amendments thereto.

19 (b) The Kansas pet animal advisory board, created by K.S.A. 47-
20 1725, and amendments thereto, is hereby continued in existence within
21 the animal health division of the department of agriculture with respect to
22 powers, duties and functions of the Kansas animal health department that
23 are transferred under this order. Persons who are members of the Kansas
24 pet animal advisory board on the effective date of this order shall
25 continue to hold such offices under the conditions and limitations
26 provided under K.S.A. 47-1725, and amendments thereto.

27 Sec. 12. The Kansas department of agriculture shall succeed to all
28 property, property rights and records of the Kansas animal health
29 department and the livestock commissioner of the Kansas animal health
30 department.

31 Sec. 13. (a) On the effective date of this order, the balances of all
32 funds or accounts thereof appropriated or reappropriated for the Kansas
33 animal health department are hereby transferred within the state treasury
34 to the Kansas department of agriculture and shall be used only for the
35 purpose for which the appropriation was originally made.

36 (b) Subject to acts of the legislature, all fees and grant funds
37 dedicated to animal health programs shall remain dedicated to animal
38 health programs on and after the effective date of this order.

39 Sec. 14. (a) (1) The secretary of agriculture in consultation with
40 the animal health commissioner shall determine such employees as are
41 necessary to enable the secretary to carry out the duties of the animal
42 health division. The livestock commissioner of the animal health
43 department shall become the animal health commissioner of the animal

1 health division of the Kansas department of agriculture on the effective
2 date of this order. All other officers and employees of the Kansas animal
3 health department who, immediately prior to such date, were engaged in
4 the performance of powers, duties and functions for the Kansas animal
5 health department and who are, in the opinion of the secretary of
6 agriculture in consultation with the animal health commissioner,
7 necessary to perform the powers, duties and functions of the Kansas
8 animal health department that are transferred under this order, shall
9 become officers and employees of the department of agriculture and are
10 hereby transferred to the Kansas department of agriculture on the
11 effective date of this order.

12 (2) All classified employees transferred under this subsection (a)
13 shall retain their status as classified employees. Thereafter, the secretary
14 of agriculture may convert vacant classified positions to positions in the
15 unclassified service under the Kansas civil service act.

16 (b) Officers and employees of the Kansas animal health department
17 transferred under this order shall retain all retirement benefits and leave
18 balances and rights that had accrued or vested prior to the date of transfer.
19 The service of each such officer and employee so transferred shall be
20 deemed to have been continuous. Any subsequent transfers, layoffs or
21 abolition of classified service positions under the Kansas civil service act
22 shall be made in accordance with the civil service laws and any rules and
23 regulations adopted thereunder. Nothing in this order shall affect the
24 classified status of any transferred person employed by the Kansas animal
25 health department prior to the date of transfer.

26 (c) Liability for accrued compensation or salaries of each officer
27 and employee who is transferred from the Kansas animal health
28 department to the Kansas department of agriculture under this order shall
29 be assumed and paid by the Kansas department of agriculture on the
30 effective date of this order.

31 Sec. 15. (a) On the effective date of this order, the division of
32 conservation is hereby established within the Kansas department of
33 agriculture. The division of conservation shall be a continuation of the
34 state conservation commission and the executive director of conservation
35 shall be a continuation of the executive director of the state conservation
36 commission. The division shall be administered under the supervision of
37 the secretary of agriculture by the executive director of the division of
38 conservation, who shall be the chief administrative officer of the division.
39 The executive director of the division of conservation shall be jointly
40 appointed by the secretary of agriculture and the state conservation
41 commission and shall serve at the pleasure of the secretary and the state
42 conservation commission. The executive director of the division of
43 conservation shall be in the unclassified service under the Kansas civil

1 service act and shall receive an annual salary fixed by the secretary of
2 agriculture, with the approval of the governor.

3 (b) All of the powers, duties and functions of the existing state
4 conservation commission and the existing executive director of the state
5 conservation commission are hereby transferred to and imposed upon the
6 conservation division of the Kansas department of agriculture and the
7 executive director of the conservation division, respectively.

8 Sec. 16. (a) The conservation division of the department of
9 agriculture shall be the successor in every way to the powers, duties and
10 functions of the state conservation commission and the executive director
11 of the state conservation commission in which the same were vested prior
12 to the effective date of this order. Every act performed in the exercise of
13 such powers, duties and functions by or under the authority of the
14 secretary of agriculture shall be deemed to have the same force and effect
15 as if performed by the state conservation commission and the executive
16 director of the state conservation commission in which such powers,
17 duties and functions were vested prior to the effective date of this order.

18 (b) Whenever the state conservation commission or the executive
19 director of the state conservation commission, or words of like effect, are
20 referred to or designated by a statute, contract, memorandum of
21 understanding, plan, grant, waiver or other document, such reference or
22 designation shall be deemed to apply to the conservation division within
23 the department of agriculture or the executive director of the conservation
24 division under the secretary of agriculture.

25 (c) All rules and regulations, orders and directives of the state
26 conservation commission or the executive director of the state
27 conservation commission that are in effect on the effective date of this
28 order shall continue to be effective and shall be deemed to be rules and
29 regulations, orders and directives of the conservation division of the
30 Kansas department of agriculture until revised, amended, revoked or
31 nullified pursuant to law by the secretary of agriculture.

32 Sec. 17. The state conservation commission established by K.S.A.
33 2-1904, and amendments thereto, is hereby continued in existence within
34 the conservation division within the department of agriculture with
35 respect to the powers, duties and functions of the state conservation
36 commission that are transferred under this order. Persons who are
37 members of the board shall continue to hold such offices under the
38 conditions and limitations in effect on the effective date of this order.

39 Sec. 18. The Kansas department of agriculture shall succeed to all
40 property, property rights and records of the state conservation
41 commission and the executive director of the state conservation
42 commission.

43 Sec. 19. (a) On the effective date of this order, the balances of all

1 funds or accounts thereof appropriated or reappropriated for the state
2 conservation commission are hereby transferred within the state treasury
3 to the Kansas department of agriculture and shall be used only for the
4 purpose for which the appropriation was originally made.

5 (b) Subject to acts of the legislature, all fees and grant funds
6 dedicated to conservation programs shall remain dedicated to
7 conservation programs on and after the effective date of this order.

8 Sec. 20. (a) (1) The executive director of the conservation
9 commission shall become the executive director of the conservation
10 division of the Kansas department of agriculture on the effective date of
11 this order. All other officers and employees of the state conservation
12 commission who, immediately prior to such date, were engaged in the
13 performance of powers, duties and functions for the state conservation
14 commission and who are, in the opinion of the secretary of agriculture in
15 consultation with the executive director, necessary to perform the powers,
16 duties and functions of the state conservation commission that are
17 transferred under this order, shall become officers and employees of the
18 department of agriculture and are hereby transferred to the Kansas
19 department of agriculture on the effective date of this order.

20 (2) The secretary of agriculture in consultation with the executive
21 director shall determine such officers and employees as are necessary to
22 enable the secretary to carry out the duties of the division of conservation.

23 (3) All classified employees transferred under this subsection (a)
24 shall retain their status as classified employees. Thereafter, the secretary
25 of agriculture may convert vacant classified positions to positions in the
26 unclassified service under the Kansas civil service act.

27 (b) Officers and employees of the state conservation commission
28 transferred by this order shall retain all retirement benefits and leave
29 balances and rights that had accrued or vested prior to the date of transfer.
30 The service of each such officer and employee so transferred shall be
31 deemed to have been continuous. Any subsequent transfers, layoffs or
32 abolition of classified service positions under the Kansas civil service act
33 shall be made in accordance with the civil service laws and any rules and
34 regulations adopted thereunder. Nothing in this order shall affect the
35 classified status of any transferred person employed by the state
36 conservation commission prior to the date of transfer.

37 (c) Liability for accrued compensation or salaries of each officer
38 and employee who is transferred to the Kansas department of agriculture
39 under this order shall be assumed and paid by the Kansas department of
40 agriculture on the effective date of this order.

41 Sec. 21. (a) No suit, action, or other proceeding, judicial or
42 administrative, that is lawfully commenced or that could have been
43 lawfully commenced, by or against any state agency or program

1 mentioned in this order, or by or against any officer of the state in such
2 officer's official capacity or in relation to the discharge of such officer's
3 official duties, shall abate by reason of the governmental reorganization
4 effected under the provisions of this order. The court may allow any such
5 suit, action or other proceeding to be maintained by or against the
6 successor of any such state agency or any officer affected.

7 (b) No criminal action that is commenced or that could have been
8 commenced by the state shall abate by the taking effect of this order.

9 Sec. 22. Except as otherwise provided by this order, all of the
10 provisions of this order shall take effect and have the force of general law
11 on July 1, 2011, unless disapproved by either house of the Kansas
12 legislature as provided by subsection (c) of section 6 of article 1 of the
13 constitution of Kansas, and unless so disapproved, this order is to be
14 published as and with the acts of the legislature and the statutes of this
15 state.

16
17 DONE AT The Capitol in Topeka
18 Under the Great Seal of the
19 State of Kansas this 7th day
20 of February, 2011.

21
22 BY THE GOVERNOR
23 SAM BROWNBACK

24
25 Kris W. Kobach
26 *Secretary of State*
27 Mary Diane Minear
28 *Assistant Secretary of State*