

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.* KRIS)
KOBACH, Attorney General,)
)
 Petitioner,)
)
 v.)
)
 DAVID HARPER, Director of Vehicles,)
 Department of Revenue, in his official)
 capacity, and)
 MARK BURGART, Secretary of Revenue,)
 in his official capacity,)
)
 Respondents.)

Case No. SN-2023-CV-000422

Pursuant to K.S.A. Chapter 60

**AFFIDAVIT OF KRIS W. KOBACH IN SUPPORT OF MOTION FOR
TEMPORARY RETRAINING ORDER AND TEMPORARY INJUNCTION**

My name is Kris W. Kobach and I am more than 18 years of age and in all respects qualified to attest to the statements made in this affidavit. I currently serve as the Attorney General of Kansas and have served in this role since January 9, 2023.

I hereby affirm the following:

1. During the most recent legislative session, the Legislature passed SB 180, sometimes referred to as the “Women’s Bill of Rights.”
2. Although the Governor vetoed the bill, the Legislature overrode that veto on April 27, 2023, making such bill a duly enacted law of the State of Kansas under Kan. Const. art. 2, § 14(a).
3. SB 180 went into effect on July 1, 2023.
4. SB 180 defines “[a]n individual’s ‘sex’ [to] mean[] . . . biological sex, either male or female, at birth[.]” 2023 Kan. Sess. Laws 1230, 1230 (§ 1(a)(1)).

5. SB 180 also requires “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 [to] identify each individual who is part of the collected data set as either male or female at birth.” *Id.* at 1230–31 (§ 1(c)).

6. By statute, Kansas driver’s licenses “shall bear” the licensee’s “gender” among other information. K.S.A. § 8-243(a).

7. In practice, the Division has interpreted “gender” in this statute synonymously with “sex,” as evidenced by the fact that the actual license documents issued by the Division identify the holder’s “sex” and do not contain the word “gender.”

8. Said practice is consistent with other usages of the term “gender” in Kansas statutes, where that word is clearly intended as a synonym for “sex.”

9. On information and belief, instruction permits and nondriver’s identification cards issued by the Division (as well as the associated records maintained by the Division) also identify the holders of such documents by “sex.”

10. On information and belief, the Division maintains a database of information concerning all licensees. That database includes, among other things, the vital statistics of each licensee’s name, date of birth, sex, height, weight, and eye color. *See* K.S.A. 8-249.

11. Prior to the passage of SB 180, the Division had a policy by which a person could change the previously identified sex on his or her driver's license or other document.

12. Under the same or a similar policy, a new applicant could obtain a driver's license or other document with a sex designation that did not match the person's sex at birth.

13. As Attorney General, I by formal opinion concluded "that section 1(a) of SB 180, in conjunction with K.S.A. 8-243(a), requires KDOR to list a licensee's 'biological sex, either male or female, at birth' on driver's licenses that it issues." Kan. Att'y Gen. Op. 2023-2, at 4, *available at* <https://shorturl.at/amDIO> [hereinafter "AGO 2023-2"].

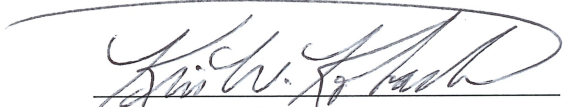
14. As Attorney General, I also by formal opinion concluded that section 1(c) of SB 180 requires KDOR to record licensees' sex at birth in the driver's license data set. AGO 2023-2, at 4.

15. Nonetheless, the Division is refusing to comply with SB 180.

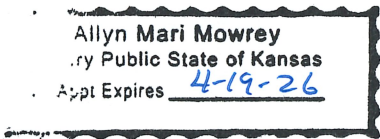
16. On information and belief, shortly before that new law went into effect, the Governor announced that she has instructed the Department of Revenue to "keep in place [its] policies regarding gender markers on . . . driver's licenses." John Hanna, *Transgender Kansas Residents Can Keep Updating Their Documents Despite a New Law, Governor Says*, Associated Press, June 29, 2023, *available at* <https://apnews.com/article/kansas-law-transgender-birth-certificates-driver-licenses-d5d3631b6e624f24733d0dbdedc9c35e>.

17. The Department of Revenue also added a header to the top of its webpage stating, “The enactment of Senate Bill 180 on July 1 will not impact the longstanding procedures for obtaining, renewing, and updating a Kansas driver’s license as they pertain to gender markers.” Kan. Dep’t of Revenue, <https://www.ksrevenue.gov/> (last visited July 7, 2023).

FURTHER AFFIANT SAITH NAUGHT.


Kris W. Kobach

Subscribed and sworn to before the undersigned on the 7th day of July, 2023.




NOTARY PUBLIC

My appointment expires:
4-19-26

CERTIFICATE OF SERVICE

I certify that on July 7, 2023, the above document was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants. A copy will be personally served on Respondents by serving an Assistant Attorney General pursuant to K.S.A. 60-304(d)(5). In addition, copies were electronically mailed to:

Ted Smith, Deputy General Counsel
Kansas Department of Revenue
ted.smith@ks.gov

Justin Whitten, Chief Counsel
Office of the Governor
justin.h.whitten@ks.gov

/s/ Kris W. Kobach