

juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs;

- (4) **Court Services Officer** means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court.

- (c) Battery against a law enforcement officer is a Class A violation. (K.S.A. 21-5413)

Sec. 3.2.1. Sexual Battery.

- (a) Sexual battery is the touching of a victim who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.
- (b) Sexual battery is a Class A violation. (K.S.A. 21-5505)

{**Editor's note:** In *City of Shawnee v. Adem*, 314 Kan. 12 (2021), the Kansas Supreme Court held the Kansas Offender Registration Acts applies to any person convicted of sexual battery under Sec. 3.2.1. of the UPOC.}

Sec. 3.2.2. Battery Against a School Employee.

- (a) Battery against a school employee is a battery, as defined in Section 3.1, committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.
- (b) Battery against a school employee is a Class A violation. (K.S.A. 21-5413)

- (C)
 - (i) Was the person who reasonably appeared to be in need of medical assistance as described in subsection (d)(1)(B), but did not initiate contact with law enforcement or emergency medical services; and
 - (ii) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.
- (2) A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer's employer, based on the officer's compliance or failure to comply with this subsection.
- (e) Violation of this section by a person 18 or more years of age but less than 21 years of age is a Class C violation for which the minimum fine is \$200.
(K.S.A. 41-727)

Article 6. Offenses Against Property

Sec. 6.1. Theft.

- (a) Theft is any of the following acts done with the intent to permanently deprive the owner of the possession, use or benefit of the owner's property or services.
 - (1) Obtaining or exerting unauthorized control over property or services;
 - (2) Obtaining control over property or services by deception;
 - (3) Obtaining control over property or services by threat;
 - (4) Obtaining control over stolen property or services knowing the property or services to have been stolen by another; or
 - (5) Knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel.
- (b) Theft of property or services of the value of less than \$1,500 is a Class A violation.

(c) As used in this section:

- (1) **Regulated scrap metal** means the same as defined in K.S.A. 50-6,109, and amendments thereto;
- (2) **Remote service unit** means the same as defined in K.S.A. 9-1111, and amendments thereto, and includes, but is not limited to, automated cash dispensing machines and automated teller machines; and
- (3) **Value** means the value of the property or, if the property is regulated scrap metal or a remote service unit, the cost to restore the site of the theft of such regulated scrap metal or remote service unit to its condition at the time immediately prior to the theft of such regulated scrap metal or remote service unit, whichever is greater.
(K.S.A. 21-5801)

{**Editor's Note:** Under state law, theft of property or services of the value of less than \$1,500 is a Class A violation, unless any one of the following is present:

- (1) Property of the value of less than \$1,500 from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony;
- (2) Property of the value of at least \$50 but less than \$1,500 is a severity level 9, nonperson felony if committed by a person who has, within five years immediately preceding commission of the crime, excluding any period of imprisonment, been convicted of theft two or more times;
- (3) Property that is a firearm of the value of less than \$25,000 is a severity level 9, nonperson felony; and
- (4) Property that is mail of the value of less than \$1,500 from three separate locations within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony. Violations under these facts are considered felony violations over which municipal court has no jurisdiction and should be referred to the appropriate prosecuting authority.}

Sec. 6.2. Intent; Permanently Deprive.

- (a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

- (E) Causing, procuring, permitting, aiding or abetting any person to do any of the acts described in subparagraphs (A) through (D). (K.S.A. 21-5804)

Sec. 6.3. Theft of Property Lost, Mislaid or Delivered by Mistake.

- (a) Theft of property lost, mislaid or delivered by mistake is obtaining control of property of another by a person who:
 - (1) Knows or learns the identity of the owner thereof;
 - (2) Fails to take reasonable measures to restore to the owner lost property, mislaid property or property delivered by a mistake; and
 - (3) Intends to permanently deprive the owner of the possession, use or benefit of the property.
- (b) As used in this section, **property delivered by mistake** includes, but is not limited to, a mistake as to the:
 - (1) Nature or amount of the property; or
 - (2) Identity of the recipient of the property.
- (c) Theft of property lost, mislaid or delivered by mistake of the value of less than \$1,000 is a Class A violation. (K.S.A. 21-5802)

Sec. 6.4. Reserved for Future Use.

Sec. 6.5. Criminal Deprivation of Property.

- (a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property.
- (b) Penalties.
 - (1) Criminal deprivation of property that is a motor vehicle upon a first or second conviction is a Class A violation. Upon a first conviction of this paragraph, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than \$100.

Upon a second conviction of this paragraph, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than \$200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.

- (2) Criminal deprivation of property other than a motor vehicle or a firearm is a Class A violation. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice. (K.S.A. 21-5803)

- (c) As used in this section, **motor vehicle** means the same as in K.S.A. 8-1437, and amendments thereto. (K.S.A. 21-5803)

Sec. 6.6. Criminal Damage to Property.

- (a) Criminal damage to property is by means other than by fire or explosive:
 - (1) Knowingly damaging, destroying, defacing or substantially impairing the use of any property in which another has an interest without the consent of such other person; or
 - (2) Damaging, destroying, defacing or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.
- (b) Criminal damage to property is a Class B violation if the property damaged is of the value of less than \$1,000 or is of the value of \$1,000 or more and is damaged to the extent of less than \$1,000.
- (c) In determining the amount of damage to property, damages may include the cost of repair or replacement of the property that was damaged, the reasonable cost of the loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property. (K.S.A. 21-5813)

- (2) Using a financial card, or the number or description thereof, which has been revoked or canceled; or
 - (3) Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.
- (b) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.
- (c) Criminal use of a financial card is a Class A violation if the money, goods, property or services obtained within a seven-day period is of the value of less than \$1,000. (K.S.A. 21-5828)

Sec. 6.18. Motor Vehicle Dealers; Selling Motor Vehicles Without a License.

- (a) It shall be unlawful for any person to do business as a motor vehicle dealer, salvage vehicle dealer, motor vehicle manufacturer, motor vehicle converter, auction motor vehicle dealer, vehicle crusher, vehicle recycler, rebuilder, scrap metal recycler, salvage vehicle pool or salesperson without a license issued by the director of vehicles. The isolated or occasional sale of a vehicle by a person who owned such vehicle shall not constitute the doing of business as a vehicle dealer.
- (b) As used in this section:
- (1) **Vehicle** means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, except that **vehicle** includes micro utility trucks, as defined in K.S.A. 8-126, and amendments thereto, but does not include motorized bicycles or electric-assisted bicycles, and does not include manufactured homes or mobile homes. As used in this subsection, the terms "manufactured home" and "mobile home" mean the same as defined by K.S.A. 58-4202, and amendments thereto. (K.S.A. 8-2401(h))

- (2) **Motor vehicle** means any vehicle other than a motorized bicycle or electric-assisted bicycle, that is self-propelled and is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, except that **motor vehicle** includes micro utility trucks, as defined in K.S.A. 8-126, and amendments thereto. (K.S.A. 8-2401(i))
- (c) Violation of this section shall be punishable by a fine not to exceed \$2,500. (K.S.A. 8-2434)

Sec. 6.19. Equity Skimming.

- (a) Equity skimming is, with the intent to defraud, intentionally engaging in a pattern or practice of:
 - (1) Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including, but not limited to, an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage;
 - (2) Failing to deliver to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption all rent proceeds received from rental of the property, not to exceed the monthly payment of principal and interest required by the note and mortgage; and
 - (3) Applying or authorizing the application of rents from such dwellings for such person's own use.
- (b) Violation of this section is a Class A violation. Each purchase of a dwelling pursuant to this section shall be deemed a separate offense.
(K.S.A. 21-6504)

Sec. 6.20. Unlawful Acts Concerning Computers.

- (a) It is unlawful for any person to:
 - (1) Knowingly and without authorization, disclose a number, code, password or other means of access to a computer, computer network, social networking website or personal electronic content; or

Sec. 7.13. Interference With Police Dogs.

- (a) It shall be unlawful for any person to strike, abuse, tease, harass, or assault any dog being used by the city for the purpose of performing the duties of a police dog regardless of whether the dog is on duty or off.
- (b) It shall be unlawful for any person to interfere with a dog being used by the police department or attempt to interfere with the handler of the dog in such a manner as to inhibit, restrict or deprive the handler of his or her control of the dog.
- (c) Violation of this section is a Class C violation.

Sec. 7.14. Electioneering.

- (a) (1) Electioneering is:
 - (A) knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted, including wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicates support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof; or
 - (B) if committed by a candidate:
 - (i) Touching or handling any voter's ballot during the voting process;
 - (ii) distributing ballots or counting ballots;
 - (iii) hindering or obstructing any voter from voting or from entering and leaving the polling place; or
 - (iv) hindering or obstructing any election board worker from performing election duties.

- (2) Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting.
- (b) The provisions of subsection (a)(1)(B) shall not apply to:
- (1) The secretary of state, any election official or any county election officer;
 - (2) a candidate for precinct committeeman or committeewoman who is employed by a county election office and is engaged in the performance of such employee's duties;
 - (3) a candidate for any office not specified in paragraphs (1) or (2) who is employed by a county election office and is engaged in the performance of such employee's duties, if such employee does not appear as a candidate for office on any ballot such employee touches, handles, distributes or counts; or
 - (4) a candidate transmitting or delivering an advance voting ballot in accordance with section 2(b), and amendments thereto.
- (c) (1) As used in this section, "**advance voting site**" means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122(c), and amendments thereto, and adult care homes and hospital based care units at the time of an election participating in the voting procedures prescribed in K.S.A. 2020 Supp. 25-2812, and amendments thereto.
- (2) **Candidate** means an individual who has declared such individual's candidacy pursuant to K.S.A. 25-205 et seq., and amendments thereto, or has been nominated for elected office pursuant to K.S.A. 25-301 et seq., and amendments thereto, in the election for which the individual is charged with having violated the provisions of this section.
- (d) Electioneering is a Class C violation.
(K.S.A. 25-2430)

Sec. 7.15. Intimidation of a Witness or Victim.

- (a) Intimidation of a witness or victim is preventing or dissuading, or attempting to prevent or dissuade, with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:
 - (1) Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or
 - (2) Any witness, victim or person acting on behalf of a victim from:
 - (A) Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer, judicial officer, the secretary for children and families, the secretary for aging and disability services, or any agent or representative of either secretary, or any person required to make a report pursuant to K.S.A. 38-2223, and amendments thereto;
 - (B) Causing a complaint, indictment or information to be sought and prosecuted or causing a violation of probation, parole or assignment to a community correctional services program to be reported and prosecuted, and assisting in its prosecution;
 - (C) Causing a civil action to be filed and prosecuted and assisting in its prosecution; or
 - (D) Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.
- (b) Intimidation of a witness or victim is a Class B person violation.

(c) As used in this section

(1) **Victim** means any individual:

- (A) Against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or
- (B) Who suffers a civil injury or loss; and

(2) **Witness** means any individual:

- (A) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;
- (B) Whose declaration under oath is received or has been received as evidence for any purpose;
- (C) Who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;
- (D) Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or
- (E) Who is believed by the offender to be an individual described in this subsection.

(3) **Civil injury or loss** means any injury or loss for which a civil remedy is provided under the laws of this state, any other state, or the United States.

(K.S.A. 21-5908; 21-5909)

Sec. 9.9.4. Unlawful Possession of Controlled Substances.

- (a) No person shall possess any of the controlled substances or controlled substance analogs thereof found in K.S.A. 21-5706(b) and amendments thereto.
- (b) Violation of subsection (a) is a Class A violation. (K.S.A. 21-5706)

{**Editor's Note:** Violations of K.S.A. 21-5704 subsections (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3,4 methylenedioxymethamphetamine (MDMA), marijuana as designated in K.S.A. 65-4105(d), and amendments thereto, or any substance designated in K.S.A. 65-4105(h), and amendments thereto, or an analog thereof. As these violations are considered felonies under state law over which municipal courts have no jurisdiction, they should be referred to the appropriate prosecuting authority}.

Sec. 9.9.5. Unlawful Possession of a Simulated Substance.

- (a) No person shall use or possess with intent to use any simulated controlled substance.
- (b) This is a Class A violation.
- (c) "Simulated controlled substance" means any product that identifies itself by a common name or slang term associated with a controlled substance and that indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance. (K.S.A. 21-5701(r)) (K.S.A. 21-5713)

Sec. 9.9.6. Distribution of a Non-controlled Substance.

- (a) No person shall distribute or possess with the intent to distribute any substance, which is not a controlled substance, to a person who is over the age of eighteen:
 - (1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

- (4) “raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.
- (c) Endangering the food supply is a Class A violation except if the contagious or infectious disease is food-and-mouth disease in which class it is classified as a felony under state law and will be referred to the appropriate prosecuting authority.
(K.S.A. 21-6317)

Sec. 10.29. Violation of a Public Health Order.

- (a) It shall be unlawful for any person to violate, refuse, or fail to comply with, a written order of the County Health Officer, Board of Health, or Director of Health issued under their respective authorities.
- (b) A violation of this section is a Class C violation.

Sec. 10.30. Operating an Aircraft Under the Influence.

- (a) Operating an aircraft under the influence is operating or attempting to operate any aircraft within this state while:
 - (1) The alcohol concentration in the person’s blood or breath as shown by any competent evidence, including other competent evidence, is 0.04 or more;
 - (2) the alcohol concentration in the person’s blood or breath, as measured within four hours of the time of operating or attempting to operate an aircraft, is 0.04 or more;
 - (3) under the influence of alcohol to a degree that renders the person incapable of safely operating an aircraft;
 - (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating an aircraft; or
 - (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating an aircraft.
- (b) (1) Operating an aircraft under the influence is an ordinance violation.

- (A) On a first conviction, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$750.
- (B) On second or subsequent conviction, the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250. The following conditions shall apply to such sentence:
- (i) As a condition of any probation granted under this subsection, the person shall serve at least 120 hours of confinement. The hours of confinement shall include at least 48 hours of imprisonment and otherwise may be served by a combination of: Imprisonment; a work release program, if such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program; and
- (ii) (a) if the person is placed into a work release program or placed under a house arrest program for any portion of the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum sentence is met. If the person is placed into a work release program or placed under a house arrest program for more than the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum of 120 hours of confinement is completed, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and
- (b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's work day. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence.

(2) As part of the judgment of conviction, the court shall order the person convicted not to operate an aircraft for any purpose for a period of six months from the date of final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is later or one year from such date on a second conviction. If the court suspends the sentence and places the person on probation as provided by law, the court shall order as one of the conditions of probation that such person not operate an aircraft for any purpose for a period of 30 days from the date of the order on a first conviction or 60 days from the date of the order on a second conviction.

(3) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence:

(A) "Conviction" includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (a); and

(B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.

(c) If a person is charged with a violation of subsection (a)(4) or (a)(5), the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge. (L. 2022, ch. 80, § 1) (HB 2377)

Sec. 10.30.1. Same; Preliminary Breath Test.

(a) A law enforcement officer may request a person who is operating or attempting to operate an aircraft within this state to submit to a preliminary screening test of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate an aircraft while under the influence of alcohol or drugs, or a combination of alcohol and any drug or drugs.

- (b) If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by L. 2022, ch. 80, § 2, and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of an aircraft except to aid the court in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to section 2, and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to L. 2022, ch. 80, § 2, and amendments thereto.
- (c) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107, and amendments thereto. Any preliminary screening of a person's oral fluid shall be conducted in accordance with rules and regulations, if any, approved pursuant to K.S.A. 75-712h, and amendments thereto. (L. 2022, ch. 80, § 3) (HB 2377)

Sec. 10.30.2. Same; Definitions.

As used in Sections 10.30 through 10.30.2 and amendments thereto:

- (a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
- (b) "Drug" includes toxic vapors as such term is defined in K.S.A. 2021 Supp. 21-5712, and amendments thereto.
- (c) "Imprisonment" includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.
- (d) "Law enforcement officer" means the same as in K.S.A. 2021 Supp. 21-5111, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of section 1, and amendments thereto, if committed off a military reservation in this state.

- (e) “Other competent evidence” includes:
- (1) Alcohol concentration tests obtained from samples taken four hours or more after the operation or attempted operation of an aircraft; and
 - (2) readings obtained from a partial alcohol concentration test on a breath testing machine. (L. 2022, ch. 80, § 4) (HB 2377)

Article 11. Offenses Against Public Morals

Sec. 11.1. Promoting Obscenity.

- (a) Promoting obscenity is recklessly:
- (1) Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting, or advertising any obscene material or obscene device;
 - (2) Possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;
 - (3) Offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit, or advertise any obscene material or obscene device; or
 - (4) Producing, presenting, or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.
- (b) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:
- (1) The materials or devices were promoted to emphasize their prurient appeal; or
 - (2) The person is not a wholesaler and promotes the materials or devices in the course of the person’s business.
- (c) As used in this section:
- (1) Any material or performance is **obscene** if:

- (6) **Performance** means any motion picture, file, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
 - (7) **Sadomasochistic abuse** means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
 - (8) **Sexual conduct** means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.
 - (9) **Sexual excitement** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (d) The provisions of this section shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying, presenting or distributing such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.
- (e) Violation of subsection (a) is a Class B violation. (K.S.A. 21-6402)

Sec. 11.8. Gambling.

- (a) Definitions of gambling terms used in sections 11.8, 11.9, and 11.10 shall be as follows:
 - (1) A **bet** is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

- (A) Bona fide business transactions that are valid under the laws of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
 - (B) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;
 - (C) A lottery as defined in this section;
 - (D) Any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;
 - (E) A lottery operated by the state pursuant to the Kansas lottery act;
 - (F) Any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas pari-mutuel racing act; or
 - (G) Tribal gaming;
 - (H) Charitable raffles as defined by K.S.A. 75-5173, and amendments thereto; or
 - (I) A fantasy sports league as defined in this section; or
 - (J) Sports wagering, as defined in K.S.A. 74-8701, and amendments thereto.
- (2) A **lottery** is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include:
- (A) A lottery operated by the state pursuant to the Kansas lottery act; or
 - (B) Tribal gaming.

- (3) **Consideration** means anything that is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

Consideration shall not include sums of money paid by or for:

- (A) Participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701, and amendments thereto;
- (B) Participants in any lottery operated by the state pursuant to the Kansas lottery act;
- (C) Participants in any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas pari-mutuel racing act; or
- (D) A person to participate in tribal gaming.

- (4) **Fantasy sports league** means any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:
- (A) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;
 - (B) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in real-world sporting events; and
 - (C) No winning outcome is based:
 - (i) On the score, point spread or any performance or performances of any single real-world team or any combination of such teams; or
 - (ii) Solely on any single performance of an individual athlete in any single real-world sporting event.
- (5) (A) **Gambling device** means any:
- (i) So-called slot machine or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and (i) that when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
 - (ii) Other machine, mechanical device, electronic device or other contrivance including, but not limited to, roulette wheels and

similar devices that are equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and (i) that when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

- (iii) Subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but that is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or
- (iv) Token, chip, paper, receipt or other document that evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(B) **Gambling device** shall not include:

- (i) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing and gaming commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

- (ii) Any machine, mechanical device, electronic device or other contrivance, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, that is not designed and manufactured primarily for use in connection with gambling, and (i) that when operated does not deliver, as a result of chance, any money, or (ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;
- (iii) Any so-called claw, crane or digger machine and similar devices that are designed and manufactured primarily for use at carnivals or county or state fairs; or
- (iv) Any machine, mechanical device, electronic device or other contrivance used in tribal gaming.

(6) A **gambling place** is any place, room, building, vehicle, tent or location that is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(7) **Tribal gaming** has the meaning provided by K.S.A. 74-9802, and amendments thereto.

(b) **Gambling** is:

- (1) Making a bet; or
- (2) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

(c) Gambling is a Class B violation. (K.S.A. 21-6403; K.S.A. 21-6404)