

# KANSAS RAILROAD STATUTES

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# Kansas Railroad Statutes

- **K.S.A. 8-1544. Obedience of pedestrian to bridge and railroad signals required.** (Pedestrian obedience to other modal operational signals)

(a) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate or barrier after a bridge operation signal indication has been given.

(b) No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

History: L. 1974, ch. 33, § 8-1544; July 1.

- **K.S.A. 8-1551. Obedience to signal indicating approach of train.** (a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad, and shall not proceed until he or she can do so safely. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately one thousand five hundred (1,500) feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. History: L. 1974, ch. 33, § 8-1551; July 1.

- **K.S.A. 8-1552. Designation of dangerous railroad grade crossings; vehicles required to stop, when.** The secretary of transportation and local authorities, with the approval of the secretary, are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall proceed only upon exercising due care. History: L. 1974, ch. 33, § 8-1552; L. 1975, ch. 426, § 44; Aug. 15.

- **K.S.A. 8-1553: Certain vehicles required to stop at railroad grade crossings; exceptions.** (a) Except as provided in subsection (b), the driver of any vehicle described in rules and regulations issued pursuant to subsection (c), before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, and shall not proceed until such driver can do so safely. After stopping as required and upon proceeding when it is safe to do so, the driver of any vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossings and the driver shall not manually shift gears while crossing the track or tracks.

(b) This section shall not apply at:

- (1) Any railroad grade crossing at which traffic is controlled by a police officer or human flagman;
- (2) any railroad grade crossing at which traffic is controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits a vehicle to proceed across the railroad tracks without slowing or stopping;
- (3) any abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned;
- (4) any industrial or spur line railroad grade crossing marked with a sign reading "Exempt." Such exempt signs shall be erected only by or with the consent of the appropriate state or local authority;
- (5) a railroad grade crossing used exclusively for industrial switching purposes, within a business district defined in K.S.A. 8-1407, and amendments thereto.

(c) The secretary of transportation, in conjunction with the state corporation commission, shall adopt such rules and regulations as may be necessary describing the vehicles which must comply with the stopping requirements of this section. Such rules and regulations shall correlate with and so far as possible conform to the federal motor carrier safety regulations of the United States department of transportation. **History:** L. 1974, ch. 33, § 8-1553; L. 1975, ch. 426, § 45; L. 1989, ch. 41, § 1; L. 1993, ch. 36, § 1; July 1.

- **K.S.A. 8-1557. Basic rule governing speed of vehicles.** No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. **History:** L. 1974, ch. 33, § 8-1557; July 1.

- **K.S.A. 8-1571: Stopping, standing or parking prohibited in specified places.** (a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand or park a vehicle:

(i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(ii) On a sidewalk;

(iii) Within an intersection;

(iv) On a crosswalk;

(v) Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(vi) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(vii) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(viii) **On any railroad tracks;**

(ix) On any controlled-access highway;

(x) In the area between roadways of a divided highway, including crossovers; or

(xi) At any place where official signs prohibit stopping.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(i) In front of a public or private driveway;

(ii) Within fifteen (15) feet of a fire hydrant;

(iii) Within twenty (20) feet of a crosswalk at an intersection;

(iv) Within thirty (30) feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway;

(v) Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of said entrance, when properly signposted; or

(vi) At any place where official signs prohibit standing.

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(i) **Within fifty (50) feet of the nearest rail of a railroad crossing;** or

(ii) At any place where official signs prohibit parking.

(b) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as is unlawful. **History:** L. 1974, ch. 33, § 8-1571; July 1.

• **K.S.A. 8-2002. Powers of local authorities.** (a) The provisions of this act shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) Regulating or prohibiting stopping, standing or parking;

(2) regulating traffic by means of police officers or official traffic-control devices;

(3) regulating or prohibiting processions or assemblages on the highways;

(4) designating particular highways or roadways for use by traffic moving in one direction as authorized in K.S.A. 8-1521, and amendments thereto;

- (5) establishing speed limits for vehicles in public parks notwithstanding the provisions of subsection (a)(3) of K.S.A. 8-1560, and amendments thereto;
- (6) designating any highway as a through highway or designating any intersection or junction of roadways as a stop or yield intersection or junction;
- (7) restricting the use of highways as authorized in K.S.A. 8-1912, and amendments thereto;
- (8) regulating the operation of bicycles and requiring the registration and inspection of same, including the requirement of a registration fee;
- (9) regulating or prohibiting the turning of vehicles or specified types of vehicles;
- (10) altering or establishing speed limits as authorized in K.S.A. 8-1560, and amendments thereto;
- (11) establish school zones as provided in subsection (a)(4) of K.S.A. 8-1560, and amendments thereto;
- (12) designating no-passing zones as authorized in K.S.A. 8-1520, and amendments thereto;
- (13) prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic as authorized in K.S.A. 8-1525, and amendments thereto;
- (14) prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- (15) establishing minimum speed limits as authorized in subsection (b) of K.S.A. 8-1561, and amendments thereto;
- (16) designating hazardous railroad grade crossings as authorized in K.S.A. 8-1552, and amendments thereto;
- (17) designating and regulating traffic on play streets;
- (18) prohibiting pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk as authorized in K.S.A. 8-2006, and amendments thereto;
- (19) restricting pedestrian crossings at unmarked crosswalks as authorized in K.S.A. 8-2007, and amendments thereto;
- (20) regulating persons propelling push carts;
- (21) regulating persons upon skates, coasters, sleds and other toy vehicles;
- (22) adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions;
- (23) adopting such other traffic regulations as are specifically authorized by this act.

(b) No local authority shall erect or maintain any official traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the secretary of transportation.

(c) No ordinance, resolution or regulation enacted under paragraph (4), (5), (6), (7), (9), (10), (12), (13), (14), (16), (17) or (19) of subsection (a) of this section shall be effective until official traffic-control devices giving notice of such local traffic regulations are erected upon or at the entrances to the highway or part thereof affected as may be most appropriate.

(d) No ordinance, resolution or regulation enacted under paragraph (5), (10) or (22) shall establish a speed limit in excess of the speed limit established by or pursuant to subsection (a) of K.S.A. 8-1558, and amendments thereto, or paragraph (2) of subsection (a) or subsection (b) of K.S.A. 8-1560, and amendments thereto. **History:** L. 1974, ch. 33, § 8-2002; L. 1975, ch. 39, § 33; L. 1975, ch. 427, § 52; L. 1996, ch. 15, § 8; Mar. 7.

• **[K.S.A. 12-1633](#). Railways and street railways; crossings; construction of viaducts or tunnels; regulation of speed; appraisalment and payment of damages; liens; actions; penalties.** The governing body of cities of the first and second class shall have the power to regulate the crossings of railway and street-railway tracks and provide precautions and adopt ordinances regulating the same; to regulate the running of street railways or cars and to adopt ordinances relating thereto and to govern the speed thereof; to regulate the running of railway engines and cars,

except speed, and to adopt ordinances relating thereto; and to make other and further provisions, rules and regulations to prevent accidents at crossings and on tracks of railways, and to prevent fires from engines, and to require all railway companies to erect viaducts over or tunnels under their tracks at the crossings of streets.

From and after the effective date of this act, that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any force or effect, and that part or parts shall be and are hereby declared null and void.

The governing body shall have power to require any railroad company or companies owning or operating any railroad or street-railway track or tracks upon or across any public street or streets of the city to erect, construct, reconstruct, complete and keep in repair any viaduct or viaducts upon or over or tunnels under such street or streets and over or under any such track or tracks, including the approaches of such viaduct, viaducts or tunnels as may be deemed and declared by the governing body to be necessary for the convenience, safety or protection of the public. Whenever any such viaduct shall be deemed and declared by ordinance to be necessary for the convenience, safety or protection of the public, the governing body shall provide for appraising, assessing and determining the damage, if any, which may be caused to any property by reason of the construction of such viaduct and its approaches. The proceedings for such purpose shall be the same as provided by law for the purpose of ascertaining and determining damages to property owners by reason of the change in grade of any street, except that such damage shall be paid by such railway company or companies. The amount of damage thus ascertained and awarded shall, upon notice by the city, be promptly paid by the railway company or companies interested and if any such company shall fail to pay the same within 10 days from receipt of notice of the amount thereof, then the amount so awarded shall become a lien in the proportion to the amount each railway company shall pay, if more than one company is concerned, upon the right-of-way and all property of such railway company and the collection may be enforced by the city in an action against such railway company or companies failing to pay. The width, height and strength of any such viaduct or tunnel and the approaches thereto, the material to be used, and the manner of construction, shall be as required by the governing body.

When two or more railroad companies own or operate separate lines of track to be crossed by any such viaduct, either upon, above or below the grade, or where any street-railway company intersects and crosses the track or tracks of any railroad company, the proportion thereof and of the approaches thereto to be constructed by each, and the proportion of cost to be borne by each, shall be determined by the governing body. It shall be the duty of any railroad company or companies or street-railway company, upon being required, as herein provided, to erect, construct, reconstruct or repair any viaduct or tunnel, to proceed, within the time and in the manner required by the governing body, to erect, construct, reconstruct or repair the same, and it shall be a nonperson misdemeanor for any railroad company or companies or street-railway company to fail, neglect or refuse to perform such duty, and upon conviction, any such company or companies or the superintendent or other officer having charge of such railway company or street railway in the district or division where such viaduct or tunnel is to be erected or repaired, shall be fined \$100, or imprisoned in the county jail not less than 30 days, and each day such companies or officers shall fail, neglect or refuse to perform such duty shall be deemed and held a separate offense; and in addition to the penalty herein provided any such company or companies shall be compelled by mandamus or other appropriate proceedings to erect, construct, reconstruct, or repair any viaduct or tunnel as may be required by ordinance as herein provided.

The governing body shall also have power, whenever any railroad company or companies or street-railway companies shall fail, neglect or refuse to erect, construct or reconstruct or repair any viaduct, viaducts or tunnel, after having been required so to do as herein provided, to proceed with the erection, construction, reconstruction or repair of the same by contract or in such other manner as may be provided by ordinance and assess the cost thereof against the property of such railroad

company or companies or street-railway company, and such cost shall be a valid and subsisting lien against such property, and also shall be a legal indebtedness of such company or companies in favor of such city, and may be enforced and collected by suit in any court having jurisdiction. **History:** L. 1903, ch. 122, § 59; L. 1911, ch. 89, § 1; L. 1913, ch. 106, § 1; R.S. 1923, § 12-1633; L. 1988, ch. 76, § 1; L. 1998, ch. 164, § 2; July 1.

- **K.S.A. 12-3401 Port authorities; definitions.** As used in K.S.A. 12-3402 to 12-3433, inclusive:

(a) "Port authority" means a port authority or joint port authority created pursuant to K.S.A. 12-3402, and amendments thereto.

(b) "Submerged lands" means the lands presently underlying the navigable streams of the state of Kansas and the lands underlying the waters of lakes, harbors, and navigation channels which have already been or which shall be created by the impoundment of the waters and the creation of commercial navigation facilities in the navigable streams.

(c) "Uplands" means lands contiguous to or fronting upon any submerged lands in this state.

(d) "Publication" means publication once a week on the same day of the week for three consecutive weeks in a newspaper of general circulation in the county or counties wherein such publication is required to be made. Publication shall be complete on the date of the last publication.

(e) "Created," as related to port authorities, means the activation of such authorities by ordinance or resolution as provided herein.

(f) "Port" means water-port facility, airport facility, terminal facility, land transportation facility, railroad facility or industrial-use facility.

(g) "Industrial-use facility" means any agricultural, commercial, industrial or manufacturing facility, including the site therefor, which is a part of or contiguous to another port facility or which a port authority determines will further the purposes of this act and will promote the general welfare and economic development of the area of its jurisdiction.

An agricultural, commercial, industrial or manufacturing facility need not be part of or contiguous to another port facility if the governing body of the city or county creating a port authority also determines that such facility will further the purposes of this act and promote the general welfare and economic development of such city or county. If the port authority was created by two or more cities or counties, such determination also shall be made by the governing body of the city or county in which such facility is located. In determining whether agricultural, commercial, industrial or manufacturing facilities, not part of or adjacent to another port facility, will further the purposes of this act and promote the general welfare and economic development of cities and counties, such port authorities and governing bodies shall consider:

(1) The desirability and economic feasibility of the proposed facility;

(2) the technical and economic capability of the port authority or private interests to operate the proposed facility;

(3) the potential economic impact of the proposed facility on the city or county in which the facility will be located;

(4) the impact such facility will have on the development of interstate and intrastate traffic which will make use of ports within the state;

(5) the impact such facility may have on the growth of new ports within the state; and

(6) the impact such facility may have on any existent comprehensive land-use plan covering the proposed location of the facility. **History:** L. 1969, ch. 89, § 1; L. 1980, ch. 70, § 3; L. 1981, ch. 76, § 1; L. 1987, ch. 75, § 1; July 1.

- **K.S.A. 12-3402. Port authorities; purpose; creation; modification of official plan by certain port authorities; legislative approval; tax levy; election required; dissolution.** (a) It is the purpose of this act to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of intrastate and interstate commerce

within the state; to promote the advancement and retention of ports within the state; to encourage and assist in the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain existing levels of commerce within the state or increase the movement of commodities, goods and products produced, manufactured or grown within or without the state through existing ports within the state or lead to the development of new ports within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by authorizing port authorities to be established in each city and in each county of the state.

A port authority shall be a public body corporate and politic which if established shall be known as the "port authority" of the city or of the county. Joint port authorities may be created under authority of this act by cooperative agreement executed by the governing bodies of any city or county or cities or counties. Such joint authorities formed by such cooperative agreement shall have all the powers and jurisdiction enumerated in this act. Such creation shall be by ordinance or resolution. Except for port authorities created prior to April 1, 1981, no port authority shall be created without approval of the legislature by concurrent resolution. The authority shall not transact any business or exercise powers hereunder until the passage of a concurrent resolution by the legislature as hereinbefore provided.

No port authority located in Cowley county shall modify, amend or extend the port authority's official plan as originally adopted by the port authority to change the purpose for which it was created or alter the character of the work to be undertaken, as provided by K.S.A. 12-3406, and amendments thereto, without approval of the legislature by concurrent resolution. The port authority shall not transact any business or exercise powers hereunder concerning any business or actions related to such modification, amendment or extension of the original plan.

A cooperative agreement creating a joint port authority may be amended by the governing bodies of the cities and counties which comprise such port authority. Any amendment to such a cooperative agreement, including amendments which allow other cities located within counties which are parties to the original agreement to join in such agreement, shall not require approval by the legislature.

No member of the authority shall serve as such who owns land, other than a residence, or represents in a fiduciary capacity or as agent any person who owns land surveyed or examined for port locations, except that this prohibition shall not prevent a user of a port facility from serving as a member of the authority.

A port authority may sue and be sued, plead and be impleaded, subject to the limitations and other provisions of the Kansas tort claims act. The exercise by such port authority of the powers conferred upon it shall be deemed to be essential governmental functions of the creating city or county.

(b) Any city or county creating or participating in the creation of a port authority, before any taxes are levied shall submit the question of whether an annual tax levy may be made on the assessed taxable tangible property of such city, county, or a combination thereof, and the amount thereof to the electors of such city or county comprising such authority. If a majority of those voting on the question vote in favor of such tax levy, the same may be made for such purpose and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, and otherwise such tax levy shall not be made. If such tax levy is approved, the authority may expend funds not otherwise appropriated to defray the expense of surveys and examinations incidental to the purposes of the port authority and may expend funds for any of the purposes as set forth in K.S.A. 12-3406, and amendments thereto.

(c) Subject to making due provisions for payment and performance of its obligations, a port authority may be dissolved by the city or county, or combination thereof, comprising it. If the port authority is dissolved, the properties of the port authority shall be transferred to the subdivision comprising it, or, if comprised by more than one city or county, to the city or county comprising it in such manner as may be agreed upon by them. Obligations of the authority shall not be obligations of

the state of Kansas, nor of any city or county which creates the authority, unless the obligations are specifically approved by a majority vote of the electors of such city or county voting on the issue. Notice of such election shall be published in a newspaper of general circulation in the county or counties once each week for two consecutive weeks. The first publication shall be not less than 21 days prior to such election. Such notice shall set forth the time and place of holding the election and the issue which the vote is to determine. **History:** L. 1969, ch. 89, § 2; L. 1970, ch. 366, § 12; L. 1979, ch. 52, § 56; L. 1980, ch. 70, § 4; L. 1981, ch. 76, § 2; L. 1981, ch. 173, § 32; L. 1987, ch. 75, § 2; L. 1999, ch. 42, § 1; L. 2002, ch. 94, § 1; L. 2004, ch. 110, § 1; Apr. 22

- **K.S.A. 12-3403. Same; board of directors; membership, appointment, removal, terms, officers, quorum, expenses.** (a) A port authority created in accordance with this act shall be governed by a board of directors. Members of a board of directors of a port authority created by the exclusive action of a city shall consist of the number of members, not less than five, it deems necessary and be appointed by the governing body. Members of a board of directors of a port authority created by the exclusive action of a county shall consist of such members as it deems necessary and be appointed by the county commissioners of such county. Members of a board of directors of a port authority created by a combination of cities and counties shall be divided among such political subdivisions in such proportions as such political subdivisions may agree and appointed in the same manner as this section provides for their appointment when such political subdivision creates its own port authority. When a port authority is created by a combination of political subdivisions, the number of directors composing the board shall be determined by agreement between such political subdivisions. The appointing body may at any time remove a director appointed by it for misfeasance, nonfeasance, or malfeasance in office.

(b) The directors of any port authority first appointed shall serve staggered terms. Thereafter each successor shall serve for a term of four years, except that any person appointed to fill a vacancy shall be appointed to only the unexpired term and any director shall be eligible for reappointment, and no director shall be removed except for cause, and if removed shall have the right of appeal to the district court of the county from which the director was appointed.

(c) The directors shall elect one of their membership as chairperson and another as vice-chairperson, and shall designate their terms of office, and shall create and appoint such other positions and officers as the directors deem appropriate and provided for in their rules and regulations. A majority of the board of directors shall constitute a quorum, the affirmative vote of which shall be necessary for any action taken by the port authority.

(d) Each member of the board of directors of a port authority shall be entitled to receive from the port authority reimbursement for necessary and actual expenses incurred in the performance of such director's duties. **History:** L. 1969, ch. 89, § 3; L. 1987, ch. 75, § 3; July 1.

- **K.S.A. 12-3404. Same; employees; advisory board; professional help.** A port authority created in accordance with K.S.A. 12-3402 shall employ and fix the qualifications, duties, and compensation of such employees and professional help as it may require to conduct the business of the port and may appoint an advisory board which shall serve without compensation. Any employee may be suspended or dismissed, and the services of professional help may be terminated at any time by the port authority. **History:** L. 1969, ch. 89, § 4; July 1

- **K.S.A. 12-3405. Same; area of jurisdiction.** The area of jurisdiction of a port authority created in accordance with K.S.A. 12-3402, and amendments thereto, shall include all of the territory of the city or county, or combination thereof, comprising it, together with any other property outside thereof conveyed to it, or over which it exercises control pursuant to subsection (a) of K.S.A. 12-3406, and amendments thereto, or pursuant to the right of eminent domain set forth in subsection (g) of K.S.A. 12-3406, and amendments thereto, except that in no case shall the same area be included in more

than one port authority, but the jurisdiction of the port authority first attaching shall be exclusive unless the first attaching shall cede or convey to another. **History:** L. 1969, ch. 89, § 5; L. 1981, ch. 76, § 3; L. 1987, ch. 75, § 4; July 1

- **K.S.A. 12-3406. Same; statement of purpose and character of work to be undertaken; general powers and authority; limitations.** A port authority established by K.S.A. 12-3402, and amendments thereto, shall clearly state the purpose for which it is to be created and the character of the work to be undertaken as a part of its official plan; and shall have full power and authority to:
  - (a) Purchase, acquire, construct, reconstruct, improve, equip, furnish, maintain, repair, enlarge, remodel, own, sell, lease, and operate docks, wharves, warehouses, piers, and other water-port facilities, airport facilities, terminal facilities, land transportation facilities, railroad facilities or industrial-use facilities within the area of its jurisdiction, as defined by K.S.A. 12-3405, and amendments thereto, consistent with the purpose of the port authority, which purpose is hereby declared to be for a public purpose;
  - (b) (1) borrow money from private financial institutions, any agency of the state of Kansas or of the United States of America or a private person or entity approved by the port authority, and to issue therefor such notes or other evidence of indebtedness as may be required and to mortgage, pledge, or otherwise encumber the assets of the authority as security therefor, or (2) issue bonds as provided in K.S.A. 12-3415, and amendments thereto;
  - (c) apply for, receive, and participate in any grants from the state of Kansas or from the United States of America;
  - (d) construct, straighten, deepen, and improve any canal, channel, river, stream, or other watercourse or way which may be necessary or proper in the development of the facilities of such port;
  - (e) purchase, acquire, own, maintain, furnish, improve, repair, enlarge, remodel, construct, reconstruct, equip, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority, which exercise of such authority is hereby declared to be for a public purpose;
  - (f) apply to the proper authorities of the United States government for a grant within the limits of the port authority either individually or in conjunction with a corporate instrumentality of this state and one or more states, or a bi-state compact or a not-for-profit corporation authorized to do business in this state and to establish, operate and maintain foreign trade zones pursuant to the foreign trade-zone act, 19 U.S.C.A. 81a to 81u, inclusive, as amended;
  - (g) exercise the right of eminent domain, if approved by a 2/3 vote of the governing body of the port authority, to appropriate any land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for the construction or the efficient operation of any facility of the port authority and included in an official plan, pursuant to the procedure provided by law, if funds equal to the appraised value of the property to be acquired as the result of such proceedings shall be on hand and available for such purposes. The port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city or county which created such port authority. If the port authority was created by two or more cities or counties, the port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city or county in which such property is located. If such property is located outside the boundaries of the port authority, such port authority shall not exercise the right of eminent domain without first having received approval, by resolution, of the governing body of the city if such property is located within the corporate limits of a city or from the board of county commissioners if such property is located within the unincorporated area of a county. A port authority shall not have the right of eminent domain to acquire a site for an industrial-use facility. A port authority shall not have the right of eminent domain to acquire any land or site in Cowley county for which at least one of the purposes is a recreational-use purpose. If a port authority exercises the right of eminent domain to acquire any land or site in Cowley county, such land or site shall be used

only for the public purpose stated in the port authority's original official plan and there shall be no private development on any such land or site for a period of 30 years after the acquisition of any such land or site. A port authority shall not exercise the right of eminent domain to acquire any land or site prior to a showing that all required state and federal permits to use or develop any such land or site in the manner specified in the port authority's official plan have been obtained.

Nothing contained in K.S.A. 12-3401 to 12-3433, inclusive, and amendments thereto, shall authorize a port authority to take or disturb property or facilities belonging to any public corporation, public utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, public utility, or common carrier for the payment of compensation, if any, at the sole cost of the port authority.

If any restoration or duplication proposed to be made hereunder shall involve a relocation of such property or facilities, the new facilities and location shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

If any restoration or duplication made hereunder shall involve a relocation of such property or facilities, the port authority shall acquire no interest or right in or to the appropriated property or facilities, except as provided in subsection (c) of K.S.A. 12-3406, and amendments thereto, until the relocated property or facilities are available for use and until marketable title thereto has been transferred to the public utility or common carrier.

Provisions for restoration, relocation, or duplication shall be described in detail in the plan specified in K.S.A. 12-3407, and amendments thereto;

(h) maintain such funds as it deems necessary;

(i) direct its agents or employees, when properly identified in writing, and after at least five days' written notice, to enter upon lands within the confines of its jurisdiction in order to make surveys and examinations preliminary to location and construction of works for the purposes of the port authority, without liability of the port authority or its agents or employees except for actual damage done;

(j) sell, lease or convey real and personal property not needed for the operation of the port authority and grant easements of rights-of-way over property of the port authority; and

(k) promote, advertise, and publicize the port and its facilities; provide traffic information and rate information to shippers and shipping interests. **History:** L. 1969, ch. 89, § 6; L. 1973, ch. 60, § 2; L. 1980, ch. 70, § 5; L. 1981, ch. 76, § 4; L. 1987, ch. 75, § 5; L. 2003, ch. 28, § 1; L. 2004, ch. 110, § 2; Apr. 22

• **K.S.A. 12-3407. Same; plans for development, notice and hearing; filing of objections to plan; revised plan, when.** The board of directors of a port authority shall prepare or cause to be prepared plans for the future development, construction, improvement and utilization of ports within its area of jurisdiction and its facilities, including such maps, profiles, and other data and descriptions as may be necessary to set forth the location and character of the work to be undertaken by the port authority. Upon the completion of any such plan the board of directors shall cause notice by publication as provided in K.S.A. 12-3401, and amendments thereto, to be given in each county in which there is a political subdivision participating in the port authority and in which any proposed facility is to be located, and shall likewise cause notice to be served upon the owners of the uplands contiguous to any submerged lands affected by any such plan in the manner provided by law for service of notice in the levy of special assessments by cities or counties, and shall permit the inspection thereof at their office by all persons interested. The notice shall fix the time and place for the hearing of all objections to the plan, which shall be not less than 30 nor more than 60 days after the last publication of such notice and after service of notice upon the owners of such uplands. Any interested person may file written objections to such plan, provided such objections are filed with the

secretary of the board of directors at the office of the secretary not less than five days prior to the date fixed for the hearing. Objections to the plan by 20% or more of the persons owning real property contiguous to the real property contained in the proposed plan shall require the affirmative vote of at least 3/4 of all of the members of the board of directors for the adoption of the plan with any modifications or amendments thereto as an official plan of the port authority. **History:** L. 1969, ch. 89, § 7; L. 1981, ch. 76, § 5; L. 1987, ch. 75, § 6; July 1.

- **K.S.A. 12-3408.** **Same; modification, amendment or extension of plan; notice and hearing; limitations on modification or amendment of plan by certain port authorities.** (a) Except as provided by subsection (b), the board of directors shall, from time to time after the adoption of an official plan, have the power to modify, amend or extend the same, provided that upon the making of any such modification, amendment or extension thereof, the board of directors shall cause notice to be given and shall conduct a hearing, all as provided in K.S.A. 12-3407, and amendments thereto.

(b) The board of directors of a port authority located in Cowley county shall not have the power to modify, amend or extend the same to change or alter the character of the work to be undertaken by the port authority which would allow the use of any land or site acquired through the exercise of eminent domain to be used for a recreational-use purpose, nor to allow private development upon such acquired land or site for a period of 30 years from the date of acquisition of such land or site. The board shall not adopt any modification, amendment, or extension until the notice has been given and the hearing held as therein provided. **History:** L. 1969, ch. 89, § 8; L. 1981, ch. 76, § 6; L. 2004, ch. 110, § 3; Apr. 22.

- **K.S.A. 13-1334.** **Streets through parks; railroads; transmission lines.** No roads nor streets shall be laid out or constructed through any park except said board of park commissioners shall lay out and construct or permit the laying out and construction of the same; and any road, highway, street or alley (excepting railroads), or part thereof, which may pass through or into or divide or separate any lands now used or condemned, or that may hereafter be acquired or condemned, for parks, shall upon condemnation [recommendation] of said board of park commissioners, with the consent of the city council of such city be by said city council vacated and closed up and made a part of such park. And no railway shall be built into, through or over any park, parkway or boulevards without the consent of said board of park commissioners; nor shall any street railway, telegraph, telephone or electric-light wires, or posts or supports thereof, be erected or placed in, upon, through, over or adjoining any park without the consent of said board of park commissioners; and said board shall have power and authority to designate the place or places for and manner of erecting, placing and maintaining the same in or upon any park or boulevard, and may cause the place and manner of maintaining the same, whether heretofore or hereafter erected or placed, to be altered at such time and in such manner as it shall deem best for the interest of the city, and may require telegraph, telephone and electric-light wires in any park, parkway or boulevard to be laid underground. **History:** L. 1907, ch. 115, § 35; March 4; R.S. 1923, § 13-1334.

- **K.S.A. 14-434.** **Levees; depot grounds; railway crossings; running of trains; regulation of speed.** The council shall have power to regulate levees, depots, depot grounds, and places of storing freight and goods, and to provide for the passage of railways through the streets and public grounds of the city; also to regulate the crossings of railway tracks and to provide precautions and adopt ordinances regulating the same; to regulate the running of railway engines and cars, except speed, and to adopt ordinances relating thereto; and to make any other and further provisions, rules and restrictions to prevent accidents at crossings, and on the tracks of railways, and to prevent fires from engines.

On and after the effective date of this act, that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any

force or effect, and that part or parts shall be null and void. **History:** L. 1872, ch. 100, § 64; R.S. 1923, § 14-434; L. 1988, ch. 76, § 3; L. 1998, ch. 164, § 4; July 1.

• **K.S.A. 15-438**. **Depots; levees; railway crossings; trains; regulation of speed.** The council shall have power to regulate levees, depots, depot grounds and places for storing freight and goods, and to provide for the passage of railways through the streets and public grounds of the city; also to regulate the crossings of railway tracks, and to provide precautions and adopt ordinances regulating the same; to regulate the running of railway engines and cars, except speed, and to adopt ordinances relating thereto; and to make any other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines.

On and after the effective date of this act, that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any force or effect, and that part or parts shall be null and void. **History:** L. 1871, ch. 60, § 64; R.S. 1923, § 15-438; L. 1988, ch. 76, § 4; L. 1998, ch. 164, § 5; July 1.

• **K.S.A. 21-3742**: **Throwing or otherwise casting rocks or other objects onto street, highway or railroad right-of-way or railroad property.** (a) Any person who intentionally throws, pushes, pitches or otherwise casts any rock, stone or other object, matter or thing onto a street, road, highway, railroad right-of-way, or upon any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock thereon, is guilty of a class B nonperson misdemeanor.

(b) Any person violating subsection (a) who damages any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object is guilty of a class A nonperson misdemeanor.

(c) Any person violating subsection (a) who injures another person on the street, road, highway or railroad right-of-way is guilty of a severity level 7, person felony.

(d) In any case where a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock is damaged by a person violating subsection (a) and a person is injured either as a result of the cast or thrown object or from injuries incurred as a result of damage to the vehicle in which a person was a passenger when struck by such object, the person throwing or casting the rock, stone or other object causing the damage and injury is guilty of a severity level 6, person felony. **History:** L. 1971, ch. 110, § 1; L. 1982, ch. 132, § 3; L. 1992, ch. 239, § 134; L. 1993, ch. 291, § 88; L. 1996, ch. 30, § 3; July 1.

• **K.S.A. 21-3761**: **Trespassing on railroad property; causing derailment of railroad equipment.** (a) It shall be unlawful for any person to:

(1) Without consent of the owner or the owner's agent, enter or remain on railroad property, knowing that it is railroad property; or

(2) maliciously or wantonly cause in any manner the derailment of a train, railroad car or rail-mounted work equipment.

Violation of this subsection is a class A nonperson misdemeanor.

(b) Any person violating subsection (a) which results in a demonstrable monetary loss, damage or destruction of railroad property when such loss is valued at more than \$1,500 upon conviction shall be guilty of a severity level 8, nonperson felony.

(c) Subsection (a) shall not be construed to interfere with the lawful use of a public or private crossing.

(d) Nothing in this section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the railway labor act (45 U.S.C. 151, et seq.) and other federal labor laws.

(e) As used in this section "railroad property" includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad company. **History:** L. 1996, ch. 30, § 1; July 1.

- **K.S.A. 2011 Supp. 21-5809. Trespassing on railroad property; causing derailment of railroad equipment.**

(a) Trespassing on railroad property is:

(1) Entering or remaining on railroad property, without consent of the owner or the owner's agent, knowing that it is railroad property; or

(2) recklessly causing in any manner the derailment of a train, railroad car or rail-mounted work equipment.

(b) Trespassing on railroad property is a:

(1) Class A nonperson misdemeanor, except as provided in subsection (b)(2);

(2) severity level 8, nonperson felony if such trespassing results in a demonstrable monetary loss, damage or destruction of railroad property valued at more than \$1,500.

(c) Subsection (a) shall not be construed to interfere with the lawful use of a public or private crossing.

(d) Nothing in this section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the railway labor act (45 U.S.C. 151, et seq.) and other federal labor laws.

(e) As used in this section "railroad property" includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad company. **History:** L. 1996, ch. 30, § 1; L. 2010, ch. 136, § 95; July 1, 2011.

- **K.S.A. 2011 Supp. 21-5819. Throwing or otherwise casting objects onto street, highway or railroad right-of-way or railroad property.** (a) It is unlawful for any person to:

(1) Recklessly throw, push, pitch or otherwise cast any rock, stone or other object, matter or thing onto a street, road, highway, railroad right-of-way, or upon any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock thereon;

(2) violate subsection (a) and damage any vehicle, engine or car or any train, locomotive, railroad

car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object;

(3) violate subsection (a) and injure another person on the street, road, highway or railroad right-of-way; or

(4) violate subsection (a), damage a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock and a person is injured as a result of the cast or thrown object or from injuries incurred as a result of damage to the vehicle in which a person was a passenger when struck by such object.

(b) (1) Violation of subsection (a)(1) is a class B nonperson misdemeanor.

(2) Violation of subsection (a)(2) is a class A nonperson misdemeanor.

(3) Violation of subsection (a)(3) is a severity level 7, person felony.

(4) Violation of subsection (a)(4) is a severity level 6, person felony.

(c) In any case where a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock is damaged as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in article 58 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto. An accused may be convicted for a violation of any other offense in article 58 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or this section, but not under both.

(d) In any case where a person dies or sustains bodily injury as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in article 54 of chapter 21 of the Kansas Statutes Annotated and K.S.A. 2011 Supp. 21-6418, and amendments thereto. An accused may be convicted for a violation of any other offense in article 54 of chapter 21 of the Kansas Statutes Annotated and K.S.A. 2011 Supp. 21-6418, and amendments thereto, or this section, but not under both. **History:** L. 2010, ch. 136, § 105; L. 2011, ch. 30, § 38; July 1.

• **K.S.A. 58-3211. Land and Water Recreational Areas Definitions.** As used in this act:

(a) "Adjacent property owner" means a person or entity, other than a responsible party, who owns property or facilities on or adjacent to a recreational trail.

(b) "Recreational trail" means a trail created pursuant to subsection (d) of 16 U.S.C. 1247 (1983).

(c) "Responsible party" means any person, for-profit entity, not-for-profit entity or governmental entity that is responsible for developing, operating or maintaining a recreational trail. **History:** L. 1996, ch. 223, § 1; July 1.

• **K.S.A. 58-3212. Duties of responsible party.** (a) The responsible party, at all times after transfer of the deed to the responsible party, shall:

(1) Perform the duties imposed by K.S.A. 2-1314 and amendments thereto along the recreational trail;

(2) provide for the safety, use and accessibility of existing easements, utility facilities and access licenses along the recreational trail;

(3) provide for trail-user education and signs regarding trespassing laws and safety along the recreational trail;

(4) provide for litter control and the enforcement of laws prohibiting littering along the recreational trail, including but not limited to trail-user education and signs about laws prohibiting littering and the provision of trash receptacles and the cleanup of trash and litter;

(5) develop and maintain the recreational trail in a condition that does not create a fire hazard;

(6) designate the recreational trail for nonmotorized vehicle use with exceptions only for motorized wheelchairs and maintenance, law enforcement and emergency vehicles;

(7) prohibit hunting or trapping on or from the recreational trail;

(8) provide for law enforcement along the recreational trail;

(9) grant easements to adjacent property owners to permit such owners to cross the recreational trail in a reasonable manner consistent with the use of the adjacent property and with K.S.A. 66-301 through 66-303, and amendments thereto;

(10) (A) maintain any existing fencing between the trail and adjacent property; (B) maintain any future fencing installed between the trail and adjacent property; (C) install between the trail and adjacent property fencing corresponding in class to that maintained on the remaining sides of such adjacent property; and (D) on request of an adjacent property owner, pay one-half the cost of installing fencing between the trail and such property owner's adjacent property with a fence of the class requested by such property owner, if not all remaining sides of such property are fenced; and

(11) (A) maintain the trail; (B) maintain all bridges, culverts, roadway intersections and crossings on the trail, essential to the reasonable and prudent operation of the trail or needed for drainage, flood control or the use of easements for crossing the trail between adjacent properties, or cause maintenance thereof by other parties that have assumed contractual responsibility therefor; and (C) install and maintain any warranted traffic signs on the trail.

(b) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located a bond or proof of an escrow account in a Kansas financial institution, as defined by K.S.A. 16-117 and amendments thereto, payable to the county. The bond or proof of an escrow account shall be filed at the time of transfer of the deed to the responsible party and annually thereafter. The bond or escrow account shall be conditioned on the responsible party's performance, and shall be in an amount agreed upon between the responsible party and the county commission as sufficient to fully cover the annual costs, of:

(1) Weed control along the trail, as required by subsection (a)(1);

(2) litter control along the trail, as required by subsection (a)(4);

(3) maintenance of the trail in a condition that does not create a fire hazard, as required by subsection (a)(5);

(4) installation and maintenance of fencing between the trail and adjacent property within the county, as required by subsection (a)(10); and

(5) installation and maintenance of signs along the trail, as required by subsections (a)(3), (a)(4) and (a)(11)(C).

If separate bonds are submitted to or escrow accounts established for the various counties through which the trail transverses, the annual costs listed above shall be only for that portion of the trail located within the particular county that is the holder of the bond or beneficiary of the escrow. A responsible party may submit a single bond or escrow account with multiple counties respectively as coobligees or cobeneficiaries, but in that event the annual costs used in computation of the bond amount shall be for the entire trail length.

(c) If the responsible party is not a governmental entity, the responsible party shall file with the county clerk of each county where a portion of the recreational trail is or will be located, proof of liability insurance in an amount agreed upon between the responsible party and the county

commission as sufficient. Such proof shall be filed at the time of transfer of the deed to the responsible party and annually thereafter.

(d) The provisions of this section shall apply to all recreational trails, regardless of when approval to enter into negotiations for interim trail use is or was received from the appropriate federal agency.

(e) The provisions of this section may be modified or supplemented by any city governing body for recreational trails within the corporate limits of such city in the manner provided by K.S.A. 12-137 *et seq.* and amendments thereto. If a city governing body adopts requirements in addition to those provided by this section, the city shall pay all costs of compliance with such additional requirements.

**History:** L. 1996, ch. 223, § 2; July 1.

- [K.S.A. 58-3213](#). **Procedures for development.** (a) Upon receipt of permission from the appropriate federal agency to enter into negotiations for interim trail use, the responsible party shall give written notice to each adjacent property owner that the responsible party intends to build a recreational trail adjacent to the property owner's property. The responsible party may utilize the addresses to which real estate tax statements are sent, as maintained by county officials, for such notices. Such notice shall be given by first-class mail unless the notice is returned undelivered, in which case a further notice shall be given by certified mail. Further notice shall be published once each week for three consecutive weeks in the official newspaper of the county in which such trail is proposed to be located.

(b) Before commencing development or operation of a recreational trail, the responsible party shall:

(1) Prepare a project plan that includes: (A) The name and address of the responsible party, (B) an itemized estimate of the costs of the project and sources of funding for the project, and (C) maps of the recreational trail;

(2) submit by certified mail, not later than 180 days after receiving approval of interim trail use from the appropriate federal agency, the initial project plan to the county commission of each county where a portion of the trail is to be located outside of city limits and to the governing body of each city where a portion of the trail is to be located inside the city limits;

(3) submit the final project plan to the county commission of each county where a portion of the trail is to be located outside of city limits and make subsequent reports to such county commission as to the status of trail development or operation, or both, at intervals determined by the commission and consider all recommendations the commission has regarding the trail; and

(4) submit the final project plan to the governing body of each city where a portion of the trail is to be located inside the city limits and make subsequent reports to such city governing body as to the status of trail development or operation, or both, at intervals determined by the governing body and consider all recommendations the governing body has regarding the trail.

(c) The responsible party shall complete development of a recreational trail within a period of time equal to two years times the number of counties in which the recreational trail is located. Such period of time shall begin only when the appeal period pursuant to subsection (d) of 16 U.S.C. 1247 (1983) has expired. Any time during which there is pending any court action challenging the development or use of the trail shall not be computed as part of the time limitation imposed by this subsection.

(d) The provisions of this section shall apply to only recreational trails for which approval to enter into negotiations for interim trail use is received from the appropriate federal agency on or after the effective date of this act. **History:** L. 1996, ch. 223, § 3; L. 1996, ch. 252, § 1; July 1.

- [K.S.A. 58-3214](#). **Adjacent property owners; duty of care.** An adjacent property owner has no duty of care to: (a) Any person using a recreational trail, except that this subsection shall not relieve an adjacent property owner from liability for injury to another that is a direct result of such property owner's gross negligence or willful or wanton misconduct; or (b) any person entering such adjacent

property owner's land by way of the recreational trail without implied or expressed permission or consent of the adjacent property owner, except that this subsection shall not relieve an adjacent property owner from liability for injury to another that is a direct result of an intentional or unlawful act of the adjacent property owner. **History:** L. 1996, ch. 223, § 4; L. 2006, ch. 178, § 1; May 25.

- **K.S.A. 66-152. Free transportation and reduced rates in certain cases.** Nothing in the law relating to transportation shall be construed to prevent the carriage, storage or handling of freight free, or at reduced rates, for the state, or for any city, county or town government, or for charitable purposes, or to and from fairs and expositions for exhibition thereof, or the transportation of officers, members and equipment of the Kansas national guard, or the free carriage of destitute and indigent persons, or for the issuance of mileage on excursion passenger tickets at reduced rates, open to the public generally, or to ministers of the gospel and those giving their entire time to religious, benevolent and charitable work, or to the inmates of soldiers' homes, state or national, including those about to enter or those returning home after their discharge, inmates of hospitals, eleemosynary or charitable institutions and members in good standing in the grand army of the republic, or to any railroad officers, agents, employees, attorneys or witnesses, attending court or before the commission, on behalf of such railroad company. **History:** R.S. 1923, 66-152; Dec. 27.
- **K.S.A. 66-154. Rebates, drawbacks and special privileges or discriminations unlawful.** It shall be unlawful for any common carrier to grant, or for any consignee or consignor to receive, any rebate or drawback, or enter into any arrangement whereby such consignee or consignor shall directly or indirectly receive a lower rate for transporting freight than the rate fixed by the orders of this commission or the published schedules. It shall be unlawful for any common carrier, or any agent or employee thereof, or for any person, firm or corporation to enter into any secret agreement with any firm, person or corporation for the purpose of giving any firm, person or corporation any special privileges, favors or discriminations in favor of such firm, person, or corporation. **History:** L. 1905, ch. 340, § 16; R.S. 1923, 66-154; L. 2005, ch. 21, § 4; July 1.
- **K.S.A. 66-154a. Unreasonable or discriminatory rates or charges; complaint; investigation by commission.** No common carrier shall charge, demand or receive from any person, company or corporation an unreasonable, unfair, unjust or unjustly discriminatory or unduly preferential rate or charge for the transportation of property, or for hauling or storing of freight, or for use of its cars, or for any service afforded by it in the transaction of its business as a common carrier; and upon complaint in writing made to the corporation commission that an unfair, unjust, unreasonable or unjustly discriminatory or unduly preferential rate or charge has been exacted, such commission shall investigate such complaint, and if sustained, shall make a certificate under its seal setting forth what is, and what would have been, a reasonable and just rate or charge for the service rendered, which shall be prima facie evidence of the matter therein stated. **History:** L. 1929, ch. 223, § 1; L. 2005, ch. 21, § 5; July 1.
- **K.S.A. 66-154b. Same; refund.** It shall be lawful for any common carrier to refund to any person, company or corporation any unreasonable, unfair, unjust or unjustly discriminatory or unduly preferential rate or charge which it has exacted, received or collected from any shipper, in accordance with the certificate referred to in K.S.A. 66-154a, and amendments thereto. **History:** L. 1929, ch. 223, § 2; L. 2005, ch. 21, § 6; July 1.
- **K.S.A. 66-227: Crossings.** It is hereby made the duty of every person or corporation owning or operating any railroad crossed by a public highway, county highway or township road to make, and keep in good repair, good and sufficient crossings for such highway, road or street over their tracks, including all the grading, bridges, ditches and culverts within their right-of-way that may be necessary

**to make a safe crossing.** The vertical profile or alignment of the centerline of the highway, road or street through the crossing shall comply with the American association of state highway and transportation officials (AASHTO) design manual titled, "a policy on geometric design of highways and streets" as published and in effect on January 1, 2001.

When the highway crossing the track is improved by the construction of a hard-surfaced road, the railroad company shall pave the space between the rails and for a distance of two feet on each side thereof with a pavement of the same or a better type for the full width of the pavement on the highway. On other crossings where the highway has not been improved, the planking or other material used between and for a distance of one foot outside of the rails shall be of a length to equal the roadway width measured perpendicular to the axis of the highway. Nothing in this act shall be construed to repeal any provision of law relating to railroad crossings on streets in cities of the first and second class. **History:** L. 1915, ch. 280, § 1; L. 1919, ch. 242, § 1; R.S. 1923, 66-227. L. 2001, ch. 15, § 1; July 1.

- **K.S.A. 66-228: Same; penalty; time within which to restore crossing.** Every person or corporation failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and shall be fined not less than five dollars, nor more than fifty dollars, for each and every violation hereof and each day same shall be allowed to remain out of repair shall be a separate offense: *Provided, however,* When any such crossings have been properly constructed as provided in this act, and shall become defective because of accident or unusual severe or stormy weather, the person or corporation whose duty it is to maintain the same, shall have ten days in which to restore said crossing to its proper condition before the penalty herein provided for shall attach. **History:** L. 1915, ch. 280, § 2; Dec. 1; R.S. 1923, 66-228.
- **K.S.A. 66-229: Same; duty of officers.** Upon complaint, it is hereby made the duty of every county engineer and road supervisor in this state to see that this act is complied with in such person's jurisdiction and to report to the county attorney of such person's county every failure on the part of any person or corporation to comply with this act. It is hereby made the duty of the county attorney of each county in the state to enforce this act. **History:** L. 1915, ch. 280, § 3; L. 1919, ch. 242, § 2; R.S. 1923, 66-229. L. 2001, ch. 15, § 2; July 1.
- **K.S.A. 66-230: Cattle guards at crossings; duties as to gates.** When any railroad runs through any improved and fenced farm lands and between an occupied dwelling and other main farm buildings; or wherever at the time of the passage of this act, any railroad right of way lies alongside of and contiguous to a public highway through any improved and fenced farm land upon which is a dwelling actually occupied as a farm residence, and it is necessary for the occupants of such dwelling to pass across the right of way of the railroad in order to reach the main public highway or get to their farm lands to cross the railroad, then and in either case the railroad company shall, at the request in writing of the owner of such farm, make and maintain proper cattle guards on such railroad on both sides of the crossing so used for farm purposes. It shall not be necessary for the occupants of such land to keep the gates in the fences at such farm crossings closed where such cattle guards are installed except that the railroad company shall not be responsible for damage done to stock at such crossing described under this act when the gates at such crossing are open. **History:** L. 1919, ch. 243, § 1; R.S. 1923, 66-230; L. 2005, ch. 21, § 8; July 1.
- **K.S.A. 66-231: Same; civil liability.** Any railroad company neglecting or refusing to comply with the provisions of K.S.A. 66-230 shall be liable for all damages sustained by anyone by reason of such

neglect and refusal; and in order for the injured party to recover all damages he has sustained it will only be necessary for him to prove such neglect or refusal. **History:** L. 1919, ch. 243, § 2; June 17; R.S. 1923, 66-231.

- **K.S.A. 66-232: Action for damages by fire.** In all actions against any railway company organized or doing business in this state, for damages by fire caused by the operating of said railroad, it shall be only necessary for the plaintiff in said action to establish the fact that said fire complained of was caused by the operating of said railroad, and the amount of his damages (which proof shall be prima facie evidence of negligence on the part of said railroad): *Provided*, That in estimating the damages under this act, the contributory negligence of the plaintiff shall be taken into consideration. **History:** L. 1885, ch. 155, § 1; May 1; R.S. 1923, 66-232.
- **K.S.A. 66-233: Action for damages by fire; attorney fee.** In all actions commenced under K.S.A. 66-232 and 66-233 and amendments thereto in which judgment is rendered against any railroad company for damages by fire caused by the operating of such railroad, if it appears from the evidence that such company has refused without just cause or excuse to pay the full amount of such damages, the court in rendering such judgment shall allow the plaintiff a reasonable sum as an attorney fee for services in such action, including proceeding upon appeal, to be recovered and collected as a part of the costs. When a tender is made by such railroad company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed. **History:** L. 1885, ch. 155, § 2; R.S. 1923, 66-233; L. 1994, ch. 136, § 1; July 1.
- **K.S.A. 66-234: Liability for negligence.** Railroads in this state shall be liable for all damages done to person or property, when done in consequence of any neglect on the part of the railroad companies. **History:** L. 1870, ch. 93, § 1; March 24; R.S. 1923, 66-234.
- **K.S.A. 66-273: Permitting trains, engines or cars to stand on public highway.** Each and every railroad company or any corporation leasing or otherwise operating a railroad in Kansas is hereby prohibited from allowing its trains, engines or cars to stand upon any public road within one half mile of any incorporated or unincorporated city or town, station or flag station, or upon any crossing or street, to exceed ten minutes at any one time without leaving an opening in the traveled portion of the public road, street or crossing of at least thirty feet in width. **History:** L. 1897, ch. 169, § 1; L. 1903, ch. 394, § 1; June 1; R.S. 1923, 66-273.
- **K.S.A. 66-274: Same; penalty; exemption of railroad employees from certain penalties.** Any railroad company or corporation operating a line of railroad in Kansas failing or neglecting to comply with K.S.A. 66-273, and amendments thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine as follows: One hundred dollars if the blocking is for more than 10 minutes but less than 20 minutes; \$300 if the blocking is for more than 20 minutes but less than 30 minutes; \$600 if the blocking is for 30 minutes and \$600 for each additional 30 minutes if the blocking is for more than 30 minutes. No member of a railroad train, yard, or engine crew shall be held personally responsible or found guilty of violating any state laws or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road or highway crossing-at-grade by trains or passenger or freight cars upon reasonable proof that such person's action was necessary due to circumstances beyond such person's control, or to comply with the order or instructions, either written or verbal, of the person's employer or officers or supervisory officials. Nothing in this section shall relieve the employer or railroad from any responsibility placed upon such employer or railroad by any such state law or any municipal ordinance. **History:** L. 1897, ch. 169, § 2; L. 1903, ch. 394, § 2; R.S. 1923, 66-274; L. 1973, ch. 262, § 1; L. 1992, ch. 34, § 1; L. 2004, ch. 103, § 3; July 1.

- **K.S.A. 66-295: Liability regardless of negligence.** Every railway company or corporation in this state, and every assignee or lessee of such company or corporation, shall be liable to pay the owner the full value of each and every animal killed, and all damages to each and every animal wounded by the engine or cars on such railway, or in any other manner whatever in operating such railway, irrespective of the fact as to whether such killing or wounding was caused by the negligence of such railway company or corporation, or the assignee or lessee thereof, or not. **History:** L. 1874, ch. 94, § 1; March 4; R.S. 1923, 66-295.
- **K.S.A. 66-296: Recovery upon failure to pay full value of animal upon demand.** In case such railway company or corporation, or the assignee or lessee thereof, shall fail for thirty days after demand made therefor by the owner of such animal, or his agent or attorney, to pay such owner or his agent or attorney the full value of such animal if killed, or damages thereto if wounded, such owner may sue and recover from such railway company or corporation, or the assignee or lessee thereof, the full value of such animal or damages thereto, together with a reasonable attorney's fee for the prosecution of the suit, and all costs in any court of competent jurisdiction in the county in which such animal was killed or wounded. **History:** L. 1874, ch. 94, § 2; March 4; R.S. 1923, 66-296.
- **K.S.A. 66-297: Persons upon whom demand may be made.** The demand mentioned in K.S.A. 66-296 may be made of any ticket agent or station agent of such railway company or corporation, or the assignee or lessee thereof. **History:** L. 1874, ch. 94, § 3; March 4; R.S. 1923, 66-297.
- **K.S.A. 66-298: Attorney's fee.** In all actions prosecuted under this act it shall be the duty of the court if tried by the court, or jury if tried by a jury, if the judgment or verdict be for the plaintiff, to find in addition to their general findings for plaintiff the amount, if anything, allowed for an attorney's fee in the case. **History:** L. 1874, ch. 94, § 4; March 4; R.S. 1923, 66-298.
- **K.S.A. 66-299: Railroad enclosed with fence.** This act shall not apply to any railway company or corporation, or the assignee or lessee thereof, whose road is enclosed with a good and lawful fence to prevent such animal from being on such road. **History:** L. 1874, ch. 94, § 5; March 4; R.S. 1923, 66-299.
- **K.S.A. 66-301: Construction of farm crossings.** Whenever any railroad, either steam or electric, shall run through any farm so as to divide it, such railroad at the request of the owner of such farm, shall construct, keep and maintain, a crossing either on, over or under such railroad track, at some convenient place, which crossing shall be so constructed as to permit ready and free crossing thereon, by animals, farm implements and vehicles. **History:** L. 1911, ch. 244, § 1; May 22; R.S. 1923, 66-301.
- **K.S.A. 66-302: Gates at crossings.** Through the fences on either side of the right-of-way of such railroad, at such crossing, such railroad shall construct, keep and maintain gates so as to permit the passage of animals, farm implements and vehicles. **History:** L. 1911, ch. 244, § 2; May 22; R.S. 1923, 66-302.
- **K.S.A. 66-303: Action to compel construction; owner may construct and collect costs.** If upon such request being made, such railroad shall fail, neglect or refuse to construct such crossing and gates, or to keep the same in repair, then the owner of such farm may, by appropriate action, compel such railroad to so construct, keep and maintain such crossing and gates, or such owner may construct or repair such crossing and gates, and then collect from such railroad the cost thereof. **History:** L. 1911, ch. 244, § 3; May 22; R.S. 1923, 66-303.

- **K.S.A. 66-308**: **Construction of fences; hog-tight fence defined.** (a) Any person, persons or corporations owning land by or through which any railroad or any electric interurban line has been or may be constructed, who has enclosed or may enclose the same or any part thereof, and adjacent to the line of such railroad or interurban line, with either a lawful fence or a hog-tight fence, may demand of such railroad or interurban company that it enclose its line next thereto with a lawful fence or hog-tight fence corresponding in class of fence to that maintained by the owner, and maintain the same except that the following shall constitute a hog-tight fence for the purpose of this act: A woven-wire fence not less than 26 inches high with not less than seven cables and meshes not to exceed six inches in length. The bottom mesh shall not be more than three inches wide; the second not more than three and one half inches wide, the third not more than four inches wide, the fourth not more than four and one half inches wide, the fifth not more than five inches wide, and the sixth not more than six inches wide. The bottom wire of the woven-wire fence shall be placed not to exceed two inches from the surface of the ground. And in addition to the woven wire already prescribed there shall be not less than three barbed wires placed above the woven wire. The first barbed wire above the woven wire shall be placed four inches above the top of the woven-wire fence. The second barbed wire shall be placed eight inches above the first barbed wire, and the third barbed wire to be placed eight inches above the second barbed wire; in all, 48 inches. The posts shall be of ordinary size for fence purposes and set in the ground at least two feet deep and not to exceed 16 feet apart. The barbs on the barbed wire shall not exceed six inches apart, such wire to be of not less than No. 13 standard gauge or wires having not less than 950 pounds breaking strength.

(b) For purposes of this section, an electrically charged wire fence described in K.S.A. 29-109 shall not be deemed a lawful fence. **History:** L. 1885, ch. 154, § 1; L. 1897, ch. 168, § 1; L. 1909, ch. 189, § 1; R.S. 1923, 66-308; L. 1986, ch. 195, § 7; July 1.

- **K.S.A. 66-309**: **Notice to railroad upon failure to build fence.** Whenever a railroad corporation, or the lessee, person, company or corporation operating any railroad, shall neglect or refuse to build such fence as provided in this act, the owner or occupant of the lands adjoining such railroad, or over or through where the railroad track is or may be laid, may give notice in writing to such corporation, or the lessee thereof, or the persons operating such railroad, to build such fence within sixty days, except during the months of December and January, after the service of such notice. Such notice shall describe the lands on which said fence is required to be built. Service of such notice may be made by delivering the same to any ticket or station agent of said corporation or the person, corporation or lessees operating such railroad. **History:** L. 1885, ch. 154, § 2; March 17; R.S. 1923, 66-309.

- **K.S.A. 66-310**: **Landowner may build; recovery of value, interest and attorney's fee.** If the party so notified shall refuse to build such fence in accordance with the provisions of this act, the owner or occupant of the land required to be fenced shall have the right to enter upon the land and track of said railroad company, and may build such fence; and the person so building such fence shall be entitled to the value thereof from such corporation or party operating or using such railroad, to be recovered with interest at the rate of one percent per month from the time such fence was built, together with a reasonable attorney's fee for the prosecution of any suit to recover the same. **History:** L. 1885, ch. 154, § 3; March 17; R.S. 1923, 66-310.

- **K.S.A. 66-311**: **Making fence hog-tight.** Any person owning or occupying land adjoining any railroad track of any railroad company shall have the right to attach to the fence constructed along the track or right-of-way of said railroad company any wires, boards or other materials so as to make the fence of said railroad company sufficient to prevent any hogs or pigs from getting upon the track of said railroad company. **History:** 1885, ch. 154, § 4; March 17; R.S. 1923, 66-311.

- **K.S.A. 66-410: Acceptance of grant; application to construction.** Laws 1864, chapter 79, included by reference. [The title to the act is as follows: "An act to accept a grant of lands made to the state of Kansas by the congress of the United States, to aid in the construction of certain railroads and telegraphs in said state, and to apply the same to construction of such roads and telegraphs." Section 1 of the act provided "The state of Kansas hereby accepts the grant of lands made to this state by the congress of the United States, by act entitled 'An act for a grant of lands in the state of Kansas, in alternate sections, to aid in the construction of certain railroads and telegraphs in said state,' approved March 3, 1863, upon the terms and conditions set forth in said act of congress." The act further provided land grants to the Leavenworth, Lawrence & Fort Gibson Railroad and Telegraph Company and the Atchison, Topeka & Santa Fe Railroad Company in consideration of construction and other provisions; and made provisions for the details of carrying this act into effect.] **History:** L. 1864, ch. 79, §§ 1 to 7; G.S. 1868, ch. 84, §§ 1 to 7; R.S. 1923, 66-410.
- **K.S.A. 66-411: Grant and sale.** Laws 1866, chapter 61, sections 1, 2, 3, 5, 6, 7, 8, 9 and 10, and Laws 1869, chapter 82, section 1 (amending and repealing section 4 of said act), included by reference. [The title to the act is as follows: "An act providing for the sale of public lands to aid in the construction of certain railroads." Section 1 of the act is in part as follows: "That the five hundred thousand acres of land donated and granted to the state of Kansas by act of congress entitled 'An act to appropriate the proceeds of the sale of the public lands, and to grant preemption rights,' approved September 4, 1841, which was located by commissioners .... said selections approved by the secretary of the interior, A.D. 1864, and lists of which are recorded in the office of the secretary of state, shall be set apart to be sold for the benefit of each of the railroad companies hereinafter mentioned." .... Act further provided that the proceeds arising from the sale of land be donated to the Northern Kansas Railroad Company, the Kansas & Neosho Valley Railroad Company, the Union Pacific Railway, southern branch, and the Leavenworth, Lawrence & Fort Gibson Railroad Company; further provided for the appointment of commissioners by the railroad, the appointment of an agent by the governor and other stipulations, and provisions for carrying the act into effect.] **History:** L. 1866, ch. 61, §§ 1 to 10; G.S. 1868, ch. 84, p. 888, §§ 1 to 10; L. 1869, ch. 82, § 1; R.S. 1923, 66-411.
- **K.S.A. 66-501: Powers of railway corporation.** Every railway corporation shall, in addition to the powers hereinbefore conferred, have power --

*First.* To cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers, agents or servants, to enter upon the lands or water of any person, but subject to liability for all damages which shall be done thereto.

*Second.* To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railway; but the real estate received by voluntary grant shall be held and used for the purpose of such grant only, and to purchase and hold, with power to convey, real estate, for the purpose of aiding in the construction, maintenance and accommodation of its railway.

*Third.* To lay out its road, not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the road; and also such land as may be deemed necessary for side tracks, depots, workshops and water stations, materials for construction, except timber; a right-of-way over adjacent lands sufficient to enable such corporation to construct and repair its roads and stations; a right to conduct water by aqueducts; a right of making proper drains; and to cut down any standing trees that may be in danger of falling on the road, making

compensation therefor; and may take property under the power of eminent domain in the manner set forth in K.S.A. 26-501 to 26-516, inclusive.

*Fourth.* To construct its road across, along or upon any stream of water, watercourse, street, highway, plank road, or turnpike, which the route of its road shall intersect or touch; but the company shall restore the stream, watercourse, street, highway, plank road or turnpike thus intersected or touched, to its former state, or to such state as to have not necessarily impaired its usefulness. Nothing herein contained shall be construed to authorize the construction of any railway not already located in, upon or across any street in any city incorporate, or town, without the assent of the corporate authorities of such city.

*Fifth.* To cross, intersect, join and unite its railway with any other railway at any point on its route, and upon the grounds of such other railway corporation, with the necessary turnouts, sidings, switches and other conveniences in furtherance of the objects of its connections; and every railway which is or may hereafter be intersected by any new railway may unite with the owners of such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided in section 81 [\*] of this act.

*Sixth.* To take and convey persons and property on their railway by the power of steam or of animals, or by any mechanical power, and to receive compensation therefor.

*Seventh.* To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of their passengers, freights and business.

*Eighth.* To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor; said compensation not to exceed the rates fixed by law.

*Ninth.* From time to time to borrow such sums of money as may be necessary for completing and finishing or operating their railway, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises to secure the payment of any debt contracted by the corporation for the purpose aforesaid. **History:** G.S. 1868, ch. 23, § 47; R.S. 1923, 66-501; L. 1963, ch. 234, § 81; Jan. 1, 1964.

- **K.S.A. 66-521**: **Same; to whom payment made.** If such car or cars of coal shall have been billed to shipper's order, then payment shall be made to the person or persons, firm or corporation for whom such coal was intended. **History:** L. 1907, ch. 282, § 2; Feb. 23; R.S. 1923, 66-521.
- **K.S.A. 66-522**: **Same; attorney's fee, when.** In case payment for such car or cars of coal shall not be made within thirty days after the same has been confiscated, converted or diverted to the use of any railroad company or common carriers, then the consignee may recover a reasonable attorney fee, in addition to the amount provided in K.S.A. 66-520. **History:** L. 1907, ch. 282, § 3; Feb. 23; R.S. 1923, 66-522.
- **K.S.A. 66-523**: **Interstate bridges and ferries across Missouri river.** Any railroad company in the states of Missouri and Kansas, running to the Missouri river, dividing the state of Missouri from the state of Kansas, shall have the right to construct bridges and maintain ferries across the Missouri river. Said companies shall construct the necessary draws to said bridges, so as not to interfere with the navigation of the river; but such bridges and ferries shall not be used for any other purpose than

for the crossing of freight and passengers transported on said road. **History:** L. 1864, ch. 28, § 1; G.S. 1868, ch. 84, p. 888, § 1; R.S. 1923, 66-523.

- **K.S.A. 66-524: Railroad policemen; appointment; approval by attorney general; power and authority.** Any railroad company may appoint one (1) or more persons to be designated by such railroad company as a railroad policeman to aid and supplement the law enforcement agencies of this state in the protection of railroad property and the protection of the persons and property of railroad passengers and employees: *Provided*, That the appointment of any such person as a railroad policeman shall be subject to the approval of the attorney general of this state or any person that he might designate for such purpose. While engaged in the conduct of his employment, each railroad policeman so appointed shall possess and exercise all law enforcement powers in every city and county of this state which are prescribed by law for the sheriffs of the several counties and for the police officers and city marshals of any city. Each railroad policeman shall carry upon his person at all times while engaged in the conduct of his duties an identification card setting forth the date of his appointment and signed by the attorney general or his designated agent. **History:** L. 1969, ch. 181, § 1; July 1.

- **K.S.A. 66-525: Railroad right-of-way; abandonment, when; requirements; release; notice; exception.** (a) For purposes of this section, a railroad right-of-way shall be considered abandoned when:

- (1) The tracks, ties, and other components necessary for operation of the rail line are removed from the right-of-way following the issuance of an abandonment order by the appropriate federal or state authority;

- (2) if, within two years after the exercise of such an order, removal of such components is not completed and railroad operating authority is not restored or reissued by an appropriate court or other federal or state authority; or

- (3) if no rail line is placed on the right-of-way within 10 years after the right-of-way is acquired. A railroad right-of-way shall not be considered abandoned if the railroad company or any other entity continues to use the right-of-way for railroad purposes after abandonment authority has been issued.

- (b) If the grantee or assignee of record of a recorded railroad right-of-way abandons such right-of-way, such grantee or assignee shall:

- (1) Remove crossbucks and modify signal devices or install "exempt" signs at all locations within 90 days of abandonment; and

- (2) file a release of all right, title and interest in the right-of-way with the register of deeds of the counties in which the property is located, within 180 days after being requested by any owner of property servient to the right-of-way.

- (c) If a grantee or assignee of record of a railroad right-of-way refuses or neglects to file a release when required by subsection (b), the owner of the servient property may bring an action in a court of competent jurisdiction to recover from the grantee or assignee of record damages in the amount of \$500, together with costs and reasonable attorney fees for preparing and prosecuting the action. The owner may recover such additional damages as the evidence warrants, and may obtain injunctive relief to quiet the title and eject any unauthorized parties from the property.

(d) A grantee or assignee of railroad right-of-way, at any time, may file a general release of all right, title and interest in the right-of-way of one or more particular rail lines or portions thereof with the register of deeds of the county or counties in which such property is located. If such action has been taken, the grantee or assignee shall be relieved of any further obligation under this section to file individual releases of any right-of-way included in such a general release.

(e) Within 30 days after entering abandoned railroad right-of-way property upon the tax rolls pursuant to K.S.A. 79-401 et seq., and amendments thereto, the county clerk of each county in which such property is so entered shall forward to the most recent railroad company holder of such property for right-of-way purposes, a certified list of the names and addresses of all property owners so entered upon the tax rolls following abandonment.

Within 30 days after receipt of such certified list by the railroad company, it shall send a notice of abandonment by first-class mail to each landowner at the address provided. The grantee or assignee of record of a recorded railroad right-of-way who abandons such right-of-way and provides the notice of such abandonment required by this subsection shall incur no civil or criminal liability for failure to notify any person who claims, or may claim, ownership of property servient to the abandoned right-of-way, nor shall such grantee or assignee incur any civil or criminal liability for notifying any person who has no legal claim to ownership of property servient to the abandoned right-of-way. The notice required by this subsection shall not create any legal right, be construed as a warranty or guarantee, nor shall such notice impair or cloud any lawful claim, right, title or interest of any person.

(f) Except where a railroad company conveys its right, title and interest in and to railroad right-of-way which it owns in fee simple, any conveyance by a railroad company of any actual or purported right, title or interest in property acquired in strips for right-of-way to any party other than the owner of the servient estate shall be null and void, unless such conveyance is made with a manifestation of intent that the railroad company's successor shall maintain railroad operations on such right-of-way.

(g) As used in this section, "railroad company" has the meaning of such term as defined in K.S.A. 2009 Supp. 66-2,123, and amendments thereto. **History:** L. 1986, ch. 247, § 1; L. 1987, ch. 258, § 1; L. 1993, ch. 105, § 1; L. 2005, ch. 21, § 9; L. 2006, ch. 108, § 3; July 1.

- **K.S.A. 66-531**: **Title of act.** This act shall be known and may be cited as the "railroad leasing act." **History:** L. 1998, ch. 158, § 1; July 1.

- **K.S.A. 66-532**: **Definitions.** As used in this act:

(a) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(b) "improvement" means any public grain warehouse, building or other structure permanently affixed to railroad land;

(c) "lease" means any agreement between a railroad and a tenant, under the terms of which a tenant occupies the surface of railroad land, which shall include track leases when the railroad is a class II or class III railroad as defined in 49 C.F.R. 1201.1-1(a);

(d) "person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association or any other legal or commercial entity and any successor or successors in interest thereto;

(e) "public grain warehouse" means any public warehouse or public grain warehouse, as defined in K.S.A. 34-223, and amendments thereto;

(f) "railroad" means any railroad company as defined in K.S.A. 2009 Supp. 66-2,123, and amendments thereto, and any successor or successors in interest thereto;

(g) "railroad land" means any land acquired by a railroad in strips for right-of-way and any parcel or tract acquired by a railroad adjacent to its right-of-way, to aid in the construction, maintenance and accommodation of its railway and which is occupied pursuant to a lease by a tenant who owns improvements thereon;

(h) "railroad operations" means the movement, storage or servicing of railroad equipment used for transporting persons or freight;

(i) "successor in interest" includes any agent, successor, assignee, trustee, receiver or other person acquiring interests or rights in railroad land, including, but not limited to, the owner or holder of any servient estate or right of reversion relating to railroad land; and

(j) "tenant" means any public warehouseman, as defined in K.S.A. 34-223, and amendments thereto, or other person primarily engaged in the sale or distribution of fertilizer or agricultural chemicals used or useful in the production of agricultural crops, occupying railroad land in good faith pursuant to a lease. **History:** L. 1998, ch. 158, § 2; L. 2005, ch. 21, § 10; L. 2008, ch. 30, § 1; July 1.

• **K.S.A. 66-533: Lease; requirements and conditions.** (a) A lease shall contain terms and conditions which are reasonable and just, and shall provide for a fair lease rental.

(b) Unless otherwise agreed by the parties to a lease, a lease shall be for a term of not less than one year.

(c) A lease may not be terminated prior to the end of its term, except: (1) By agreement of the parties; (2) by reason of a party's breach or default in the performance of the terms and conditions of the lease, where the defaulting party has been given written notice of default and a reasonable opportunity to cure the default, but has failed to do so; or (3) where the railroad land which is subject to the lease is reasonably needed by the railroad for railroad operations.

(d) A lease may not require that one party to the lease indemnify, defend or hold the other party to the lease harmless for liabilities caused by the other party's negligence.

(e) A lease may require the tenant to remove the tenant's improvements upon termination of the lease, in which event the tenant shall have not less than six months following termination of the lease to remove such improvements, and until such improvements have been removed, the tenant shall pay monthly rent based on the annual rent specified in the lease.

(f) A lease may provide for the imposition of a penalty and a reasonable rate of interest, and interest may accrue if the tenant fails to pay the lease rental when due under the terms of the

lease. If a dispute arises as to the lease rental provided in a lease renewal, no penalty shall be imposed and no interest shall accrue during the time when the dispute is being resolved pursuant to K.S.A. 66-534 and amendments thereto, if the tenant remains current on the rental required by the preceding lease. **History:** L. 1998, ch. 158, § 3; July 1.

- **K.S.A. 66-534: Resolution of disputes.** (a) All disputes regarding lease terms and conditions shall be resolved by negotiation, mediation or, if necessary, by court action, as provided in this act.

(b) The parties shall first negotiate in good faith to resolve each such dispute. If each such dispute has not been resolved by negotiation within 60 days after negotiation is requested in writing, then upon the written request of either party, the parties shall agree upon an independent, qualified mediator to assist the parties in the resolution of each such dispute. If the parties are unable to agree upon a mediator within 30 days after such written request, then upon application of either party, the district court shall appoint an independent, qualified mediator to assist the parties in the resolution of each such dispute.

(c) If the parties are not successful in resolving a dispute arising under a lease through negotiation and mediation, as provided in this section, either party may commence an action in district court to resolve the dispute.

(d) In any determination of fair lease rental of the railroad land, the value of improvements owned by the tenant shall not be considered. **History:** L. 1998, ch. 158, § 4; July 1.
- **K.S.A. 66-535: Tenant rights; sale or abandonment by railroad, procedure.** (a) If a railroad unreasonably refuses to renew a lease, whether or not the tenant is required to remove its improvements pursuant to the terms of the lease, or if a railroad terminates a lease pursuant to subsection (c)(3) of K.S.A. 66-533 and amendments thereto, the tenant under the lease shall not be ejected from the railroad land, unless and until the tenant is fully compensated by the railroad for the tenant's improvements.

(b) In the event any railroad land is sold, any lease shall be assigned to the purchaser as part of the transaction, and the purchaser shall succeed to the rights and obligations of the railroad under the lease and the provisions of this act.

(c) In the event any railroad land is abandoned by a railroad, any person establishing a superior right or title to such railroad land shall be deemed to be a successor in interest to the railroad for purposes of this act and shall succeed to the rights and obligations of the railroad under the lease and the provisions of this act. The tenant shall not be dispossessed by any such person unless and until the tenant is fully compensated by such person for the tenant's improvements, except that such person shall have the right to set off any obligation then due to such person from the tenant under the lease.

(d) Any dispute as to the amount of full compensation or as to a railroad's unreasonable refusal to renew a lease, shall be resolved in the manner provided in K.S.A. 66-534 and amendments thereto. **History:** L. 1998, ch. 158, § 5; July 1.
- **K.S.A. 66-536: Determination of unconscionability of lease or provisions thereof, procedure.** In any action involving a dispute arising out of a lease, if unconscionability is put into issue by a party or by the court, the parties shall be afforded a reasonable opportunity to present

evidence as to the setting, purpose and effect of the lease or any provision thereof to aid the court in making the determination. If a court, as a matter of law, finds a lease or any provision thereof was unconscionable when made, the court may refuse to enforce the lease, enforce the remainder of the lease without the unconscionable provision or limit the application of any unconscionable provision to avoid an unconscionable result. **History:** L. 1998, ch. 158, § 6; July 1.

- **K.S.A. 66-537: Application of act.** The provisions of this act shall not apply to or affect any valid lease entered into prior to the effective date of this act or to any renewal or extension thereof on the same terms and conditions, but the provisions of this act shall apply to and govern any renewal or extension of such lease on any different term or condition or any material modification of any such lease where such renewal, extension or material modification is effected on or after the effective date of this act. **History:** L. 1998, ch. 158, § 7; July 1.

- **K.S.A. 66-538: Severability clause.** The provisions of this act are hereby declared to be severable. If any provision of this act shall be found by the decision of a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of any other provision of this act. **History:** L. 1998, ch. 158, § 8; July 1.

- **K.S.A. 66-2,120: Failure of locomotive to sound whistle at crossing; penalties; payment to informer.** An air whistle shall be attached to each locomotive engine, and shall be sounded four (4) times (two long, one short and one long blast) beginning at least eighty (80) rods from the place where the railroad shall cross any public road or street and to be prolonged or repeated until the crossing is occupied by the engine or car, except in cities and villages, under a penalty of not more than twenty dollars (\$20) for every neglect of the provisions of this section, to be paid by the corporation owning the railway on the suit of the county attorney, one-half thereof to go to the informer, and the other half to the county treasurer; and the corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect: *Provided, however, That such penalty shall be sued for within one (1) month from the time the cause of action accrues, and not thereafter: And provided further, That but one penalty shall be recovered in any one action.* **History:** G.S. 1868, ch. 23, § 60; L. 1876, ch. 60, § 1; R.S. 1923, 66-2,120; L. 1925, ch. 207, § 1; L. 1963, ch. 323, § 1; L. 1973, ch. 106, § 22; June 1.

- **K.S.A. 66-2,121: Railroad-highway crossing signs; specifications.** Every railway corporation shall cause railroad-highway crossing signs in the form of a crossbuck to be erected, well supported by posts or otherwise, alone or in combination with other protective devices, and constantly maintained on the right-hand side of the traveled public road or street, on each approach to the crossing when the same is crossed by the railway on the same level. Said railroad-highway crossing signs shall be elevated so that they may be easily seen by travelers. Each side of a railroad-highway sign shall be a white reflectorized background, with the words "RAILROAD CROSSING" in black lettering. When crossbuck signs are a part of a flashing light signal assembly, such signs and assemblies shall conform to the manual and specifications adopted by the secretary of transportation pursuant to K.S.A. 8-2003. If any such crossing consists of two or more tracks, including sidings, the number of tracks shall be indicated on an auxiliary sign of inverted T-shape, mounted below the railroad-highway crossing sign. Said auxiliary sign shall be of white reflectorized background, with black lettering. This section shall not apply to streets in cities, unless the railway corporation shall be required to put up such railroad-highway crossing signs by the governing body of such city, or the officer thereof having charge of such streets. **History:** G.S. 1868, ch. 23, § 61; R.S. 1923, 66-2,121; L. 1975, ch. 343, § 1; L. 1980, ch. 203, § 1; April 4.

- **K.S.A. 66-2,122: Actions to recover penalties; service of summons.** All penalties imposed upon railway corporations by this or any other act may be sued for in the name of the state of Kansas,

and may be commenced by serving a summons on any officer or agent of such company found within the state. **History:** G.S. 1868, ch. 23, § 62; R.S. 1923, 66-2,122; L. 1973, ch. 134, § 53; July 1, 1974.

- **K.S.A. 66-2,123: Railroad company, defined.** As used in article 2 of chapter 66 of the Kansas Statutes Annotated, and amendments thereto, "railroad company" means and shall include any incorporated railroad company, express or transportation company, other common carrier, sleeping car company, private-car company, railroad-bridge company, person or persons, lessee, assignees, trustee, receiver, partnership, joint-stock company or corporation engaged wholly, partially, jointly or severally in laying out, constructing, owning, operating, using or maintaining any railroad operated by steam or electricity, or other motive power, or any portion or part of such railroad line. As used in this section, "person" means any persons, partnerships, joint-stock companies or corporations. **History:** L. 2005, ch. 21, § 2; July 1.

- **K.S.A. 68-414. Improvement of railroad crossings on state highway system; division of cost; safety devices or signals.** The secretary of transportation, in the construction, improvement, reconstruction or maintenance of the state highway system, shall have the power and authority to compel all railroad companies operating steam or electric railroads in this state to construct, improve, reconstruct or maintain in a manner to be approved by the secretary of transportation, viaducts, tunnels, underpasses, bridges or grade crossings where the lines of said railroad companies intersect state highways, when in the judgment of the secretary such viaducts, tunnels, underpasses, bridges or grade crossings are necessary for the proper construction of the state highway system, for the safety of the general public, or for the elimination of a dangerous grade crossing. The expense of such construction, improvement, reconstruction or maintenance may be divided between the railroad company and the secretary of transportation in a fair and equitable proportion to be determined by the secretary of transportation, said secretary, however, to pay not to exceed fifty percent (50%) of the cost of any construction, improvement, reconstruction or maintenance of viaducts, tunnels, underpasses or bridges, but such fifty percent (50%) limitation shall not apply to express highways or freeways established pursuant to K.S.A. 68-2301. Otherwise, grade crossings shall be constructed and maintained at the expense of the railroad company.

If after due notice to said railroad company that in the judgment of the secretary of transportation the construction, improvement, reconstruction or maintenance of such viaduct, tunnel, underpass, bridge or grade crossing is necessary, said railroad company fails to comply with the secretary's order as provided by this section, said secretary is empowered and authorized to forthwith construct, improve, reconstruct or maintain such viaduct, tunnel, underpass, bridge or grade crossing and the amount so expended for such construction, improvement, reconstruction or maintenance shall comprise a charge against such railroad company and the secretary shall render a bill to such railroad company stating the amount expended and for what purpose, and upon the failure or refusal of such railroad company to make payment of the amount due the state the secretary shall forward all data and information to the attorney general of this state, who shall immediately institute a suit in the name of the secretary of transportation for the recovery of the amount reported by the secretary of transportation as due from the railroad company for its proportion of the cost of the construction, improvement, reconstruction or maintenance of such viaduct, tunnel, underpass, bridge or grade crossing. Upon the recovery of such fund said secretary shall deposit same with the state treasurer and said sum shall be apportioned to the different funds in the amounts expenditures from such funds were made. **History:** L. 1929, ch. 225, § 15; L. 1975, ch. 427, §99; L. 1976, ch. 294, § 1; July 1.

- **K.S.A. 68-509. Elimination of grade crossings; division of costs between railroad and county; eminent domain; publication notice; appeal from award; warning signals.** The county

engineer and board of county commissioners, in designating the county road system, shall eliminate all steam or electric road grade crossings and all other dangerous places on the highways so far as practicable, by paralleling such steam or electric roads, constructing undergrade or overhead crossings, relocating the highways or using such other means as may be necessary to properly safeguard the traveling public. The expense of eliminating railroad crossings shall be divided between the railroad company and the county, in a fair and equitable proportion determined by the secretary of transportation, who shall determine the necessity for eliminating such crossing.

When the elimination, protection or improvement of a railroad grade crossing, as finally determined to be necessary by the secretary, requires the relocation, laying out, altering, widening or vacating of a highway, the board of county commissioners may purchase or acquire by donation any land required and, by order of the board, cause the highway to be relocated, laid out, altered, widened or vacated. Such order of the board of county commissioners shall cause any land so procured to become a public highway without further action. If the owner of any land required for the relocation, laying out, altering or widening of a highway for the purposes mentioned in this section refuses to sell or donate such land, the board of county commissioners shall exercise the right of eminent domain in the following manner:

The board of county commissioners by order shall determine the nature of the changes required in such road, the approximate amount and location of land required to be taken therefor and the time and place at which the road will be viewed. The board shall publish a notice once in the official county paper, not less than 15 days and not more than 25 days before the viewing of the road. A similar notice shall be sent by certified mail to the owners of lands affected by such change, at the address where the owner's tax statement is sent. Such notice shall set out the substance of the order and its date, the time and place the commissioners will begin to view the road and give all parties a hearing.

The board shall direct the county engineer to meet with it at such time and place, unless the new locations of roads made necessary by the changes have already been definitely surveyed and located. Upon the day stated in the notice, or on the following day, the county commissioners shall meet at the place stated in the notice and proceed to view the road and changes required; shall view all lands required to be taken for the relocation, laying out, altering or widening of the highway for the purposes described in this section; and shall appraise the value thereof and assess the damages thereto. The county commissioners shall forthwith file in the office of the county clerk of the county a written report of their findings, along with the plat of the road as changed. All applications for damages must be filed in writing with the county clerk on or before the first day of the next regular session of the board following the filing of the report. The board at such session shall finally determine the amount to be paid as damages to any owner of the land. The amounts so allowed shall be paid from the general fund or the road fund of the county.

The right of appeal from the award of damages made by the board of county commissioners shall be the same as is now provided by law in other road cases, but such appeal shall not delay any work upon or in relation to the road. If lands are appropriated for the relocation of any county or township road, which relocation is deemed necessary to avoid one or more railroad crossings or other dangerous places, the railroad company shall pay such part of the cost, not less than 1/2 or more than 3/4, as determined by the secretary of transportation. Such part of the cost shall be paid by the railroad company to the county and shall be used to reimburse the funds from which the cost of land and damages were paid. The secretary of transportation, upon the request of any county or township board, may require suitable safety devices or warning signals at dangerous or obscure railroad crossings to indicate the approach of trains, which shall be installed and maintained by the railroad company. The secretary may require the removal of spoil banks and other obstructions to view and the grading of approaches to the tracks, the cost of which shall be borne by the railroad company and county or township jointly or severally in the proportions determined by the secretary. The secretary may require the construction of suitable warning signs at a distance of 200 to 300 feet on both sides of all railroad grade crossings if, in the judgment of the secretary, signs are necessary for the safety

of travel. All such warning signs on township roads shall be erected by the townships and those on the county roads by the county. **History:** L. 1917, ch. 264, § 18; L. 1919, ch. 245, § 5; R.S. 1923, 68-509; L. 1975, ch. 427, § 119; L. 1981, ch. 173, § 69; July 1.

When the secretary of transportation deems it advisable, said railroad company may be required by order of the secretary, to install and maintain suitable safety devices or warning signals at dangerous or obscure crossings to indicate the approach of trains.

- **K.S.A. 75-5025.** **State rail transportation plan; specific powers and duties of secretary.** The secretary of transportation pursuant to K.S.A. 75-5023, is hereby authorized to exercise those powers necessary for the state to qualify for rail service continuation subsidies pursuant to the provisions of the railroad revitalization and regulatory reform act of 1976 including authority: (1) To establish a state plan for rail transportation and local rail services; (2) to administer and coordinate the state plan; (3) to provide in the plan for equitable distribution of federal rail service continuation subsidies among state, local and regional transportation authorities; (4) to maintain adequate programs of investigation, research, promotion and development in connection with such purposes and to provide for public participation therein; (5) to provide satisfactory assurance on behalf of the state that such fiscal control of accounting procedures will be adopted by the state as may be necessary to assure proper disbursement of an account for federal funds paid to the state as rail service continuation subsidies; (6) to comply with the regulations of the secretary of transportation and the United States department of transportation affecting federal rail service continuation programs; and (7) to do all things otherwise necessary to maximize federal assistance to the state under title VIII of public law 94-210. **History:** L. 1976, ch. 369, § 1; April 27.

- **K.S.A. 75-5026.** **Same; acceptance of federal funds.** The secretary of transportation may accept and utilize federal funds, grants, gifts or donations which are available and any sums that are appropriated, in carrying out the purpose of this act. The secretary of transportation may also apply for discretionary or other funds available under the provisions of the railroad revitalization and regulatory reform act of 1976, or other federal programs. **History:** L. 1976, ch. 369, § 2; April 27

- **K.S.A. 75-5027.** **Same; rules and regulations.** The secretary of transportation may adopt rules and regulations consistent with and for the purpose of adequately implementing the foregoing subdivisions of this act. **History:** L. 1976, ch. 369, § 3; L. 1982, ch. 369, § 1; July 1.

- **K.S.A. 75-5029:** **Railroad rehabilitation loan guarantee fund; purposes; limitation on expenditures; administration.** The railroad rehabilitation loan guarantee fund is hereby established in the state treasury which shall be for the purpose of facilitating the financing, acquisition, rehabilitation of railroads in participation with the federal government to provide rail service in Kansas and for the refinancing thereof. The secretary of transportation shall administer the railroad rehabilitation loan guarantee fund. All expenditures from the railroad rehabilitation loan guarantee fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation or by a person or persons designated by the secretary. **History:** L. 1983, ch. 25, § 1; L. 1989, ch. 275, § 2; March 16.

- **K.S.A. 75-5030:** **Same; payment of amounts in default by mid-states port authority, when; limitation.** Subject to the provisions of K.S.A. 75-5029, the secretary of transportation shall pay from the railroad rehabilitation loan guarantee fund to the federal railroad administration, or its successor, the amounts for any loan which is in default, which is for the acquisition and rehabilitation of certain

railroad facilities by the mid-states port authority from the trustee of the Chicago, Rock Island and Pacific Railway company to provide railroad service in Kansas and which received prior approval by the secretary of transportation, except that the total of all such amounts paid under this section shall not exceed 50% of the loss which would otherwise be assumed by the federal government in the event of default on such loan for such project. **History:** L. 1983, ch. 25, § 2; July 1.

- **K.S.A. 75-5031**: **Same; refinancing agreement; guarantee, limitation.** For the purpose of facilitating the refinancing of the loan guaranteed by the secretary of transportation in accordance with K.S.A. 75-5030 and amendments thereto, the secretary of transportation is hereby authorized to enter into an agreement with the mid-states port authority and the financial institutions participating in such refinancing to guarantee the repayment of any amounts which are in default on any loan obtained by the mid-states port authority for such refinancing. Such agreement may contain such terms and conditions as the secretary of transportation may deem appropriate to carry out the purposes of this section, except that the total principal amount guaranteed thereby shall not exceed \$7,000,000. **History:** L. 1989, ch. 275, § 1; March 16.
- **K.S.A. 75-5040**: **Railroad assistance programs; findings.** The legislature finds and determines that integrated systems, including railways, highways and airways, are necessary in order to meet the economic and energy needs of the citizens of the state, both now and in the future. The legislature finds that a portion of the present railroad system in the state does not provide adequate service to citizens of the state. The legislature further finds and determines that it is in the best interest of the state to establish a rail service assistance program in order to preserve and revitalize essential rail service in the state. **History:** L. 1991, ch. 149, § 1; May 30.
- **K.S.A. 75-5041**: **Rail service assistance program; establishment.** There is hereby established the rail service assistance program to provide assistance for the preservation and revitalization of rail service in the state, including the guarantee of loans pursuant to K.S.A. 75-5046. **History:** L. 1991, ch. 149, § 2; May 30.
- **K.S.A. 75-5042**: **Rail service assistance program advisory committee; establishment.** There is hereby established the rail service assistance program advisory committee hereinafter referred to as the advisory committee. The advisory committee shall be advisory to the secretary of transportation. **History:** L. 1991, ch. 149, § 3; May 30.
- **K.S.A. 75-5043**: **Advisory committee; membership.** The advisory committee shall consist of nine members appointed by the governor as follows:
  - (a) Two shall be rail shippers;
  - (b) two shall be representatives of railroad management, one shall represent a class I railroad and one shall represent a regional or short line railroad;
  - (c) two shall represent railroad labor, one shall be an employee of a class I railroad and one shall be an employee of a regional or short line railroad; and
  - (d) three shall represent the general public. A person appointed to fill a vacancy which occurs prior to the expiration of a term shall be appointed for the unexpired term. Each member of the advisory committee shall be appointed for a three-year term. **History:** L. 1991, ch. 149, § 4; May 30.

- **K.S.A. 75-5046: Railroad loan guarantee program; requirements; restrictions.** (a) Subject to the provisions of subsection (f), the secretary of transportation is hereby authorized upon application by a qualified entity and its lender to enter into an agreement to guarantee the repayment of loans made for the purpose of facilitating the financing, acquisition or rehabilitation of railroads in the state of Kansas.

(b) Such agreement may contain such terms and conditions as the secretary of transportation may deem appropriate to carry out the purposes of this section, except that the aggregate unpaid principal amount of obligations guaranteed thereby shall not exceed \$20,000,000 of which not more than \$5,000,000 may be available each fiscal year. Any loan guaranteed by the secretary of transportation pursuant to this section, at a minimum, shall meet the following requirements:

(1) The ratio of benefits to costs for any project funded by such guaranteed loan shall be greater than one. The benefit/cost methodology to be used for this determination shall be the most recent standard benefit/cost methodology approved by the federal railroad administration of the United States department of transportation;

(2) the qualified entity shall demonstrate that it is financially sound and capable of fulfilling all obligations created by the proposed loan guarantee agreement; and

(3) the qualified entity shall demonstrate that adequate funding for the proposed project is not otherwise available, on terms that would make the proposed project financially feasible, in the absence of a state loan guarantee.

(c) Prior to any loan being guaranteed under the provisions of this section, the secretary of transportation shall make a determination as to whether the guaranteeing of such loan would adversely affect the rating of any bonds issued and outstanding or authorized to be issued. If the guaranteeing of such loan would adversely affect the rating of such bonds, the secretary of transportation shall not guarantee such loan. Such determination shall be documented in writing by the secretary of transportation.

(d) The secretary of transportation may adopt rules and regulations consistent with and for the purpose of implementing the provisions of this section, including the priorities contained in subsection (a) of K.S.A. 75-4045, and amendments thereto.

(e) "Qualified entity" means any interstate commerce commission certificated railroad, a port authority established in accordance with Kansas laws, or any entity meeting the rules and regulations established by this section.

(f) The secretary of transportation shall not enter into any agreement to guarantee a loan under the provisions of this section unless such action has been authorized by act of the legislature or has been approved by the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c and amendments thereto, except that such approval may also be given when the legislature is in session. **History:** L. 1991, ch. 149, § 7; L. 1999, ch. 137, § 23; July 1.

- **K.S.A. 75-5047: Rail service assistance program loan guarantee fund; establishment.** (a) The rail service assistance program loan guarantee fund is hereby established in the state treasury which shall be for the purpose of facilitating the financing, acquisition and rehabilitation of railroads

pursuant to the rail service assistance program in K.S.A. 75-5040 through 75-5047 and for the refinancing thereof. The secretary of transportation shall administer the rail service assistance program loan guarantee fund. All expenditures from the rail service assistance program loan guarantee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation or by a person or persons designated by the secretary.

(b) The secretary of transportation shall pay from the rail service assistance program loan guarantee fund to a lender of a qualified entity, the amounts for any loan which is in default, which is for the financing, acquisition or rehabilitation of railroads pursuant to the provisions of K.S.A. 75-5046.

**History:** L. 1991, ch. 149, § 8; May 30.

- **K.S.A. 2011 Supp. 75-5048**: Rail service improvement program; rail service improvement fund; requirements; restrictions; funding; transfer of money, authorized. (a) The secretary of transportation is hereby authorized to make loans or grants to a qualified entity for the purpose of facilitating the financing, acquisition or rehabilitation of railroads and rolling stock in the state of Kansas.

(b) Such loans or grants shall be made upon such terms and conditions as the secretary of transportation may deem appropriate, and such loans or grants shall be made from funds credited to the rail service improvement fund.

(c) The rail service improvement fund is hereby established in the state treasury which shall be for the purpose of facilitating the financing, acquisition and rehabilitation of railroads pursuant to subsection (a) of this section and for the refinancing thereof. The secretary of transportation shall administer the rail service improvement fund. All expenditures from the rail service improvement fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation or by a person or persons designated by the secretary.

(d) All moneys received from the federal government, pursuant to K.S.A. 75-5026, and amendments thereto, 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 rail service improvement fund.

(e) The management and investment of the rail service improvement fund shall be in accordance with K.S.A. 68-2324, and amendments thereto. Notwithstanding anything to the contrary, all interest or other income of the investments, after payment of any management fees, shall be considered income of the rail service improvement fund.

(f) On July 1, 2013, and each July 1 thereafter, the director of accounts and reports shall transfer \$5,000,000 from the state highway fund to the rail service improvement fund.

(g) The secretary of transportation is hereby authorized to transfer moneys from the state highway fund to the rail service improvement fund or from the rail service improvement fund to the state highway fund. In transferring moneys from the rail service improvement fund, the secretary of transportation shall not diminish the moneys transferred under subsection (f).

(h) "Qualified entity" means any interstate commerce commission certificated railroad, a port authority established in accordance with Kansas laws, or any entity meeting the rules and regulations established by K.S.A. 75-5050, and amendments thereto. **History:** L. 1991, ch. 149, § 9; L. 1999, ch. 137, § 24; L. 2001, ch. 5, § 395; L. 2006, ch. 108, § 2; L. 2010, ch. 156, § 30; L. 2011, ch. 28, § 1; July 1

- **K.S.A. 75-5049**: Same; loans; requirements. The secretary in making any loan pursuant to K.S.A. 75-5048, and amendments thereto, may:

(a) Stipulate minimum operating standards for rail lines designed to achieve reasonable transportation service for shippers and to achieve best use of funds invested in rail line rehabilitation;

(b) require a portion of the total assistance for improving a rail line to be loaned to the railroad by rail users and require the railroad to reimburse rail users for any loan on the basis of use of the line and the revenues produced when the line has been improved;

(c) determine the terms and conditions under which all or any portion of funds loaned shall be repaid to the department of transportation by the railroads. Reimbursement may be made as a portion of the increased revenue derived from the improved rail line. Any reimbursement received by the department pursuant to this subsection 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 rail service improvement fund and shall be appropriated exclusively for the rehabilitation of other rail lines in the state pursuant to K.S.A. 75-5048, and amendments thereto. **History:** L. 1991, ch. 149, § 10; L. 2001, ch. 5, § 396; July 1.

- **K.S.A. 75-5050: Rules and regulations.** The secretary of transportation may adopt rules and regulations for the purpose of implementing the provisions of K.S.A. 75-5048 and 75-5049
- **K.S.A. 75-5064: Transportation revolving fund; definitions.** As used in K.S.A. 2009 Supp. 75-5063 through 75-5069:

(a) "Cost" means as applied to any qualified project, any or all costs, whenever incurred, approved by the department, for carrying out a qualified project;

(b) "department" means the Kansas department of transportation established under K.S.A. 75-5001, and amendments thereto;

(c) "fund" means the Kansas transportation revolving fund established by K.S.A. 2009 Supp. 75-5066;

(d) "governmental unit" means any town, city, district, county, commission, agency, authority, board or other instrumentality of the state or of any of its political subdivisions, including any combination thereof, which is responsible for the construction, ownership or operation of a qualified project;

(e) "private enterprise" means a private person or entity that has entered into a contract with a public authority to design, finance, construct and/or operate a qualified project that is within the jurisdiction of such public authority;

(f) "project" means the acquisition, construction, improvement, repair, rehabilitation, maintenance or extension of transportation facilities;

(g) "project costs" means all costs (or expenses which are necessary or incident to a project and which are directly attributable thereto);

(h) "project revenues" means all rates, rents, fees, assessments, charges and other receipts derived or to be derived by a qualified borrower from a qualified project;

(i) "qualified borrower" means any governmental unit or private enterprise which is authorized to construct, operate or own a qualified project;

(j) "qualified project" means any public or private transportation project, including, without limitation, the construction, reconstruction, resurfacing, restoration, rehabilitation or replacement of public or private transportation facilities within the state;

(k) "revenues" means when used with respect to the department, any receipts, fees, revenues or other payments received or to be received by the department under K.S.A. 2009 Supp. 75-5063 through 75-5069;

(l) "secretary" means the secretary of the Kansas department of transportation;

(m) "transportation project" means any bridge, culvert, highway, road, street or combination thereof. **History:** L. 1999, ch. 137, § 3; July 1.

• **K.S.A. 75-5078: Railroads; transfer of powers; duties and functions from corporation commission to department of transportation.** (a) Except as otherwise provided by law, all of the powers, duties and functions of the state corporation commission as it relates to railroads are hereby transferred to and conferred and imposed upon the Kansas department of transportation.

(b) All rules and regulations of the state corporation commission referencing railroads in existence on the date of passage of this act shall be reviewed by the Kansas department of transportation prior to July 1, 2005. Any such rules and regulations which the Kansas department of transportation does not notify the state corporation commission to retain shall be revoked by the state corporation commission prior to the effective date of this act. Any rules and regulations which the Kansas department of transportation notified the state corporation commission to retain shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the Kansas department of transportation until revised, amended, revoked or nullified pursuant to law.

(c) When any conflict arises as to the disposition of any power, function or duty in relation to the transfer of this authority, such conflict shall be resolved by the governor, whose decision shall be final.

(d) The Kansas department of transportation shall take custody of all state corporation commission records, memoranda, writings, entries, prints, representations or combinations thereof relating to railroads. Any conflict as to the proper disposition of records arising under this section and resulting from the transfer shall be determined by the governor, whose decision shall be final.

(e) No suit, action or other proceeding, judicial or administrative, lawfully commenced or which could have been commenced, by or against any state agency mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of the act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(f) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act. **History:** L. 2005, ch. 21, § 1; July 1.

• [K.S.A. 2010 Supp. 75-5089](#). **Passenger rail service program; requirements; loans or grants; passenger rail service revolving fund.** (a) The secretary of transportation is hereby authorized to establish and implement a passenger rail service program.

(b) The secretary of transportation may, as part of such passenger rail service program, do the following:

(1) Enter into agreements with Amtrak, other rail operators, local jurisdictions and other states for the purpose of developing passenger rail service, serving Kansas and other states interconnected and positioned on a current or proposed route. The agreements may include any of the following provisions:

(A) Cost-sharing agreements associated with initiating service, capital costs, operating subsidies and other costs necessary to develop and maintain service; or

(B) joint powers agreements and other institutional arrangements associated with the administration, management and operation of passenger rail service.

(2) Provide assistance and enter into agreements with local jurisdictions along the proposed route of a midwest regional rail system development or other passenger rail service operations serving Kansas to ensure that rail stations and terminals are designed and developed in accordance with the following objectives:

(A) To meet safety and efficiency requirements outlined by Amtrak and the federal railroad administration;

(B) to aid intermodal transportation; and

(C) to encourage economic development.

(3) Provide loans or grants as provided under the provisions of subsection (c).

(c) (1) The secretary of transportation is hereby authorized to make loans or grants to passenger rail service providers for the following purposes:

(A) To provide assistance for the restoration, conservation, improvement and construction of railroad main lines, branch lines, switching yards, sidings, rail connections, intermodal yards, highway grade separations and other railroad related improvements;

(B) for rail economic development projects that improve rail facilities, including the construction of branch lines, sidings, rail connections, intermodal yards, stations, equipment defined as locomotives and rolling stock, including passenger coaches and other rail-related improvements that spur economic development and job growth; and

(C) costs associated with the initiation, operation and maintenance of passenger rail service.

(2) Passenger rail service providers, who desire assistance in the form of a loan or grant under this section, shall submit an application to the secretary of transportation. Applications shall be in

such form and shall include such information as the secretary of transportation shall require and shall be submitted in a manner and at a time to be determined by the secretary of transportation.

(3) Such loans or grants shall be made upon such terms and conditions as the secretary of transportation may deem appropriate, and such loans or grants shall be made from funds credited to the passenger rail service revolving fund.

(4) The passenger rail service revolving fund is hereby established in the state treasury which shall be for the purposes established under subsection (c)(1). The secretary of transportation shall administer the passenger rail service revolving fund. All expenditures from the passenger rail service revolving fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation or by a person or persons designated by the secretary.

The secretary of transportation shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the secretary pursuant to this act. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the passenger rail service revolving fund.

(5) The management and investment of the passenger rail service revolving fund shall be in accordance with K.S.A. 68-2324, and amendments thereto. Notwithstanding anything to the contrary, all interest or other income of the investments, after payment of any management fees, shall be considered income of the passenger rail service revolving fund.

(d) As part of the annual report required under K.S.A. 68-2315, and amendments thereto, the secretary of transportation shall report on the development and operation of the midwest regional rail system and the state's passenger rail service program.

(e) It is the intent of the state legislature that the enactment of this act shall not affect the terms or duration of railroad assistance agreements entered into under legislation enacted before the effective date of this act.

(f) As used in this section "passenger rail service" means long-distance, intercity and commuter passenger transportation, including the midwest regional rail system development which is provided on railroad tracks.

(g) The secretary of transportation may adopt rules and regulations for the purpose of implementing the provisions of this section. **History:** L. 2010, ch. 28, § 1; Apr. 1

• **K.S.A. 75-5090. Midwest interstate passenger rail compact.** The midwest interstate passenger rail compact is hereby enacted into law and entered into with all other states which adopt the compact in a form substantially as follows:

ARTICLE I  
STATEMENT OF PURPOSE

The purposes of this compact are, through joint or cooperative action:

(a) To promote development and implementation of improvements to intercity passenger rail service in the midwest;

(b) to coordinate interaction among midwestern state elected officials and their designees on passenger rail issues;

(c) to promote development and implementation of long-range plans for high speed rail passenger service in the midwest and among other regions of the United States;

(d) to work with the public and private sectors at the federal, state and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote midwestern interests regarding passenger rail; and

(e) to support efforts of transportation agencies involved in developing and implementing passenger rail service in the midwest.

## ARTICLE II ESTABLISHMENT OF COMMISSION

To further the purposes of the compact, a commission is created to carry out the duties specified in this compact.

## ARTICLE III COMMISSION MEMBERSHIP

(a) The manner of appointment of commission members, terms of office consistent with the terms of this compact, provisions for removal and suspension, and manner of appointment to fill vacancies shall be determined by each party state pursuant to its laws, but each commissioner shall be a resident of the state of appointment. Commission members shall serve without compensation from the commission.

(b) The commission shall consist of four resident members of each state as follows: The governor or the governor's designee who shall serve during the tenure of office of the governor, or until a successor is named; one member of the private sector who shall be appointed by the governor and shall serve during the tenure of office of the governor, or until a successor is named; and two legislators, one from each legislative chamber (or two legislators from any unicameral legislature), who shall serve two-year terms, or until successors are appointed, and who shall be appointed by the appropriate appointing authority in each legislative chamber. All vacancies shall be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy shall serve until the end of the incomplete term. Each member state shall have equal voting privileges, as determined by the commission bylaws.

## ARTICLE IV POWERS AND DUTIES OF THE COMMISSION

(a) The duties of the commission are to:

(1) Advocate for the funding and authorization necessary to make passenger rail improvements a reality for the region;

(2) identify and seek to develop ways that states can form partnerships, including with rail industry and labor, to implement improved passenger rail in the region;

- (3) seek development of a long-term, interstate plan for high speed rail passenger service implementation;
  - (4) cooperate with other agencies, regions and entities to ensure that the midwest is adequately represented and integrated into national plans for passenger rail development;
  - (5) adopt bylaws governing the activities and procedures of the commission and addressing, among other subjects: The powers and duties of officers; the voting rights of commission members, voting procedures, commission business, and any other purposes necessary to fulfill the duties of the commission;
  - (6) expend such funds as required to carry out the powers and duties of the commission; and
  - (7) report on the activities of the commission to the legislatures and governor of the member states on an annual basis.
- (b) In addition to its exercise of these duties, the commission is empowered to:
- (1) Provide multistate advocacy necessary to implement passenger rail systems or plans, as approved by the commission;
  - (2) work with local elected officials, economic development planning organizations and similar entities to raise the visibility of passenger rail service benefits and needs;
  - (3) educate other state officials, federal agencies, other elected officials and the public on the advantages of passenger rail as an integral part of an intermodal transportation system in the region;
  - (4) work with federal agency officials and members of congress to ensure the funding and authorization necessary to develop a long-term, interstate plan for high speed rail passenger service implementation;
  - (5) make recommendations to member states;
  - (6) if requested by each state participating in a particular project and under the terms of a formal agreement approved by the participating states and the commission, implement or provide oversight for specific rail projects;
  - (7) establish an office and hire staff as necessary;
  - (8) contract for or provide services;
  - (9) assess dues, in accordance with the terms of this compact;
  - (10) conduct research; and
  - (11) establish committees.

## ARTICLE V OFFICERS

The commission shall annually elect from among its members a chair, a vice-chair who shall not be a resident of the state represented by the chair, and others as approved in the commission bylaws. The officers shall perform such functions and exercise such powers as are specified in the commission bylaws.

## ARTICLE VI MEETINGS AND COMMISSION ADMINISTRATION

The commission shall meet at least once in each calendar year, and at such other times as may be determined by the commission. Commission business shall be conducted in accordance with the procedures and voting rights specified in the bylaws.

## ARTICLE VII FINANCE

(a) Except as otherwise provided for, the moneys necessary to finance the general operations of the commission in carrying forth its duties, responsibilities and powers as stated herein shall be appropriated to the commission by the compacting states, when authorized by the respective legislatures, by equal apportionment among the compacting states. Nothing in this compact shall be construed to commit a member state to participate in financing a rail project except as provided by law of a member state.

(b) The commission may accept, for any of its purposes and functions, donations, gifts, grants, and appropriations of money, equipment, supplies, materials and services from the federal government, from any party state or from any department, agency, or municipality thereof, or from any institution, person, firm, or corporation. All expenses incurred by the commission in executing the duties imposed upon it by this compact shall be paid by the commission out of the funds available to it. The commission shall not issue any debt instrument. The commission shall submit to the officer designated by the laws of each party state, periodically as required by the laws of each party state, a budget of its actual past and estimated future expenditures.

## ARTICLE VIII ENACTMENT, EFFECTIVE DATE AND AMENDMENTS

The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin are eligible to join this compact. Upon approval of the commission, according to its bylaws, other states may also be declared eligible to join the compact. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by any three party states incorporating the provisions of this compact into the laws of such states. Amendments to the compact shall become effective upon their enactment by the legislatures of all compacting states.

## ARTICLE IX WITHDRAWAL, DEFAULT AND TERMINATION

(a) Withdrawal from this compact shall be by enactment of a statute repealing the same and shall take effect one year after the effective date of such statute. A withdrawing state shall be liable for any obligations which it may have incurred prior to the effective date of withdrawal.

(b) If any compacting state shall at any time default in the performance of any of its obligations, assumed or imposed, in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission, and the commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless such default shall be remedied under the stipulations and within the time period set forth by the commission, this compact may be terminated with respect to such defaulting state by affirmative vote of a majority of the other commission members. Any such defaulting state may be reinstated, upon vote of the commission, by performing all acts and obligations as stipulated by the commission.

## ARTICLE X CONSTRUCTION AND SEVERABILITY

The provisions of this compact entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected hereby. If this compact entered into hereunder shall be held contrary to the constitution of any compacting state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof. **History:** L. 2010, ch. 32, § 1; July 1

- [\*\*K.S.A. 79-32,212\*\*](#). **Credit for single city port authority.** (a) For taxable years 2002 through 2021, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, an amount equal to 100% of the amount attributable to the retirement of indebtedness authorized by a single city port authority established before January 1, 2002. In no event shall the total amount of the credits allowed under this section exceed \$500,000 for any one fiscal year.

(b) Upon certification by the secretary of revenue of the amount of any such credit, the director of accounts and reports shall issue to such taxpayer a warrant for such amount which shall be deemed to be a capital contribution. **History:** L. 2002, ch. 109, § 1; July 1.