

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIV. 3

STATE OF KANSAS, ex rel. KRIS	)	
KOBACH, Attorney General,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 2023-CV-000422
	)	
	)	
DAVID HARPER, Director of Vehicles,	)	
Department of Revenue, in his official	)	
capacity, and	)	
MARK BURGART, Secretary of Revenue,	)	
in his official capacity,	)	
	)	
<u>Respondents.</u>	)	

Pursuant to K.S.A. Chapter 60

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

Respondents appear through their counsel, Ted E. Smith, and make special appearance to move to dissolve the Temporary Restraining Order issued by this Court on July 10, 2023. (“TRO”) That Respondents are adverse parties and move to dismiss and/or modify the TRO pursuant to K.S.A. 60-903(e) based on justifications set out herein and at hearing on the matter. Respondents (“KDOR”) request that TRO be denied after a hearing on the matter set as promptly as justice requires.

## LEGAL & FACTUAL BACKGROUND

1. Senate Bill 180 (2023) (“SB 180”) became law on July 1, 2023. (Attached hereto and incorporated as KDOR’s Exhibit A).
2. SB 180 is one and half pages in length and has one substantive section. The Amendment addresses the concept of biological “sex” at birth, primarily for purposes of vital statistics. (e.g., birth certificates). SB 180 is drawn word for word from model legislation created by a national, non-state actor<sup>1</sup>, and was not amended or tailored to the specifics of Kansas law during the Legislative process.<sup>2</sup> SB 180 focuses primarily on vital statistics of the Kansas Department of Health and Environment<sup>3</sup>, and does not address KDOR’s statutory responsibilities. The Legislature did not explicitly address KDOR’s historical use of “gender” as an identity marker for driver’s licenses.
3. Driver’s license and identification card processes are separate and distinct from the Vital Statistics Act, K.S.A. 65-2401 et seq., and are controlled by Chapter 8 of the Kansas Statutes Annotated, specifically K.S.A. 2022 Supp. 8-240 and K.S.A. 2022 Supp. 8-243. Vital statistics and driver’s licenses serve different roles. Birth certificate information is fixed in time and discrete. Driver’s license information is continuously changing (driving authority, weight, address) and is used by the driver’s

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<sup>1</sup> See Kansas City Star, “Trans Kansas still can change gender info on IDs”, pg. 10A, July 3, 2023 (SB 180 based on model legislation from Independent Women’s Forum)

<sup>2</sup> Single amendment did not address gender issues associated with driver’s licenses.  
[https://www.kslegislature.org/li/b2023\\_24/measures/documents/sb180\\_01\\_0000.pdf](https://www.kslegislature.org/li/b2023_24/measures/documents/sb180_01_0000.pdf)

<sup>3</sup> See “Consent Judgment”. 18-02552-DDC-KGG (Kan. Dist. Ct., June 21<sup>st</sup>, 2019)

license holder to provide current identification of the individual to the government or private third parties.

4. Prior to 2007, State law required KDOR to maintain and associate an applicant's "sex" with the driver's license record. In 2007, Senate Bill 9 changed the driver's license data field element from "sex" to "gender." The change standardized the State's driver's license processes with other states when they rely upon secure, supporting documentation (e.g., U.S. Passport, birth certificates from other states) to support driver's license issuance. The change to "gender" was explicit and focused specifically on State driver's license laws.
5. The change to "gender" in 2007 for State driver's license created a need for KDOR to provide guidance on normalization of driver's license examiners processing of gender correction requests. Because the State examiner may be confronted with two source identity documents, a U.S. Passport and a Kansas birth certificate, a process was necessary to record the variance in documents and why the applicant's gender was reflected in a certain way. The 2011 policy helped KDOR avoid inconsistent processing of this gender issue and address potential American with Disability claims. (Attached hereto and incorporated as KDOR's Exhibit B). This policy, crafted during Governor Sam Brownback's administration, has been followed for twelve years.
6. KDOR is not aware of any current controversies with its customers where the customer has been injured or suffered due to KDOR's ongoing reliance on "gender" as required by K.S.A. 2022 Supp. 8-240(a) and K.S.A. 2022 Supp. 8-243(c). KDOR

is not aware of any real-world situations wherein State law enforcement organizations have had fugitives escape capture or incarceration due to KDOR gender policy. KDOR is not aware of any complaints from other governmental or commercial entities that have claimed injury because of the status quo, nor has the Petitioner identified any actual harm incurred by the public because of KDOR's ongoing compliance with K.S.A. 2022 Supp. 8-240 and K.S.A. 2022 Supp. 8-243. How an applicant identifies "gender" supports one of the primary purposes of the driver's license, that the person stopped during a traffic stop or attempting to cash a check at a bank, is who they say they are and that their clothes and appearance match the photo and gender marker on the card.

7. KDOR continues to rely upon both State-based and non-Kansas documentation to validate an applicant's identity, including gender. Non-Kansas documentation can consist of U.S. Passports, other state birth certificates, other state REAL ID credentials, USCIS immigration and/or citizenship documentation and are normally tied to the applicant's gender rather than sex. In a significant portion of transactions, KDOR will not be aware of prior issues of gender change because the initial documents relied upon by Respondent will not provide a history of gender change (e.g., U.S. Passport or out of State birth certificate) KDOR continues to display the gender indication provided by the applicant that is supported by valid documentation set out in the Division of Vehicle's form DE-56a. (Attached hereto and incorporated as KDOR's Exhibit C).

8. KDOR’s driver’s license system and database can maintain two sets of information simultaneously. KDOR data system can display the current data field of “gender” and retain the history of past transactions associated with changes to applicant’s gender field. The drivers’ license system can identify each individual both with their current gender and with any historical data provided that identifies the individual’s prior reported gender (e.g., applicant election with supporting Kansas birth certificate) – the quality of this data is dependent on the documentation provided by the applicant. This documentation is routinely of non-Kansas origin. See Table below as indication of current driver’s license system capabilities to maintain a data field for “gender” and the ability to identify prior elections of gender based on supporting documentation:

Date	Gender Change Requests	Total Credentials Issued
7/2019 - 12/2022	233	
Jan-23	2	65,577
Feb-23	4	60,596
Mar-23	6	76,617
Apr-23	23	63,154
May-23	71	69,578
Jun-23	172	74,875
Jul-23	3	
<b>Total</b>	<b>514</b>	

as of 7/7/23

## ARGUMENT

1. KDOR agrees that the Court is to evaluate five factors when considering this TRO request. *Steffes v. City of Lawrence*, 284 Kan. 380, 394 (2007). Consideration of the five factors weighs against issuance of the TRO. The purpose of a TRO is to preserve the relative position of the parties until a final decision on the merits. The current status quo is that an applicant wanting to provide up to date documentation of the applicant's current "gender" on the driver's license, and that KDOR retains a history of prior gender elections, including a sex at birth designation derived from a Kansas birth certificate. Petitioner is requesting an affirmative change from the status quo – that KDOR diverge from its current process of relying upon "gender" for purposes of developing identity under K.S.A. 2022 Supp. 8-240(c) and K.S.A. 2022 Supp. 8-243(a). A KDOR process that has been in place statutory since July 2007 (16 years) and a supporting administrative process that has been in place since May 2011 (12 years).
2. The TRO, if maintained, would be a departure from the status quo. See *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 689 P.2d 860 (1984). Purpose of restraining order as provisional remedy to party entitled to relief is to restrain a defendant for a very brief period, pending hearing on application for temporary injunction, and the order can go no further than to preserve status quo until hearing is held for temporary injunction, the status quo being the last actual, peaceable, non-contested position of the parties which preceded the pending controversy. K.S.A. 60-903. **A TRO, without hearing and *ex parte*, should never change the status quo and KDOR must have its day in court**

**before this affirmative TRO was issued.** See *Burnett v. Doyen*, 220 Kan. 400, 404, 552 P.3d 928 (1976); See Also 43 C.J.S. Injunctions 8.

3. Petitioner is not entitled to the relief sought for the more specific, explicit statutes in K.S.A. 2022 Supp. 8-240 and K.S.A. 2022 Supp. 8-243 control over the non-driver's license specific language in SB 180. Furthermore, Petitioner has provided no actual evidence of injury or suffering beyond the hypothetical, and nor has Petitioner attested to existence of injury under K.S.A. 60-902.

*Substantial Likelihood of Eventually Prevailing on the Merits*

4. Petitioner has elected to proceed under mandamus under K.S.A. 60-801 and to secure this peremptory order pursuant to K.S.A. 60-802(b). Petitioner must therefore show that its right to require the performance of an act is clear to change the status quo. KDOR maintains that the opposite to Petitioner's request is clear, that SB 180 does not affect KDOR's requirements under K.S.A. 2022 Supp. 8-240 and K.S.A. 2022 Supp. 8-243. SB 180 contains no explicit language relating to driver's license. Other states relying upon the third parties' model legislation to amend their laws in 2023, took the specific steps to identify driver's licenses when crafting their laws (Montana) or their laws did not associate "gender" within their driver's license laws. (Tennessee)<sup>4</sup> The Legislature in SB 180 chose not to address the "gender" classification in its driver's license laws.

Statements made at hearing on the bill indicate Committee members understood there to

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<sup>4</sup> See Tennessee Senate Bill 1440, Sec. 1 (2023) (Tennessee uses "sex" rather than "gender" in its driver's license statute TN ST Sec. 55-50-321); See Also Montana Senate Bill 458, Sec. 40 (2023) (Montana's license statute uses "sex" instead of "gender" and this policy decision specifically address that state's license procedures).

be difference between “sex at birth” under SB 180 and the existing “gender” identity used for driver’s licenses.<sup>5</sup>

5. “Gender” and “sex” are not so easily interchanged as Petitioner claims in its motion and Petition. If such terms are synonymous, why did the Legislature go to the trouble to amend K.S.A. 8-240 and K.S.A. 8-243 in 2007 from “sex” to “gender.” Petitioner’s citation to Justice Ginzburg’s question and answer interview wasn’t a substantive discussion on the difference between gender and sex, but a rather unfunny poke at males because use of the term “sex” would distract them due to sexual connotations. See 70 Ohio St. L.J. 805, 817 (2009). Merriam-Webster Dictionary (11<sup>th</sup> Ed. 2003), states in reference to sex and gender, “among those who study gender and sexuality, a clear delineation between sex and gender is typically prescribed, with sex as the preferred term for biological forms, and gender limited to its meanings involving behavioral, cultural, and psychological traits.”<sup>6</sup> Webster’s New International Dictionary 2296 (2d ed. 1953) noted a distinction in the terms as synonyms, for sex refers to physiological distinctions; gender, to distinctions in grammar.” The United States Supreme Court in *Bostock v. Clayton County, George*, 140 S.Ct. 1731, 1739, 1748, 207 L.Ed.2d 218 (2020), discusses

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<sup>5</sup> During hearing testimony on March 6, 2023, before the House Health and Human Services Committee Hearing, Representative Ron Bryce (R) inquired of a witness, Hadley Heath Manning: “You mentioned there was a distinct difference between biological sex and gender, and I went back over the Bill...the word gender is not in the Bill, but I hear most proponents or opponents are mentioning gender as a basis for their arguments...what did you mean by ‘there is a distinct difference between biological sex and gender?’” Ms. Manning responded, “Biological sex is objective. It is scientific. It is something that we can observe, and it comes down to being male or female in a biological sense. Gender identity is subjective. It is how one feels. It can be on a spectrum. It can be something people choose.” Representative Bryce concludes “I think it is very important to keep the distinction in definitions.”

<sup>6</sup> See also Merriam Webster Internet Edition, Link of July 10, 2023, “<https://www.merriam-webster.com/dictionary/gender?src=search-dict-box>”



this issue in *dicta* acknowledging a growing difference between sex as a biological distinction and gender identity as capturing something more than anatomy.<sup>7</sup>

6. Even if the Court finds that SB 180 applies in some form to KDOR's driver's license process, SB 180, specifically Sec. 1(c) can be administered harmoniously with KDOR's current practices for KDOR is able to retain indications of "sex at birth" and will continue to do so. (See Legal & Factual Background, paragraph 8 above). The State's driver's license system collection of data can identify an applicant's history of gender designation, including documentation showing sex at birth, but this is contingent on the applicant's historical, submitted documentation. SB 180, Sec. 1(a) does not address the issue of "gender" of the driver's license applicant. Vital statistics with driver's license issuance are separate governmental functions. There is no explicit provision in Kansas statutes that connects current information<sup>8</sup> on a driver's license to the historical, discrete data elements on vital statistic documentation under K.S.A. 65-2401 *et seq.*<sup>9</sup> Vital Statistics is managed by a different agency for a different purpose.
7. If the Court considers that SB 180 to conflict with K.S.A. 2022 Supp. 8-240 and K.S.A. 8-243, it should adopt the general rule that the more specific statute controls. The use of

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<sup>7</sup> Justice Alito's dissent goes further and argues "sex" and sex stereotypes (gender identity) are not the same and that sex discrimination is different from gender identity discrimination. 1764, 1772; See also Kavanaugh dissent footnote 6, "American Psychological Association describing 'transgender' as '[a]n umbrella term encompassing those whose gender identities or gender roles differ from those typically associated with the sex they were assigned at birth.'"

<sup>8</sup> Data fields like name, image, address, city, zip, driver status, weight, and height, are constantly changing through time and that is the primary utility of the driver's license, whereas information in vital statistics is discrete and determinations fixed in a time. The driver's licenses data fields need to be constantly updated to serve as an up-to-date identification tool. (e.g., law enforcement, voting, support commercial transactions)

gender in the driver's license laws is more specific. *In re Mental Health Ass'n of Heartland*, 289 Kan. 1209, 1215 (2009). The ordinary words of SB 180 do not address driver's licenses and does not amend K.S.A. 2022 Supp. 8-240 or K.S.A. 2022 Supp. 8-243, so it should not be considered the most recent enactment on the topic of driver's license by the Legislature.

8. Mandamus is not available to require performance of an act that involves the exercise of discretion by the public official, nor does it lie to enforce a right which is in substantial dispute. *State ex rel. Stephan v. Kansas Racing Comm'n*, 246 Kan. 708, 716, 792 P.2d 971 (1990). The Director of Vehicles is charged with the administration of the Division of Vehicles. K.S.A. 75-5110. The Division of Vehicles is required to accept original applications for valid driver's license and approve such applications if all applicable requirements of the motor vehicle drivers' license act have been complied with . . . which license shall be issued as provided in this act. " K.S.A. 8-235b. The Division shall examine the applicant for driver's license, if examination is required, including proof of identity, K.S.A. 8-235d(b)(1), and shall not issue a driver's license to an individual that has not proven identity under K.S.A. 2022 Supp. 8-240. K.S.A. 8-237(h).
9. This process can require the review of many documents that may or may not be consistent. This day-to-day application of judgment to each applicant's specific circumstances require the examiners to exercise judgment or opinion. See *Stephen*, 246 Kan. at 717; See also *Arney v. Director, Kansas State Penitentiary*, 234 Kan. 257, 261 (1983). Conduct of the Director of Vehicles and his driver's license examiners in

comparing the elections of applicants with their supporting documentation is a discretionary function, and relief through mandamus does not lie. As stated earlier, an examiner must consider and weigh contrasting identity documentation for gender markers. Additionally, the driver's license examiner may have to factor in medical documentation of what constitutes sex development diagnosis or associated conditions provided by a treated physician. See KDOR's Exhibit B.

10. Other states have evaluated driver's license issuance on whether such actions are discretionary or ministerial in nature, and consistently held such functions to be discretionary. See *C.L. v. Olson*, 143 Wis.2d 701 (1988); See Also *Ramos v. Texas Dept. of Public Safety*, 35 S.W.3d 723 (2000); See Also *Papelian v. State of California*, 65 Cal.App.3d 958 (Court of Appeal, 2nd Dist., Division 1 1976); See Also *Richardson v. Dept. of Motor Vehicles*, 25 Cal.App.5th 102 (Court of Appeals, First District Division 3, 2018).

*Is there a Reasonable Probability of Suffering Irreparable Future Injury?*  
*Will the Issuance of the Affirmative TRO have an Adverse Public Interest?*

11. As indicated earlier, KDOR's current compliance with K.S.A 2022 Supp. 8-240 and K.S.A. 2022 Supp. 8-243 regarding communicating gender has been in place for over twelve years. Petitioner has provided no evidence of actual injury incurred by law enforcement but for potential hypotheticals in brief. Law enforcement has not promoted legislation require KDOR change its practice. Associating gender marker on the

credential is the better, safer method for assisting law enforcement to connect the credential with the person before them.

12. Petitioner failed to show that immediate and irreparable injury, loss, or damage would result to the State. Petitioner's argument regarding "accuracy" is at best speculative and KDOR believes that upon deeper review the Court will find the argument absurd. Having accurate and consistent gender markers on IDs will help law enforcement appropriately identify people. This will also assist with accurate identification for public services/resources. Petitioner's position burdens Kansas citizens and the State. An affidavit filed by the Petitioner after the initial filing contains no actual attestation by Petitioner that there will be injury or harm suffered if the TRO is not issued. K.S.A. 60-903(a)(1) requires specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition. There are no facts listed that show immediate injury, loss, or damage in the AG's affidavit.
13. Under K.S.A. 60-903(a)(2), the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required. The Petitioner did not certify any efforts made to give notice and the reasons it should not be required in the affidavit. While Petitioner updated a partial, not complete affidavit on Friday late afternoon, KDOR was not given an opportunity to be heard, which would have been feasible, before the TRO was granted. KDOR does not waive statutory requirements of attestation and verification under K.S.A. 60-902.

14. Regarding organ donation, KDOR's role is not to provide the base medical information to convince the physician making the surgical call for transplant. KDOR connects the driver's license applicant with the donor registry so that the parties can further coordinate without the Division of Vehicles' involvement. See K.S.A. 8-247(g) and K.S.A. 65-3239. Petitioner's claims on organ donation risk are hypothetical and make an unlikely assumption that because the organ donation indication is on the driver's license there is no further need for genetic and blood matching before transplant surgery. KDOR finds that unlikely.
15. The State of Kansas will be harmed by the TRO for many Kansas residents that depend on their driver's license to indicate gender to their employers and other aspects of society will be in a position of having to explain the gender on their license and how they present to society. The TRO compels all pre-July 1 gender change applicants to have their driver's licenses corrected, changing KDOR's determination of gender, upon applicants next scheduled return to the driver's license examiner offices based on a law that does not expressly address "gender" and was not in effect when KDOR made the gender determination.
16. The State of Kansas will be harmed by the TRO being approved as the Attorney General and the Kansas Department of Revenue *will have to address together* numerous Federal and/or State lawsuits. Claimants may bring claims of violation of the Americans with

Disability Act.<sup>10</sup> Claimants may bring actions under State law of violations of Sec. 1 of the Kansas Constitution. Claimants may bring actions under Federal and State Equal Protections laws.<sup>11 12</sup> Maintenance of this TRO could create actionable claims by private individuals in separate Federal and State actions.

*Remedy Available*

17. Petitioner has not explored options that may exist under K.S.A. 77-601 *et seq.*, (Kansas Judicial Review Act) and the KJRA is the exclusive means of judicial review of agency action. Agency action is subject to review under K.S.A. 77-621.
18. There is a remedy available to the Legislature for addressing KDOR's ongoing compliance with gender marker and K.S.A. 2022 Supp. 8-240 and K.S.A. 2022 Supp 8-243. The 2024 Legislative Session can consider proposals for amendment to K.S.A. 8-240(c) and K.S.A. 8-243(a) regarding gender by explicitly connecting "gender" to definitions in Section 1 of SB 180. Such 2024 proposal, if passed into law, would not jeopardize the State's ongoing Federal REAL ID compliance but would create challenges for KDOR in its equal application of the law between driver's license applicants using a

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<sup>10</sup> See ADA broad definition of disability, 42 U.S.C. Sec. 12102(4)(A); SB 180, Sec. 1(a)(7) is problematic for term "medically verifiable diagnosis of 'disorder/differences in sex development'" appears to have been dropped from the most recent DSM-5, and the applicability of gender related syndromes and/or conditions to the ADA disability definition is developing and very fact specific. See *Williams v. Kincaid*, 45 F.4th 759, fn. 7 (U.S. Ct. of Appeals, 4 Cir. 2022).

<sup>11</sup> State action is unconstitutional when it creates "arbitrary or irrational" distinctions between classes of people out of "a bare ... desire to harm a politically unpopular group." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446-447 (1985).

<sup>12</sup> The treatment of intersex and/or transgender classes has been recognized under equal protection case(s) See *Bowen v. Gilliard*, 483 U.S. 587; See Also *F.V. v. Barron*, 286 F.Supp.3d 1131, 1145 (D.Idaho 2018).

Kansas birth certificate versus applicants that rely upon out of state birth certificates or U.S. Passport.

19. There is a remedy available to Petitioner and any hypothetical law enforcement officer, for the driver's license database retains gender history of the applicants and law enforcement can work with Division of Vehicles, like they have on many other issues, to develop a solution if there is in fact an immediate need as claimed by Petitioner.
20. This TRO and injunctive relief have been issued without consideration of KDOR's arguments. In consideration of the drastic consequences of a restraining order, the party to be restrained should be heard, when feasible, before the TRO dissolved. *Unified Sch. Dist. No. 503 v. McKinney*, 236 Kan. 224, 227, 689 P.2d 860, 865 (1984).

## CONCLUSION

Mandamus, and therefore utilization of this immediate temporary restraining order request, are not appropriate unless there is a clear legal duty alleged. The authority claimed by Petitioner that SB 180 implicitly controls over the specific, existing K.S.A. 8-240 and K.S.A. 8-243 is not clear. Rather it is clear that the driver's licensing specific statutes continue to control, and KDOR's actions are concordant with law. Petitioner is unlikely to prevail on this issue at a full hearing. There is no established, actual harm shown by the Petitioner if KDOR's processes are maintained (the current status quo), beyond hypothetical cases. There will be serious harm and public impact to individuals if they must reclassify their gender as requested by Petitioner. For all these reasons, KDOR requests the TRO be dissolved and that the Mandamus matter proceed to full hearing by the Court or be dismissed based justifications set out above.

Respectfully submitted this 10<sup>th</sup> day of July 2023.

/s/ Ted E. Smith  
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CERTIFICATE OF SERVICE

I, Ted E. Smith, do hereby certify that on Monday, July 10, 2023, a copy of the Respondents/KDOR's "MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER" was deposited in the Eflex Court Filing system and copies were electronically delivered via Eflex and through email communication to:

Anthony Powell at Anthony.powell@ag.ks.gov  
Dwight Carswell at Dwight.carswell@ag.ks.gov  
Jesse Burris at Jesse.burris@ag.ks.gov

A physical, bench copy was also mailed to the Court, the Honorable Teresa Watson, Division 3, Office 324, 200 SE 7<sup>th</sup> St., Topeka, KS 66603

/s/ Ted Smith \_\_\_\_\_  
Ted E. Smith, Attorney #16737

KDOR/Respondent Exhibit A  
SENATE BILL No. 180

AN ACT establishing the women's bill of rights; providing a meaning of biological sex for purposes of statutory construction.

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

Section 1. (a) Notwithstanding any provision of state law to the contrary, with respect to the application of an individual's biological sex pursuant to any state law or rules and regulations, the following shall apply:

(1) An individual's "sex" means such individual's biological sex, either male or female, at birth;

(2) a "female" is an individual whose biological reproductive system is developed to produce ova, and a "male" is an individual whose biological reproductive system is developed to fertilize the ova of a female;

(3) the terms "woman" and "girl" refer to human females, and the terms "man" and "boy" refer to human males;

(4) the term "mother" means a parent of the female sex, and the term "father" means a parent of the male sex;

(5) with respect to biological sex, the term "equal" does not mean "same" or "identical";

(6) with respect to biological sex, separate accommodations are not inherently unequal; and

(7) an individual born with a medically verifiable diagnosis of "disorder/differences in sex development" shall be provided legal protections and accommodations afforded under the Americans with disabilities act and applicable Kansas statutes.

(b) Laws and rules and regulations that distinguish between the sexes are subject to intermediate constitutional scrutiny. Intermediate constitutional scrutiny forbids unfair discrimination against similarly situated male and female individuals but allows the law to distinguish between the sexes where such distinctions are substantially related to important governmental objectives. Notwithstanding any provision of state law to the contrary, distinctions between the sexes with respect to athletics, prisons or other detention facilities, domestic violence shelters, rape crisis centers, locker rooms, restrooms and other areas where biology, safety or privacy are implicated that result in separate accommodations are substantially related to the important governmental objectives of protecting the health, safety and privacy of individuals in such circumstances.

(c) Any school district, or public school thereof, and any state agency, department or office or political subdivision that collects vital statistics for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic or other data shall identify each individual who is part of the collected data set as either male or female at birth.

18 KDOR Exhibit A

SENATE BILL No. 180—page 2

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_

SENATE concurred in  
HOUSE amendments \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*

19 K DOR Exhibit A

KDOR Respondents B

Division of Vehicles  
915 SW Harrison St  
Topeka KS 66612-1588



Phone: 785-296-3601  
FAX: 785-291-3755  
www.ksrevenue.org

Nick Jordan, Secretary  
Donna Shelite, Director

Department of Revenue

Sam Brownback, Governor

**To:** State Driver's License Examiners  
**From:** Ted E. Smith, KDOR Staff Attorney  
**Date:** May 10, 2011  
**Subject:** Requests for Gender Reclassification on Kansas driver's licenses and identification cards

Method for Gender Reclassification based on Court Order

The Kansas Division of Vehicles (hereafter "Division") will rely upon a court order announcing a gender reclassification to support an applicant's requested gender change on a State-issued driver's license or identification card. The applicant must provide the examiner with an original order or file stamped photocopy of the order. The Division retains the right to retain the pleadings provided. It is not necessary that the Division be specifically named in the lawsuit or that the Division is specifically ordered to change the applicant's gender classification. If the court order of gender reclassification announces a new, full legal name for the applicant, the examiner may rely upon the order to modify the applicant's full legal name.

Method for Gender Reclassification based on Medical Declaration

The applicant is required to mail a written request to the Kansas Chief Driver's License Examiner, Division of Vehicles – Kansas Department of Revenue, Docking State Office Building, RM 130, 915 SW Harrison, Topeka, KS 66612

The request must include all of the following:

- 1) A letter from the applicant requesting the change in gender classification. The letter must include: the applicant's current full legal name, Kansas residential address, and gender classification shown on the applicant's current driver's license or identification card, as well as the name, residential address, and gender classification the applicant wants on the new driver's license or identification card. The applicant should also include the applicant's current phone number and email address, if any.
- 2) The applicant must also provide a letter on official letterhead from the applicant's licensed medical, osteopathic physician stating that applicant has undergone the appropriate clinical treatment for change of sex or that the physician has re-evaluated the applicant and determined that gender reclassification based on physical criteria is appropriate.
- 3) The applicant must provide a photocopy of the applicant's current Kansas driver's license or identification card.

KDOR Respondents B

If the Division approves the request, the applicant will receive a letter from Chief Driver's License Examiner authorizing the applicant's change of gender designation. After the applicant receives this authorization letter, the applicant may visit any Kansas driver's licensing exam station to update the applicant's records and get a new driver's license or identification card. The applicant must take all of the following to the exam station: the Division's authorization letter, the applicant's current driver's license/identification card, and the appropriate fee required by law to secure an original, renewal, or replacement driver's license.

Procedural Limitations on Considering Gender Classification Request

If the applicant wants to change the applicant's full legal name in the Division's record, the applicant must also include an original or certified copy of a court order of name change.

Please Note: the simple production of medical records will not suffice to justify gender reclassification. The Division requires an emphatic declaration or finding of gender classification by the applicant's attending physician - this declaration or finding need not be specifically directed to the Kansas Division of Vehicles.

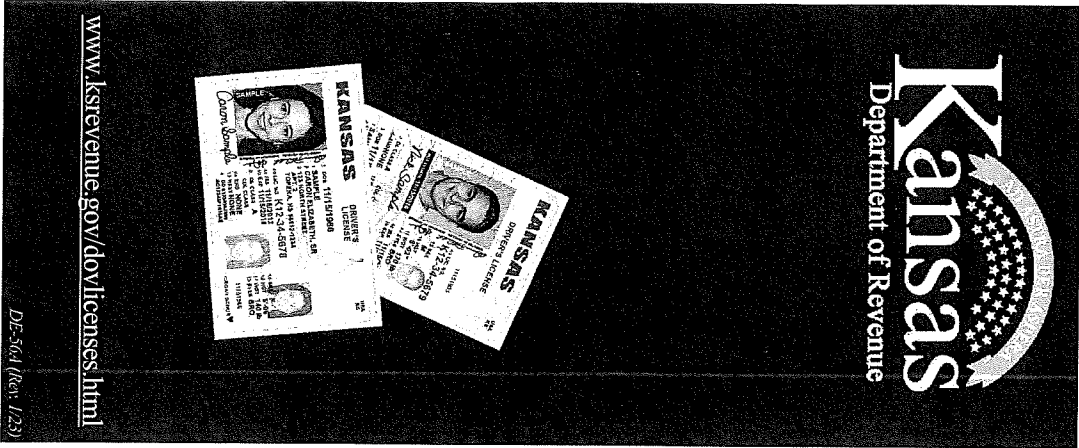
Medical information provided to the DMV will be held in strictest confidence per K.S.A. 2010 Supp. 45-221(a)(1), and the Federal Driver's Privacy Protection Act, section 2721 *et seq.*

Historical Gender Classification

If the applicant has had a prior gender classification change on the applicant's driver's license or identification card, using a letter from your physician or mental health care provider, court order, or other declaration, such applicant is grandfathered and no further action is necessary to maintain the current gender classification on the Kansas driver's license or identification card.

KDOR Exhibit B

KDOR Respondents C



**Getting Started**

Are you planning to obtain a Kansas license, permit, or identification card? Please follow these steps to ensure your visit to the driver's license office goes smoothly.

1. Please use this checklist to verify you have all required documents. You must provide the documents from each number in the section of service needed.  
*Ex: Lawful presence document, 2 pieces of mail, SSC, and legal name change document (if applicable) would all be required to add the REAL ID indicator.*
2. Make sure your documents are original or certified copies. Faxed, photocopied, laminated, or electronic copies cannot be accepted.
3. Verify mail has residential address, not a PO box or separate mailing address only. Mail is not limited to the 4 options on this list.
4. When you have all required documents for the service you are needing, please visit [www.kstrevenue.gov/DOV/AppointmentsInfo/](http://www.kstrevenue.gov/DOV/AppointmentsInfo/) to schedule an appointment to receive priority service.

Please visit <https://www.kstrevenue.gov/dov/qd.html> for teen driver information and for online service options, <https://kstrevenue.gov/dov/licenseservices.html>.

**Renewal**

1. **Kansas Credential**  
 Driver's License Identification Card  
 Learner's Permit

2. **One Proof of Kansas Residential Address**  
*Proof must be in your name*  
 Cancelled Mail  
 USPS Change of Address Form  
 Utility Bill  
 Lease Agreement

**Please note:** If you surrendered your Kansas credential to another state, or your Kansas credential has been expired over 1 year, you will be required to present all documents from the First-Time Kansas Credential section.

**Out of State Transfer or First-Time Kansas Credential**

1. **One Proof of Lawful Presence**  
 State-Issued Birth Certificate  
 Unexpired Passport  
 Certificate of Citizenship or Naturalization  
 U.S. Consular Report of Birth Abroad  
 Valid Permanent Resident Card  
 Valid Employment Authorization Card  
 Foreign students must present I-20 or DS-2019  
*Birth registration cards, hospital certificates, foreign-born, birth certificates, and Bureau of Census registrations cannot be accepted.*

2. **Two Proofs of Kansas Residential Address**  
*Proof must be in your name*  
 Cancelled Mail  
 USPS Change of Address Form  
 Utility Bill  
 Lease Agreement

3. **One Proof of Social Security Number**  
 Social Security Card  
 1040, W-2, or Tax Return (Must show full SSN)

4. **Legal Name Change Document** (If applicable)  
*If the name on your lawful presence document is different than your current name, you will also need your legal name change document.*  
 Government-Issued Marriage Certificate  
 Court Order of Legal Name Change  
 Divorce Decree with Name Change Declaration  
 Adoption Decree

5. **Out of State Credential** (If applicable)  
*If you have been issued a credential from another state, in addition to the above documents, you will need to present one document below.*  
 Most recently issued out of state credential  
 Temporary copies or photocopies cannot be accepted  
 MVR or Clearance letter dated in the last 30 days  
*May be obtained by contacting the state that issued your out of state credential.*

KDOR Exhibit C / Responses

**Replacement**

**1. Two Proofs of Identification**

- State-Issued Birth Certificate
- Student or Employee Identification Card
- Expired License or Identification Card
- Medical or Immunization Records
- Unexpired Passport
- Department of Corrections identification
- Voter Registration Card
- Professional License
- W-2, Check Stub, or Tax Return
- Vehicle Registration or Title
- Disabled Identification Card
- Military ID, DD-214, or NGB22
- Certificate of Citizenship or Naturalization
- U.S. Consular Report of Birth Abroad
- Valid Permanent Resident Card
- Valid Employment Authorization Card
- Foreign students will also need to present I-20 or DS-2019

**2. One proof of Kansas Residential Address**

- Proof must be in your name*
- Cancelled Mail
  - USPS Change of Address Form
  - Utility Bill
  - Lease Agreement

**Name Change**

**1. Kansas Credential**

- Driver's License
- Identification Card
- Learner's Permit

**2. One Proof of Kansas Residential Address**

- Proof may be in your previous name*
- Cancelled Mail
  - USPS Change of Address Form
  - Utility Bill
  - Lease Agreement

**3. Legal Name Change Document**

- Government-Issued Marriage Certificate
  - Court Order of Legal Name Change
  - Divorce Decree with Name Change Declaration
  - Adoption Decree
- Church or duplicate licenses cannot be accepted*

**Adding REAL ID Indicator**

**1. One Proof of Lawful Presence**

- State-Issued Birth Certificate
  - Unexpired Passport
  - Certificate of Citizenship or Naturalization
  - U.S. Consular Report of Birth Abroad
  - Valid Permanent Resident Card
  - Valid Employment Authorization Card
  - Foreign students must present I-20 or DS-2019
- Birth registration cards, hospital certificates, foreign-born birth certificates, and Bureau of Census registrations cannot be accepted.*

**2. Two Proofs of Kansas Residential Address**

- Proof must be in your name*
- Cancelled Mail
  - USPS Change of Address Form
  - Utility Bill
  - Lease Agreement

**3. One Proof of Social Security Number**

- Social Security Card
- 1040, W-2, or Tax Return (*Must show full SSN*)

**4. Legal Name Change Document (if applicable)**

*If the name on your lawful presence document is different than your current name, you will also need your legal name change document.*

- Government-Issued Marriage Certificate
- Court Order of Legal Name Change
- Divorce Decree with Name Change Declaration
- Adoption Decree

**Address Change**

**1. Kansas Credential**

- Driver's License
- Identification Card
- Learner's Permit

**2. One Proof of Kansas Residential Address**

- Proof must be in your name*
- Cancelled Mail
  - USPS Change of Address Form
  - Utility Bill
  - Lease Agreement

**Adding Veteran Indicator**

**2. Attorney General Approval Letter**

- Must display current name and address*
- License Renewal Approval
  - License Reissue Approval

In addition to all required documents for your service needed, please present one document below if you would like to add "Veteran" to your Kansas credential.

- DD-214 or NGB-22 with honorable discharge
- VA Card
- Retired Military ID

**Additional Information**

- Proof of SSN is not required for temporary residents in the U.S. on a non-work authorized status.
- If you have completed an approved driver's education course, in addition to all required documents in this checklist, you will also need to provide your Certificate of Completion for office testing to be waived.
- If you have a DOT medical card, please present that at every driver's license office visit.

Questions? Please email [KDOR\\_DL@KS.GOV](mailto:KDOR_DL@KS.GOV)