

# Journal of the House

FIFTY-EIGHTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Thursday, May 1, 2003, 9:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.  
The roll was called with 123 members present.  
Reps. O'Neal and Pottorff were excused on excused absence by the Speaker.  
Present later: Rep. O'Neal.

Prayer by guest chaplain, the Rev. L. Dean Thompson, pastor, Valley Falls and Coal Creek United Methodist Church, Valley Falls, and guest of Rep. Tafanelli:

Eternal God,

to you belong praise, glory, honor, and all blessing.

We approach your holy throne with boldness to ask for your continued strength and guidance in these the days of our lives.

You have promised your grace and mercy to us as we live and endeavor to contend for the which is good and right for ourselves and others.

We ask your continued guidance as we seek to find and do your will in all areas of life.

Bless we pray all who have authority over us. You have given wisdom to these who govern our state and we ask that your continued help be with them as they make decisions that would strengthen and prosper us.

On this National Day of Prayer help each of us to renew our covenants with you and with those who depend upon our willingness to do what is right and just and in the best interest of the welfare of our entire state.

As we have had to contend as a nation against evil in these days, grant us your fearless grace to make no peace with oppression. Help us to reverently use our freedom in the maintenance of justice, peace and truth for all of humankind.

Look graciously upon this body of government and where there is pride, subdue it; where there is need, supply it; where there is error, rectify it; where there is default, restore it.

We pray all of this in the name of the One, whose death and resurrection has given us life, abundantly and eternally. Amen.

The Pledge of Allegiance was led by Rep. Burgess.

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committee as indicated:

Committee of the Whole: **HB 2471**, **HB 2472**.

## COMMUNICATIONS FROM STATE OFFICERS

From Matthew Hickam, State Long-Term Care Ombudsman, in accordance with K.S.A. 75- 7306, Annual Report to the Legislature, Kansas Long-Term Care Ombudsman Office, October 1, 2001 to September 30, 2002.

From M. Lee Allison, State Geologist and Director, as required by Executive Order 2002-4, 2003 Kansas Energy Report.

From Janis DeBoer, Acting Secretary, 2002 Client Assessment Referral and Evaluation (CARE) Annual Report.

From Marilyn Scafe, Chair, Kansas Parole Board, Annual Report, Fiscal Year 2002.

From Kansas Natural Resources Legacy Alliance, in accordance with K.S.A. 2-1921 and 2-1922, Preliminary Report, May 1, 2003. Also can be viewed at [www.kdwp.state.ks.us/alliance/alliance.html](http://www.kdwp.state.ks.us/alliance/alliance.html).

From William H. Layes, Chief, Labor Market Information Services, Kansas Wage Survey, 2002 Edition. Also can be viewed at <http://laborstats.hr.state.ks.us>.

The complete reports are kept on file and open for inspection in the office of the Chief Clerk.

#### **MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY**

On motion of Rep. Holland, **HR 6025**, A resolution in memory of Jacob Lee Butler, was adopted.

There being no objection, the following remarks of Rep. Holland are spread upon the Journal:

I am extremely honored to stand before this body today to celebrate the life of Army Sgt. Jacob Lee Butler of Wellsville, who died April 1, 2003, in Assamawah, Iraq, while participating in Operation Iraqi Freedom. Jacob served as a reconnaissance scout with the 3rd Brigade of the First Armored Division. His awards and decorations include the Bronze Star Medal, Meritorious Service Medal, Army Commendation Medal with two oak leaf clusters, Army Achievement Medal, Good Conduct Medal, National Defense Service Medal, Armed Forces Expeditionary Medal with bronze service star and Purple Heart, earned in Operation Iraqi Freedom.

Most of us in this chamber only know of Jacob Butler as the first confirmed Kansas casualty of the war in Iraq. Yet Jacob's life story, like those of other Kansas heroes, tells of a resolute and determined person that valued family and an obligation for the greater good.

Jacob Butler was born April 26, 1978, in Merriam, Kansas, the son of James C. and Cynthia D. Butler. He lived in Merriam for several years before moving with his family to Wellsville in 1990, where he subsequently graduated from Wellsville High School in 1996. Randy Renoud, Jacob's high school viced principal, saw Jacob as a quiet, focused, and serious boy who had a strict sense of moral obligation and always looked towards the future. Dwayne Nolke, owner of Nolke's Cash Saver where worked after school hours, remembers Jacob as being a hard worker with a strong sense of obligation to his family. Jacob loved spending time with his family and friends and was especially close to his two nieces and nephew. He enjoyed raising cattle, and his hobbies included hunting and fishing. Jacob was truly the all-American, home town Kansas boy.

Jacob Butler made the ultimate sacrifice so that others could enjoy freedom and democracy. He will be dearly missed by all that knew him, loved him, and served with him. God bless you, Jacob Lee Butler, for making the world a better place to live in your own quiet, determined, and unselfish way.

Rep. Holland introduced Jacob Butler's parents, Jim and Cindy Butler, and other members of the family including his four brothers, James Jr., Josh, Joe, and Justin. Jim Butler also addressed a few remarks to the members of the House.

#### **INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS**

The following resolution was introduced and read by title:

HOUSE RESOLUTION No. 6026—

By Representative Larkin

A RESOLUTION in memory of James W. "Bill" Patton.

WHEREAS, James W. "Bill" Patton, 86, of Hiawatha died April 28 at a Hiawatha nursing home; and

WHEREAS, Bill Patton served in the Kansas House of Representatives from 1967 through 1970 and was a member of the Committees on Agriculture, Aviation, Banks and Banking, Cities of the Second Class, Soldiers Compensation, Commercial and Financial Institutions, Federal and State Affairs and Natural Resources; and

WHEREAS, Mr. Patton was a lifelong resident of Hiawatha, graduating from Hiawatha High School in 1933. He earned a bachelor's degree from Kansas State University in 1937. During World War II he served in the Army Air Corps as a B-17 command pilot with the 463rd Bomb Group, having served from 1940 until he was discharged as a Major in 1945. Subsequently he farmed near Hiawatha before becoming a trust officer with the Citizens State Bank of Hiawatha in 1960, a position which he held until his retirement in 1985; and

WHEREAS, Mr. Patton was a member of the First United Methodist Church of Hiawatha, Homer-White Post No. 66 of the Hiawatha American Legion, VFW Post No. 5210 of Hiawatha, Hiawatha Kiwanis Club and the Kansas State University Alumni Association. Mr. Patton also was a member of the Brown County Soil Conservation Board and the Kansas Farm Bureau. He volunteered for the Brown County Agricultural Museum of Hiawatha and was the first play-by-play announcer for the American Legion baseball team in Hiawatha; and

WHEREAS, Mr. Patton married Lyla A. Peterson on March 26, 1943. She survives. They are the parents of a daughter, Nora Patton-Taylor, two sons, Michael Patton and James Patton, and have four grandchildren, three great-grandchildren, plus a great-great-grandchild: Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That we extend our deepest sympathy to the family of James W. "Bill" Patton and express our appreciation for the public service he gave to his state and community; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives be directed to provide an enrolled copy of this resolution to Mrs. James W. Patton, 400 Woodbury Lane, Hiawatha, Kansas 66434.

#### MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

The motion of Rep. Ballou, in accordance with House Rule 1503 (b), that **HB 2053** be changed to the first measure under the order of business General Orders, was considered.

Having received the required 63 votes, the motion prevailed.

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Aurand, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2053**, **HB 2472**; **SB 195**, **SB 239**; **H. Sub. for SB 263**; **H. Sub. for SB 268**.

On motion of Rep. Aurand, the House went into Committee of the Whole, with Rep. Hayzlett in the chair.

#### COMMITTEE OF THE WHOLE

On motion of Rep. Hayzlett, Committee of the Whole report, as follows, was adopted:

Recommended that **SB 195**, **SB 239** be passed.

**HB 2053** be passed over and retain a place on the calendar.

Committee report recommending a substitute bill to **H. Sub. for SB 263** be adopted; and the substitute bill be passed.

Committee report recommending a substitute bill to **H. Sub. for SB 268** be adopted; and the substitute bill be passed.

On motion of Rep. Davis to amend **HB 2472**, Rep. Edmonds requested a ruling on the amendment being germane to the bill. The Rules Chair ruled the amendment not germane.

Also, on motion of Rep. Kirk **HB 2472** be amended on page 2, after line 13, by inserting the following:

"Sec. 2. K.S.A. 2002 Supp. 79-32,205 is hereby amended to read as follows: 79-32,205.

(a) There shall be allowed as a credit against the tax liability of a resident individual imposed under the Kansas income tax act an amount equal to 15% for tax year 2002, and 20% for tax year 2003 and all tax years thereafter, of the amount of the earned income credit allowed

against such taxpayer's federal income tax liability pursuant to section 32 of the federal internal revenue code for the taxable year in which such credit was claimed against the taxpayer's federal income tax liability.

(b) If the amount of the credit allowed by subsection (a) exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer.”;

And by renumbering sections accordingly;

On page 9, after line 5, by inserting the following:

“Sec. 5. K.S.A. 2002 Supp. 79-3635 is hereby amended to read as follows: 79-3635. (a)

(1) A claimant shall be entitled to a refund of retailers' sales taxes paid upon food during the calendar year 1998 and each year thereafter in the amount hereinafter provided. There shall be allowed for each member of a household of a claimant having income of \$12,500 or less, an amount equal to ~~\$72~~ \$84. There shall be allowed for each member of a household of a claimant having income of more than \$12,500 but not more than \$25,000, an amount equal to ~~\$36~~ \$42. There shall be allowed for a claimant who qualifies for an additional personal exemption amount pursuant to K.S.A. 79-32,121, and amendments thereto, an additional amount of ~~\$36 or \$72~~ \$42 or \$84, as the case requires. All such claims shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation or by a person or persons designated by the director.

(2) As an alternative to the procedure described by paragraph ~~†~~ (1), for all taxable years commencing after December 31, ~~2001~~ 2002, there shall be allowed as a credit against the tax liability of a resident individual imposed under the Kansas income tax act an amount equal to ~~\$36 or \$72~~ \$42 or \$84, as the case requires, for each member of a household. There shall be allowed for a claimant who qualifies for an additional personal exemption amount pursuant to K.S.A. 79-32,121, and amendments thereto, an additional amount of ~~\$36 or \$72~~ \$42 or \$84, as the case requires. If the amount of such tax credit exceeds the claimant's income tax liability for such taxable year, such excess amount shall be refunded to the claimant.

(b) A head of household shall make application for refunds for all members of the same household upon a common form provided for the making of joint claims. All claims paid to members of the same household shall be paid as a joint claim by means of a single warrant.

(c) No claim for a refund of taxes under the provisions of K.S.A. 79-3632 *et seq.* shall be paid or allowed unless such claim is actually filed with and in the possession of the department of revenue on or before April 15 of the year next succeeding the year in which such taxes were paid. The director of taxation may: (1) Extend the time for filing any claim under the provisions of this act when good cause exists therefor; or (2) accept a claim filed after the deadline for filing in the case of sickness, absence or disability of the claimant if such claim has been filed within four years of such deadline.

(d) In the case of all tax years commencing after December 31, ~~2001~~ 2002, the threshold income amounts prescribed in this section and subsection (c) of K.S.A. 79-3633, and amendments thereto, shall be increased by an amount equal to such threshold amount multiplied by the cost-of-living adjustment determined under section 1 (f)(3) of the federal internal revenue code for the calendar year in which the taxable year commences.

(e) *The provisions of this section shall be effective for all taxable years commencing after December 31, 2002.*”;

And by renumbering sections accordingly;

On page 10, in line 30, after “79-32,110,” by inserting “79-32,205,”; also in line 30, after “79-3620,” by inserting “79-3635,”;

On page 1, in the title, in line 9, after “79-32,110,” by inserting “79-32,205,”; in line 10, after “79-3620,” by inserting “79-3635,”;

Also, on motion of Rep. Reardon to amend **HB 2472**, Rep. Howell requested the question be divided. The question was divided.

On Part A of the motion of Rep. Reardon, the motion did not prevail. On Part B, the motion was withdrawn.

On motion of Rep. Larkin **HB 2472** be amended on page 2, in line 13, after the period by inserting “The provisions of this section shall expire upon the United States Congress

authorizing the states to require remote retailers to collect and remit use tax on retail transactions subject to the states' sales tax laws.”;

Also, on motion of Rep. Nichols to amend **HB 2472**, Rep. Edmonds requested a ruling on the amendment being germane to the bill. The Rules Chair ruled the amendment not germane. Rep. Nichols challenged the ruling, the question being “Shall the Rules Chair be sustained?”

Roll call was demanded.

On roll call, the vote was: Yeas 62; Nays 61; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Ballou, Barbieri-Lightner, Beggs, Bethell, Boyer, Brunk, Burgess, Carter, Compton, Cox, Dahl, DeCastro, Decker, Dreher, Edmonds, Faber, Freeborn, Goering, Goico, Gordon, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, D. Johnson, E. Johnson, Kauffman, Krehbiel, Landwehr, Light, P. Long, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, Osborne, Ostmeyer, Owens, Patterson, Powell, Powers, Schwab, Schwartz, B. Sharp, Shultz, Siegfried, Tafanelli, Vickrey, D. Williams.

Nays: Ballard, Betts, Burroughs, Campbell, Carlin, Craft, Crow, Davis, Dillmore, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Huntington, Jack, Kassebaum, Kirk, Klein, Kuether, Larkin, Loganbill, M. Long, Loyd, McKinney, J. Miller, Minor, Neighbor, Nichols, O'Malley, Pauls, Peterson, Phelps, Reardon, Rehorn, Reitz, Ruff, Sawyer, S. Sharp, Showalter, Shriver, Sloan, Storm, Svaty, Swenson, Thimesch, Thull, Toelkes, Ward, Wilk, J. Williams, Wilson, Winn, Yoder, Yonally.

Present but not voting: None.

Absent or not voting: O'Neal, Pottorff.

The Rules Chair was sustained.

Also, on motion of Rep. B. Sharp to amend **HB 2472**, the motion did not prevail.

Also, roll call was demanded on motion of Rep. Sawyer to amend **HB 2472** on page 2, after line 13, by inserting the following:

“Sec. 2. K.S.A. 2002 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117.

(a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal

income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments to such sections.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2002 Supp. 79-32,204 and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203 and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2002 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) *For taxable years commencing after December 31, 2002, the amount of any dividend income, to the extent such dividend income is excluded from federal adjusted gross income pursuant to any amendments to the federal internal revenue code enacted after December 31, 2002.*

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retire-

ment benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1) *et seq.*

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249 and amendments thereto.

(xiii) For taxable years beginning after December 31, 1993, the amount of income earned on contributions deposited to an individual development account under K.S.A. 79-32,117h, and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation.

(xv) For all taxable years beginning after December 31, 1999, amounts not exceeding \$2,000, or \$4,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2002 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.”;

And by renumbering sections accordingly;

On page 10, in line 30, after “79-32,110,” by inserting “79-32,117,”;

On page 1, in the title, in line 9, after “79-32,110,” by inserting “79-32,117,”;

On roll call, the vote was: Yeas 56; Nays 67; Present but not voting: 0; Absent or not voting: 2.

Yeas: Ballard, Betts, Burroughs, Carlin, Crow, Dahl, Davis, Dillmore, Feuerborn, Flaherty, Flora, Gatewood, Gilbert, Grant, Henderson, Henry, Holland, Huntington, Kassebaum, Kirk, Klein, Kuether, Larkin, Loganbill, M. Long, Loyd, McKinney, J. Miller, Minor, Myers, Nichols, O’Neal, Pauls, Peterson, Phelps, Powers, Reardon, Rehorn, Ruff, Sawyer, B. Sharp, Showalter, Shriver, Sloan, Storm, Svaty, Swenson, Thimesch, Thull, Toelkes, Vickrey, Ward, J. Williams, Wilson, Winn, Yoder.

Nays: Aurand, Ballou, Barbieri-Lightner, Beggs, Bethell, Boyer, Brunk, Burgess, Campbell, Carter, Compton, Cox, Craft, DeCastro, Decker, Dreher, Edmonds, Faber, Freeborn,

Goering, Goico, Gordon, Hayzlett, Hill, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kauffman, Landwehr, Light, P. Long, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Neighbor, Neufeld, Newton, Novascone, O'Malley, Osborne, Ostmeyer, Owens, Patterson, Powell, Reitz, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Tafanelli, Wilk, D. Williams, Yonally.

Present but not voting: None.

Absent or not voting: Krehbiel, Pottorff.

The motion of Rep. Sawyer did not prevail.

Also, having voted on the prevailing side, Rep. Boyer moved that the Committee of the Whole reconsider its action on the question, "Shall the Rules Chair be sustained?" on the Nichols amendment. The motion prevailed.

The question then reverted back to the question, "Shall the Rules Chair be sustained?" The Rules Chair was not sustained.

The question then reverted back to the motion of Rep. Nichols to amend on page 10, following line 29, by inserting the following:

"Sec. 6. K.S.A. 72-6410 is hereby amended to read as follows: 72-6410. (a) "State financial aid" means an amount equal to the product obtained by multiplying base state aid per pupil by the adjusted enrollment of a district.

(b) "Base state aid per pupil" means an amount of state financial aid per pupil. Subject to the other provisions of this subsection, the amount of base state aid per pupil is ~~\$3,890~~ *for the 2003-2004 school year is \$3,939, for the 2004-2005 school year is \$3,990, and for the 2005-2006 school year is \$4,040.* The amount of base state aid per pupil is subject to reduction commensurate with any reduction under K.S.A. 75-6704, and amendments thereto, in the amount of the appropriation from the state general fund for general state aid. If the amount of appropriations for general state aid is insufficient to pay in full the amount each district is entitled to receive for any school year, the amount of base state aid per pupil for such school year is subject to reduction commensurate with the amount of the insufficiency.

(c) "Local effort" means the sum of an amount equal to the proceeds from the tax levied under authority of K.S.A. 72-6431, and amendments thereto, and an amount equal to any unexpended and unencumbered balance remaining in the general fund of the district, except amounts received by the district and authorized to be expended for the purposes specified in K.S.A. 72-6430, and amendments thereto, and an amount equal to any unexpended and unencumbered balances remaining in the program weighted funds of the district, except any amount in the vocational education fund of the district if the district is operating an area vocational school, and an amount equal to any remaining proceeds from taxes levied under authority of K.S.A. 72-7056 and 72-7072, and amendments thereto, prior to the repeal of such statutory sections, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district under the provisions of subsection (a) of K.S.A. 72-1046a, and amendments thereto, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district pursuant to contracts made and entered into under authority of K.S.A. 72-6757, and amendments thereto, and an amount equal to the amount credited to the general fund in the current school year from amounts distributed in such year to the district under the provisions of articles 17 and 34 of chapter 12 of Kansas Statutes Annotated and under the provisions of articles 42 and 51 of chapter 79 of Kansas Statutes Annotated, and an amount equal to the amount of payments received by the district under the provisions of K.S.A. 72-979, and amendments thereto, and an amount equal to the amount of a grant, if any, received by the district under the provisions of K.S.A. 72-983, and amendments thereto, and an amount equal to 75% of the federal impact aid of the district.

(d) "Federal impact aid" means an amount equal to the federally qualified percentage of the amount of moneys a district receives in the current school year under the provisions of title I of public law 874 and congressional appropriations therefor, excluding amounts received for assistance in cases of major disaster and amounts received under the low-rent housing program. The amount of federal impact aid defined herein as an amount equal to

the federally qualified percentage of the amount of moneys provided for the district under title I of public law 874 shall be determined by the state board in accordance with terms and conditions imposed under the provisions of the public law and rules and regulations thereunder.”;

And by renumbering the remaining sections accordingly;

Also on page 10, in line 30, following “K.S.A.” by inserting “72-6410 and K.S.A.”;

On page 1, in the title, in line 9, following “amending” by inserting “K.S.A. 72-6410 and”;

Roll call was demanded.

On roll call, the vote was: Yeas 111; Nays 13; Present but not voting: 0; Absent or not voting: 1.

Yeas: Ballard, Barbieri-Lightner, Beggs, Betts, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Dreher, Feuerborn, Flaharty, Flora, Freeborn, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Henderson, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Huff, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Kirk, Klein, Krehbiel, Kuetner, Landwehr, Larkin, Light, Loganbill, M. Long, P. Long, Loyd, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Judy Morrison, Myers, Neighbor, Newton, Nichols, Novascone, O’Malley, O’Neal, Owens, Patterson, Pauls, Peterson, Phelps, Powell, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, Schwab, Schwartz, B. Sharp, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, D. Williams, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: Aurand, Ballou, Bethell, Edmonds, Faber, Hayzlett, Humerickhouse, Mason, Jim Morrison, Neufeld, Osborne, Ostmeyer, Wilk.

Present but not voting: None.

Absent or not voting: Pottorff.

The motion of Rep. Nichols prevailed.

Also, on motion of Rep. Faber **HB 2472** be amended on page 10, following line 29, by inserting the following:

“Sec. 6. K.S.A. 2002 Supp. 12-187 is hereby amended to read as follows: 12-187. (a)

(1) No city shall impose a retailers’ sales tax under the provisions of this act without the governing body of such city having first submitted such proposition to and having received the approval of a majority of the electors of the city voting thereon at an election called and held therefor. The governing body of any city may submit the question of imposing a retailers’ sales tax and the governing body shall be required to submit the question upon submission of a petition signed by electors of such city equal in number to not less than 10% of the electors of such city. *No city shall impose a retailers’ sales tax under the provisions of this act and pledge or use the revenue received therefrom to or for a school or school district for general use, education budget, capital improvement spending or any other educational funding purpose.*

(2) The governing body of any class B city located in any county which does not impose a countywide retailers’ sales tax pursuant to paragraph (5) of subsection (b) may submit the question of imposing a retailers’ sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as enumerated in the question, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited to the following: Local health departments, city, county or district hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home health care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, rural health clinics, integration of health care services, home health services and rural health networks.

(b) (1) The board of county commissioners of any county may submit the question of imposing a countywide retailers’ sales tax to the electors at an election called and held thereon, and any such board shall be required to submit the question upon submission of

a petition signed by electors of such county equal in number to not less than 10% of the electors of such county who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than  $\frac{2}{3}$  of the membership of the governing body of each of one or more cities within such county which contains a population of not less than 25% of the entire population of the county, or upon receiving resolutions requesting such an election passed by  $\frac{2}{3}$  of the membership of the governing body of each of one or more taxing subdivisions within such county which levy not less than 25% of the property taxes levied by all taxing subdivisions within the county. *No county shall impose a retailers' sales tax under the provisions of this act and pledge or use the revenue therefrom to or for a school district for general use, education budget, capital improvement spending or any other educational funding purpose.*

(2) The board of county commissioners of Anderson, Atchison, Barton, Butler, Cowley, Cherokee, Crawford, Ford, Jefferson, Lyon, Montgomery, Neosho, Osage, Ottawa, Riley, Saline, Seward, Wabaunsee, Wilson and Wyandotte counties may submit the question of imposing a countywide retailers' sales tax and pledging the revenue received therefrom for the purpose of financing the construction or remodeling of a courthouse, jail, law enforcement center facility or other county administrative facility, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire when sales tax sufficient to pay all of the costs incurred in the financing of such facility has been collected by retailers as determined by the secretary of revenue. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Butler, Cowley, Lyon, Montgomery, Neosho, Riley or Wilson county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189, and amendments thereto.

(3) (A) Except as otherwise provided in this paragraph, the result of the election held on November 8, 1988, on the question submitted by the board of county commissioners of Jackson county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the Banner Creek reservoir project. The tax imposed pursuant to this paragraph shall take effect on the effective date of this act and shall expire not later than five years after such date.

(B) The result of the election held on November 8, 1994, on the question submitted by the board of county commissioners of Ottawa county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the erection, construction and furnishing of a law enforcement center and jail facility.

(4) The board of county commissioners of Finney and Ford counties may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing all or any portion of the cost to be paid by Finney or Ford county for construction of highway projects identified as system enhancements under the provisions of paragraph (5) of subsection (b) of K.S.A. 68-2314, and amendments thereto, to the electors at an election called and held thereon. Such election shall be called and held in the manner provided by the general bond law. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Finney or Ford county pursuant to this paragraph to exceed the maximum rate prescribed in K.S.A. 12-189, and amendments thereto. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Finney county, the state treasurer shall remit such funds to the treasurer of Finney county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in Ford county, the state treasurer shall remit such funds to the treasurer of Ford county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund.

(5) The board of county commissioners of any county may submit the question of imposing a retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as

enumerated in the question, to the electors at an election called and held thereon. Whenever any county imposes a tax pursuant to this paragraph, any tax imposed pursuant to paragraph (2) of subsection (a) by any city located in such county shall expire upon the effective date of the imposition of the countywide tax, and thereafter the state treasurer shall remit to each such city that portion of the countywide tax revenue collected by retailers within such city as certified by the director of taxation. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited to the following: Local health departments, city or county hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, rural health clinics, integration of health care services, home health services and rural health networks.

(6) The board of county commissioners of Allen county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of operation and construction of a solid waste disposal area or the modification of an existing landfill to comply with federal regulations to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs incurred in the financing of the project undertaken. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Allen county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189 and amendments thereto.

(7) The board of county commissioners of Clay, Dickinson and Miami county may submit the question of imposing a countywide retailers' sales tax at the rate of .50% in the case of Clay and Dickinson county and at a rate of up to 1% in the case of Miami county, and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(8) The board of county commissioners of Sherman county may submit the question of imposing a countywide retailers' sales tax at the rate of .25%, .5% or .75% and pledging the revenue therefrom for the purpose of financing the costs of the county roads 64 and 65 construction and improvement project. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(9) The board of county commissioners of Cowley, Russell and Woodson county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% in the case of Russell and Woodson county and at a rate of up to .25%, in the case of Cowley county and pledging the revenue received therefrom for the purpose of financing economic development initiatives or public infrastructure projects. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(10) The board of county commissioners of Franklin county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing recreational facilities. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such facilities.

(11) The board of county commissioners of Douglas county may submit to the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purposes of preservation, access and management of open space, and for industrial and business park related economic development.

(c) The boards of county commissioners of any two or more contiguous counties, upon adoption of a joint resolution by such boards, may submit the question of imposing a retailers' sales tax within such counties to the electors of such counties at an election called and held thereon and such boards of any two or more contiguous counties shall be required to submit such question upon submission of a petition in each of such counties, signed by a number of electors of each of such counties where submitted equal in number to not less

than 10% of the electors of each of such counties who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than  $\frac{2}{3}$  of the membership of the governing body of each of one or more cities within each of such counties which contains a population of not less than 25% of the entire population of each of such counties, or upon receiving resolutions requesting such an election passed by  $\frac{2}{3}$  of the membership of the governing body of each of one or more taxing subdivisions within each of such counties which levy not less than 25% of the property taxes levied by all taxing subdivisions within each of such counties.

(d) Any city retailers' sales tax in the amount of .5% being levied by a city on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax or until repealed by the adoption of an ordinance so providing. In addition to any city retailers' sales tax being levied by a city on July 1, 1990, any such city may adopt an additional city retailers' sales tax in the amount of .25% or .5%, provided that such additional tax is adopted and approved in the manner provided for the adoption and approval of a city retailers' sales tax. Any countywide retailers' sales tax in the amount of .5% or 1% in effect on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax.

(e) A class D city shall have the same power to levy and collect a city retailers' sales tax that a class A city is authorized to levy and collect and in addition, the governing body of any class D city may submit the question of imposing an additional city retailers' sales tax in the amount of .125%, .25%, .5% or .75% and pledging the revenue received therefrom for economic development initiatives, strategic planning initiatives or for public infrastructure projects including buildings to the electors at an election called and held thereon. Any additional sales tax imposed pursuant to this paragraph shall expire no later than five years from the date of imposition thereof, except that any such tax imposed by any class D city after the effective date of this act shall expire no later than 10 years from the date of imposition thereof.

(f) Any city or county proposing to adopt a retailers' sales tax shall give notice of its intention to submit such proposition for approval by the electors in the manner required by K.S.A. 10-120, and amendments thereto. The notices shall state the time of the election and the rate and effective date of the proposed tax. If a majority of the electors voting thereon at such election fail to approve the proposition, such proposition may be resubmitted under the conditions and in the manner provided in this act for submission of the proposition. If a majority of the electors voting thereon at such election shall approve the levying of such tax, the governing body of any such city or county shall provide by ordinance or resolution, as the case may be, for the levy of the tax. Any repeal of such tax or any reduction or increase in the rate thereof, within the limits prescribed by K.S.A. 12-189, and amendments thereto, shall be accomplished in the manner provided herein for the adoption and approval of such tax except that the repeal of any such city retailers' sales tax may be accomplished by the adoption of an ordinance so providing.

(g) The sufficiency of the number of signers of any petition filed under this section shall be determined by the county election officer. Every election held under this act shall be conducted by the county election officer.

(h) The governing body of the city or county proposing to levy any retailers' sales tax shall specify the purpose or purposes for which the revenue would be used, and a statement generally describing such purpose or purposes shall be included as a part of the ballot proposition.”;

And by renumbering the remaining sections accordingly;

Also on page 10, in line 30, following “Supp.” by inserting “12-187.”;

On page 1, in the title, in line 9, following “Supp.” by inserting “12-187.”;

Also, roll call was demanded on motion to recommend **HB 2472** favorably for passage.

On roll call, the vote was: Yeas 41; Nays 83; Present but not voting: 0; Absent or not voting: 1.

Yeas: Ballard, Boyer, Carlin, Cox, Craft, Crow, Davis, Dreher, Feuerborn, Flaharty, Flora, Gilbert, Henry, Hill, Holland, Horst, Huntington, Jack, Kassebaum, Kirk, Kuether, Larkin, Loyd, Minor, Judy Morrison, Neighbor, Nichols, O'Malley, O'Neal, Patterson, Peterson, Reardon, Reitz, Sawyer, S. Sharp, Sloan, Storm, Svaty, Toelkes, Yoder, Yonally.

Nays: Aurand, Ballou, Barbieri-Lightner, Beggs, Bethell, Betts, Brunk, Burgess, Burroughs, Campbell, Carter, Compton, Dahl, DeCastro, Decker, Dillmore, Edmonds, Faber, Freeborn, Gatewood, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Holmes, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, D. Johnson, E. Johnson, Kauffman, Klein, Krehbiel, Landwehr, Light, Loganbill, M. Long, P. Long, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Myers, Neufeld, Newton, Novascone, Osborne, Ostmeyer, Owens, Pauls, Phelps, Powell, Powers, Rehorn, Ruff, Schwab, Schwartz, B. Sharp, Showalter, Shriver, Shultz, Siegfried, Swenson, Tafanelli, Thimesch, Thull, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: Pottorff.

The motion to recommend **HB 2472** favorably for passage did not prevail.

On motion of Rep. Aurand, the House recessed until 2:30 p.m.

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## AFTERNOON SESSION

The House met pursuant to recess with Speaker Mays in the chair.

On motion of Rep. Aurand, the House went into Committee of the Whole, with Rep. Hayzlett in the chair.

### COMMITTEE OF THE WHOLE

On motion of Rep. Tafanelli, Committee of the Whole report, as follows, was adopted:

Recommended that committee report to **HB 2053** be adopted; also, on motion of Rep. Ballou to amend, Rep. Mason requested a ruling on the amendment being germane to the bill. The Rules Chair ruled the amendment not germane. Rep. Ballou challenged the ruling, the question being "Shall the Rules Chair be sustained?" The Rules Chair was not sustained.

The question then reverted back to the motion of Rep. Ballou to amend **HB 2053** on page 1, by striking all in lines 15 through 33 and inserting:

"Section 1. K.S.A. 74-8702 is hereby amended to read as follows: 74-8702. As used in the Kansas lottery act, unless the context otherwise requires:

(a) "Commission" means the Kansas lottery commission.

(b) "Executive director" means the executive director of the Kansas lottery.

(c) "Gaming equipment" means any electric, electronic ~~or mechanical device or other equipment unique to the Kansas lottery used directly in the operation of any lottery and in the determination of winners pursuant to this act, computerized or electromechanical machine, mechanism, supply or device or any other equipment, which is: (1) Unique to the Kansas lottery and used pursuant to the Kansas lottery act; (2) integral to the operation of an electronic gaming machine; or (3) affects the results of an electronic gaming machine by determining win or loss.~~

(d) "Kansas lottery" means the state agency created by this act to operate a lottery or lotteries pursuant to this act.

(e) "Lottery retailer" means any person with whom the Kansas lottery has contracted to sell lottery tickets or shares, or both, to the public.

(f) "Lottery" or "state lottery" means the lottery or lotteries operated pursuant to this act.

(g) "Major procurement" means any gaming product or service, including but not limited to facilities, advertising and promotional services, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the Kansas lottery, but not including materials, supplies, equipment and services common to the ordinary operations of state agencies.

(h) "Person" means any natural person, association, *limited liability company*, corporation or partnership.

(i) "Prize" means any prize paid directly by the Kansas lottery pursuant to its rules and regulations.

(j) "Share" means any intangible manifestation authorized by the Kansas lottery to prove participation in a lottery game.

(k) "Ticket" means any tangible evidence issued by the Kansas lottery to prove participation in a lottery game.

(l) "Vendor" means any person who has entered into a major procurement contract with the Kansas lottery.

(m) "Returned ticket" means any ticket which was transferred to a lottery retailer, which was not sold by the lottery retailer and which was returned to the Kansas lottery for refund by issuance of a credit or otherwise.

(n) "Video lottery machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game authorized by the commission, including but not limited to bingo, poker, black jack and keno, and which uses a video display and microprocessors and in which, by chance, the player may receive free games or credits that can be redeemed for cash.

(o) (1) "Lottery machine" means any machine or device that allows a player to insert cash or other form of consideration and may deliver as the result of an element of chance, regardless of the skill required by the player, a prize or evidence of a prize, including, but not limited to:

(A) Any machine or device in which the prize or evidence of a prize is determined by both chance and the player's or players' skill, including, but not limited to, any machine or device on which a lottery game or lottery games, such as poker or blackjack, are played;

(B) any machine or device in which the prize or evidence of a prize is determined only by chance, including, but not limited to, any slot machine or bingo machine; or

(C) any lottery ticket vending machine, such as a keno ticket vending machine, pull-tab vending machine or an instant-bingo vending machine.

(2) "Lottery machine" shall not mean:

(A) Any food vending machine defined by K.S.A. 36-501, and amendments thereto;

(B) any nonprescription drug machine authorized under K.S.A. 65-650, and amendments thereto;

(C) any machine which dispenses only bottled or canned soft drinks, chewing gum, nuts or candies; ~~or~~

(D) any machine excluded from the definition of gambling devices under subsection (d) of K.S.A. 21-4302, and amendments thereto; or

(E) any electronic gaming machine operated in accordance with the Kansas gaming act.

(p) "Electronic gaming machine" means any electronic, electromechanical, video or computerized device, contrivance or machine authorized by the Kansas lottery which, upon insertion of cash, tokens, electronic cards or any consideration, is available to play, operate or simulate the play of a game authorized by the Kansas lottery at a parimutuel licensee location, including, but not limited to, bingo, poker, blackjack, keno and slot machines and which may deliver or entitle the player operating the machine to receive cash, tokens, merchandise or credits that may be redeemed for cash. Electronic gaming machines may use bill validators and may be single-position reel-type, single or multi-game video and single-position multi-game video electronic game, including but not limited to, poker, blackjack and slot machines. Electronic gaming machines shall be linked to a central computer at a location determined by the executive director for purposes of security, monitoring and auditing.

(q) "Facility owner licensee," "facility manager licensee" and "organization licensee" have the meanings provided by K.S.A. 74-8802, and amendments thereto.

(r) "Key gaming employee" means any natural person 21 years of age or older employed by or under contract with a lottery gaming machine operator or employed by or under contract with a person providing on or off-site management or employee-related services to the lottery gaming machine operator, including, but not limited to: (1) Gaming machine operator manager and assistant manager; (2) facilities operator manager; (3) electronic games manager; (4) accounting department personnel; (5) count room employees; (6) cage department employees, including cashiers and main bank employees; (7) vault department employees; (8) approvers of credit; (9) surveillance department employees; (10) security

department employees; (11) floor managers; (12) electronic gaming machine technicians; (13) custodians of electronic gambling machines, including persons with access to cash and accounting records within such machines; (14) collection personnel; (15) internal auditors or the lottery gaming machine operator; and (16) any employee whose total cash compensation is in excess of \$50,000 per year.

(s) "Lottery gaming machine operator" means any person with which the executive director has contracted for the placement of an electronic gaming machine pursuant to the Kansas gaming act.

(t) "Net machine income" means the total of all cash and the face value of all tokens or electronic cards placed in an electronic gaming machine, less cash, merchandise or credits that may be redeemed for cash paid to players as winnings.

(u) "Parimutuel licensee" means a facility owner licensee or a facility manager licensee.

(v) "Parimutuel licensee location" means: (1) A racetrack facility, as defined by K.S.A. 74-8802, and amendments thereto, where live horse racing or live greyhound racing has been authorized or for which an application for authorization to conduct live horse racing or live greyhound racing pursuant to the Kansas parimutuel racing act is pending prior to February 1, 2000; (2) a facility located on real estate where such racetrack facility is located; or (3) a racetrack facility located at, on or immediately adjacent to the real estate of Eureka Downs or Anthony Downs. A parimutuel licensee location may include any existing structure at a racetrack facility described in this subsection or any structure that may be constructed on real estate where such racetrack facility is located.

(w) "Progressive electronic game" means a game played on an electronic gaming machine for which the payoff increases uniformly as the game is played and for which the jackpot, determined by application of a formula to the income of independent, local or interlinked electronic gaming machines, may be won.

(x) "Technology provider" means any person or entity other than a lottery gaming machine operator that designs, manufactures, installs, operates, distributes, supplies or replaces an electronic gaming machine for sale, lease or use in accordance with this act.

(y) "Token" means a metal or other representative of value, which is not legal tender, redeemable for cash only by the issuing lottery gaming machine operator at its parimutuel licensee location and issued and sold by a lottery gaming machine operator for the sole purpose of playing an electronic gaming machine.

New Sec. 2. (a) Sections 2 through 32, and amendments thereto, shall be known as the Kansas gaming act and shall be part of and supplemental to the Kansas lottery act.

(b) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application.

New Sec. 3. (a) The executive director may contract with parimutuel licensees for the operation and management, by the state of Kansas, of electronic gaming machines at parimutuel licensee locations in counties where a proposition submitted pursuant to section 5, and amendments thereto, has been approved by the voters of such county. Such contracts shall be subject to the provisions of this act and rules and regulations adopted under this act but shall not be subject to the provisions of K.S.A. 74-3738 through 75-3744, and amendments thereto.

(b) The executive director shall select as lottery gaming machine operators such parimutuel licensees as the executive director deems best able to serve the public convenience and promote marketing plans developed by the Kansas lottery. In the selection of lottery gaming machine operators, the executive director shall consider factors such as financial responsibility, security of the licensee location, integrity, reputation, volume of expected sales and such other factors as the executive director may deem appropriate.

(c) The executive director may charge an administrative application fee reasonably related to the costs of processing the application, to parimutuel licensees applying to become lottery gaming machine operators.

(d) A contract shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable except upon approval of the executive director, voluntarily or involuntarily, or subject to being encumbered or hypothecated. No interest in the contract shall descend by the laws of testate or intestate devolution

but any interest shall cease and expire upon the death of the parimutuel licensee or interest holders in the parimutuel license except that the executor, administrators or representatives of the estate of any deceased licensee and the trustee of any insolvent or bankrupt licensee may continue to operate pursuant to the contract under order of the appropriate court for no longer than one year after the death, bankruptcy or insolvency of such licensee.

(e) Each lottery gaming machine operator shall be issued a lottery gaming machine operator certificate which shall be conspicuously displayed at the place where the lottery gaming machine operator is authorized to operate and manage electronic gaming machines.

(f) To be selected as a lottery gaming machine operator, a parimutuel licensee must:

- (1) Have sufficient financial resources to support the activities required under this act;
- (2) be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the parimutuel licensee is located; and
- (3) be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.

(g) The lottery gaming machine operator, at its own expense, shall purchase for the Kansas lottery a license for all software programs used by such lottery gaming machine operator to operate electronic gaming machines. The Kansas lottery shall be the licensee and owner of all such software programs to each lottery gaming machine operator. A parimutuel licensee may own or lease, on behalf of the Kansas lottery and at the licensee's own expense, electronic gaming machines for placement at the parimutuel licensee location or the Kansas lottery with the consent of the parimutuel licensee may lease such machines for placement at the parimutuel licensee location, subject to reimbursement of the Kansas lottery by the parimutuel licensee for all expenses related to leasing, installing, operating and managing such machines. Electronic gaming machines purchased or leased by the lottery gaming machine operator, at its own expense, may be installed, operated or managed, owned or leased by a lottery gaming machine operator or by a technology provider under contract with the lottery gaming machine operator as provided by this act. All electronic gaming machines under this act shall be subject to the ultimate control of the Kansas lottery in accordance with the act. Each specific type of electronic gaming machine shall be approved by the Kansas lottery in accordance with K.S.A. 74-8710, and amendments thereto. The use of progressive electronic gaming machines is expressly permitted.

(h) Each contract between the Kansas lottery and a lottery gaming machine operator shall provide that the Kansas lottery shall receive all of the net machine income derived from the operation of electronic gaming machines at the parimutuel licensee location.

(i) Contracts authorized by this section may include provisions relating to:

- (1) Accounting procedures to determine the net machine income, unclaimed merchandise and credits;
- (2) the location and operation of electronic gaming machines at the parimutuel licensee location, except as provided by this act, the days and hours of operation and the number of such electronic gaming machines shall not be restricted;
- (3) minimum requirements for an electronic gaming machine operator to provide qualified oversight, security and supervision of the operation of electronic gaming machines at the parimutuel licensee location, including the use of qualified personnel with experience in applicable technology;
- (4) the eligibility requirements for employees of a lottery gaming machine operator who will have responsibility for the handling of cash or tokens. Such requirements may include a background investigation performed by the Kansas racing and gaming commission and that any key gaming employee shall be licensed as provided in sections 17 and 19, and amendments thereto;
- (5) provision for termination of the contract by either party for cause, including but not limited to, failure of the lottery gaming machine operator to maintain a parimutuel license in accordance with K.S.A. 74-8801 *et seq.*, and amendments thereto, failure of the lottery gaming machine operator to collect and remit net machine income pursuant to section 8, and amendments thereto; and
- (6) any other provision deemed necessary by the parties pursuant to this section.

(j) The initial term of a contract pursuant to this section shall be not less than the remaining term of the Kansas lottery. Such contract may be renewed with each extension of the Kansas lottery as provided in K.S.A. 74-8723, and amendments thereto.

(k) (1) The Kansas lottery shall examine prototypes of electronic gaming machines and shall notify the Kansas racing and gaming commission which such types of electronic gaming machines are in compliance with the requirements of this act.

(2) No electronic gaming machine shall be operated at a parimutuel licensee location pursuant to this act unless the executive director of the Kansas racing and gaming commission first issues a certificate for such machine authorizing its use at a specified parimutuel licensee location pursuant to this act.

(3) Each electronic gaming machine shall have the certificate prominently displayed thereon. Any machine which does not display the certificate required by this section is contraband and a public nuisance subject to confiscation by any law enforcement officer.

(4) The executive director shall require any manufacturer, supplier, provider, lottery gaming machine operator or other person seeking the examination and certification of electronic gaming machines to pay the anticipated actual costs of the examination in advance. After the completion of the examination, the executive director shall refund any overpayment or charge and collect amounts sufficient to reimburse the executive director for any underpayment of actual costs. The executive director may contract for the examination of electronic gaming machines as required by this subsection, and may rely upon testing done by or for other states regulating electronic gaming machines, if the executive director deems such testing to be reliable and in the best interest of the state of Kansas.

(l) Electronic gaming machines operated pursuant to this act shall:

(1) Pay out an average of not less than 87% of the amount wagered during the expected lifetime of the game;

(2) be directly linked to a central lottery communications system to provide auditing and other program information as approved by the Kansas lottery. The communications systems certified by the Kansas lottery shall not limit participation to only one electronic gaming machine manufacturer, distributor, supplier or provider; and

(3) be online and in constant communication with a central computer located at a location determined by the executive director. The lottery gaming machine operator shall lease or purchase at its own expense for the Kansas lottery all gaming equipment necessary to implement such central communications and auditing functions.

(m) No employee, contractor or other person in any way affiliated with an electronic gaming machine operator shall loan money to or otherwise extend credit to patrons of a parimutuel licensee location.

New Sec. 4. The executive director shall have the power to:

(a) Enter into contracts with parimutuel licensee for placement and replacement of electronic gaming machines at parimutuel licensee locations. Such contracts shall be subject to rules and regulations adopted pursuant to this act but shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(b) Examine or cause to be examined by any agent or representative designated by the executive director any books, papers, records or memoranda of any lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of the Kansas lottery act or rules and regulations adopted thereunder.

(c) Issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any lottery gaming machine operator, or to compel the appearance of any lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of this act or rules and regulations adopted hereunder. Subpoenas issued under the provisions of this subsection may be served upon natural persons and corporations in the manner provided in K.S.A. 60-304, and amendments thereto, for the service of process by any officer authorized to serve subpoenas in civil actions or by the executive director or an agent or representative designated by the executive director. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any country where such books, papers, records, memoranda or person is located for an order to comply.

(d) Inspect and view the operation of all machines, systems or facilities where electronic gaming machines controlled and operated by the Kansas lottery are located.

(e) Inspect and approve, prior to publication or distribution, all advertising by a lottery gaming machine operator which includes any reference to the Kansas lottery.

New Sec. 5. (a) Electronic gaming machines shall be operated pursuant to this act only in counties where, in accordance with this section, the qualified voters of the county have voted to permit operation of electronic gaming machines at parimutuel licensee locations within the county.

(b) The board of county commissioners of any county where there is a parimutuel licensee location may submit by resolution, and shall submit upon presentation of a petition filed in accordance with subsection (c), to the qualified voters of the county a proposition to permit the operation of electronic gaming machines at parimutuel licensee locations within the county. The proposition shall be submitted to the voters either in a countywide special election called by the board of county commissioners for that purpose and held not less than 90 days after the resolution is adopted or the petition is filed or at the next general election, as shall be specified by the board of county commissioners or in the petition, as the case may be.

(c) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the election officer. The petition shall be signed by qualified voters of the county equal in number to not less than 10% of the voters of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition: "We request an election to determine whether the operation of electronic gaming machines by the Kansas lottery shall be permitted in \_\_\_\_\_ county at parimutuel licensee locations."

(d) Upon the adoption of a resolution or the submission of a valid petition calling for an election pursuant to this section, the county election officer shall cause the following proposition to be placed on the ballot at the election called for that purpose: "Shall the operation of electronic gaming machines by the Kansas lottery be permitted in \_\_\_\_\_ county at parimutuel licensee locations?"

(e) If a majority of the votes cast and counted at such election is in favor of permitting the operation of parimutuel licensed locations, the executive director may enter into a contract with such licensees to operate such games at parimutuel licensee locations in the county. If a majority of the votes cast and counted at an election under this section is against permitting the operation of electronic gaming machines at parimutuel licensee locations in the county the Kansas lottery shall not operate such games in the county. The county election officer shall transmit a copy of the certification of the results of the election to the executive director and to the Kansas racing and gaming commission.

(f) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted at elections of the count.

(g) If in any election provided for by this section a majority of the votes cast and counted is against permitting the operation of electronic gaming machines in the county, another election submitting the question of permitting the operation of electronic gaming machines in the county shall not be held for at least two years from the date of such election. No election to submit the question of permitting the operation of electronic gaming machines shall be called and held during the period of time between December 15, 2004 through January 1, 2007.

New Sec. 6. (a) All purse supplements paid pursuant to this act shall be according to the point schedule in effect on January 1, 2002, at the respective parimutuel licensee locations. All purse supplements paid pursuant to this section shall be in addition to purses and supplements paid under K.S.A. 74-8801 *et seq.*, and amendments thereto.

(b) Except as provided in subsection (e), no electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location unless the facility where the electronic gaming machine is operated displays live and simulcast parimutuel races pursuant to an order issued by the Kansas racing and gaming commission on video terminals and has installed parimutuel windows for wagering on parimutuel races.

(c) Except as provided in subsection (d):

(1) No electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location in Sedgwick county unless, during the first full calendar year and each year thereafter in which electronic gaming machines are operated at such location, the parimutuel licensee shall conduct at such location at least six live racing programs each calendar week for 49 weeks, with at least 13 live races conducted each program;

(2) on and after January 1, 2005, no electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location in Wyandotte county unless, during the first full calendar year and each year thereafter in which electronic gaming machines are operated at such location, the parimutuel licensee shall conduct at such location at least five live horse racing programs each calendar week for a minimum of 60 racing days, with at least ten live races conducted each program, with a minimum of seven live thoroughbred and three live quarterhorse races per day and at least seven live dog racing programs each calendar week for at least 49 weeks, with at least 13 live races conducted each program; and

(3) except as provided by this subsection (c)(3), no electronic gaming machine shall be operated pursuant to this act at a parimutuel licensee location in Crawford county unless, during the first full calendar year and each year thereafter in which electronic gaming machines are operated at such location, the parimutuel licensee shall conduct at such location live racing the number of days agreed upon by the organization licensee and the parimutuel licensee but not less than 150 days, comprised of at least seven live racing programs each calendar week, with at least 13 live races conducted each program.

(d) The Kansas racing and gaming commission may provide exceptions to the requirements of subsection (c) for a parimutuel licensee conducting live racing when events beyond the control of the licensee may render racing impossible or impractical. Such events shall include any natural or man-made disaster, shortage of qualified racing animals due to kennel sickness or state imposed limitations on operations.

(e) The Kansas racing and gaming commission may allow the operation of electronic gaming machines at the racetrack facility at Eureka Downs and the racetrack facility at Anthony Downs on days when simulcast parimutuel races are displayed at such facility without requiring live horse racing or live greyhound racing at such facility. The Kansas racing and gaming commission shall not authorize the operation of such machines at such racetrack facility unless the qualified voters of the county where such racetrack facility is located have voted pursuant to section 5, and amendments thereto, to permit operation of such machines within the county.

(f) The Kansas racing and gaming commission shall allow the temporary use of existing facilities at a parimutuel licensee location for the installation and operation of electronic gaming machine while processing applications, plans and other documents required for, and during the construction of, permanent facilities for such machines. On and after July 1, 2006, the commission may allow temporary use of existing facilities at a parimutuel licensee location for such purpose if construction of permanent facilities have not been completed.

New Sec. 7. (a) There is hereby established in the state treasury the live horse racing purse supplement fund. Twenty percent of all moneys paid into such fund shall be transferred to the Kansas horse breeding development fund created pursuant to K.S.A. 74-8829, and amendments thereto. Such moneys shall be distributed from the separate horse purse supplement accounts maintained pursuant to this section, in accordance with rules and regulations of the Kansas racing and gaming commission, provided that parimutuel licensees shall continue to pay purses from the live and simulcast purse fund established by law.

(b) There is hereby established in the state treasury the live greyhound racing purse supplement fund. Moneys available in such fund shall be paid to parimutuel licensees for distribution as purse supplements in accordance with rules and regulations of the Kansas racing and gaming commission.

(c) There is hereby established in the state treasury the electronic gaming machine fund.

New Sec. 8. (a) The executive director shall collect and remit to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto, all net machine income received from lottery gaming machine operators. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the electronic gaming machine fund, established pursuant to section 7, and amendments thereto. Separate ac-

counts shall be maintained in the electronic gaming machine fund for receipt of moneys from each lottery gaming machine operator.

(b) Subject to the provisions of section 32, and amendments thereto, not less often than once each week, the state treasurer shall transfer from the account of each lottery gaming machine operator in the electronic gaming machine fund to the state general fund an amount equal to the following:

(1) Of the first \$50,000,000 net machine income of such operator during any fiscal year, 20%.

(2) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 22.5%.

(3) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 25%.

(4) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 27.5%.

(5) Of any additional amounts of net machine income of such operator during such fiscal year, 30%.

(c) Subject to the provisions of section 32, and amendments thereto, not less than once each week, the state treasurer shall transfer the following percentages of the balance remaining, after transfer of moneys pursuant to subsection (b), in each account in the electronic gaming machine fund for receipt of moneys from lottery gaming machine operators which are parimutuel licensees:

(1) To the problem gambling grant fund established pursuant to K.S.A. 2002 Supp. 79-4805, and amendments thereto, .25%, not to exceed \$3,000,000 in any fiscal year;

(2) to the nonprofit organization licensed by the Kansas racing and gaming commission to conduct races at the parimutuel licensee location, 1%, pursuant to the management contract;

(3) to the county where the parimutuel licensee location is located, 3%;

(4) to the live greyhound racing purse supplement fund, 3.5%; and

(5) to the live horse racing purse supplement fund, 3.5%.

(d) Subject to the provisions of section 32, and amendments thereto, after distribution of moneys pursuant to subsection (c), the state treasurer, not less than once each week, shall remit the balance in the account of each lottery gaming machine operator to such lottery gaming machine operator.

New Sec. 9. (a) Except as when authorized in accordance with subsection (c), it is unlawful for any parimutuel licensee to allow any person to play electronic gaming machines or share in winnings of a person knowing such person to be:

(1) Under 21 years of age;

(2) the executive director, a member of the commission or an employee of the Kansas lottery;

(3) an officer or employee of a vendor contracting with the Kansas lottery to supply gaming equipment or tickets to the Kansas lottery for use in the operation of any lottery conducted pursuant to this act; or

(4) a spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent or a person described by subsection (a)(2) or (3).

(b) Violation of subsection (a) is a class A nonperson misdemeanor upon conviction for a first offense. Violation of subsection (a) is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

(c) The executive director may authorize in writing any employee of the Kansas lottery and any employee of a lottery vendor to play an electronic gaming machine to verify the proper operation thereof with respect to security and contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the Kansas lottery and be added to the prize pools of subsequent lottery games. No money or merchandise shall be awarded to any employee playing an electronic gaming machine pursuant to this subsection.

New Sec. 10. No person shall operate an electronic gaming machine while intoxicated. The Kansas racing and gaming commission shall adopt rules and regulations governing identification of persons who are intoxicated and procedures for removal of such persons

from premises where electronic gaming machines are operated. Such rules and regulations may include requirements the employees of a parimutuel licensee be trained in controlling intoxicated persons within a parimutuel licensee location.

New Sec. 11. Each lottery gaming machine operator shall post one or more signs at the operator's parimutuel licensee location to inform patrons of the toll free number available to provide information and referral services regarding compulsive or problem gambling. The text shall be determined by the secretary of the department of social and rehabilitation services. Failure by a lottery gaming machine operator to post and maintain such signs shall be cause for the imposition of a fine not to exceed \$500 per day.

New Sec. 12. Each lottery gaming machine operator shall provide access for the executive director, the executive director's designee or the commission to all its records and the physical premises where the electronic gaming machine activities occur for the purpose of monitoring or inspecting the electronic gaming machines and gaming equipment. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Kansas open records act, K.S.A. 45-216 *et seq.*, and amendments thereto.

New Sec. 13. (a) Wagers shall be received only from a person at a parimutuel licensee location. No person present at a parimutuel licensee location shall place or attempt to place a wager on behalf of another person who is not present at the parimutuel licensee location.

(b) Violation of this section is a class A nonperson misdemeanor upon a conviction for a first offense. Violation of this section is a severity level 9, nonperson felony upon conviction for a second or subsequent offense.

New Sec. 14. Each lottery gaming machine operator may employ a person at least 18 years of age as an employee of the parimutuel licensee. No employee under age 21 shall be permitted to make a wager on an electronic gaming machine.

New Sec. 15. Pursuant to section 2 of the federal act entitled "An Act to Prohibit Transportation of Gambling Devices in Interstate and Foreign Commerce," 15 U.S.C. 1171 through 1777, the state of Kansas, acting by and through the duly elected and qualified members of the legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such federal act, declare and proclaim that it is exempt from the provision of section 2 of such federal act to the extent that such gambling devices are being transported to or from the Kansas lottery or to or from a lottery gaming machine operator at a parimutuel licensee location within the state of Kansas.

New Sec. 16. Except for persons acting in accordance with rules and regulations of the Kansas lottery and rules and regulations of the Kansas racing and gaming commission in performing installation, maintenance and repair services, any person who, with the intent to manipulate the outcome, pay out or operation of an electronic gaming machine, manipulates the outcome, pay out or operation of an electronic gaming machine by physical, electrical or mechanical means shall be guilty of a severity level 8, nonperson felony.

New Sec. 17. (a) The Kansas racing and gaming commission and its designated employees may observe and inspect all electronic gaming machines and facilities operated by parimutuel licensees.

(b) The Kansas racing and gaming commission may examine, or cause to be examined by any agent or representative designated by such commission, any books, papers, records or memoranda of any parimutuel licensee, or of any business involved in electronic gaming, for the purpose of ascertaining compliance with any provision of this act or any rules and regulations adopted hereunder.

(c) The Kansas racing and gaming commission may adopt rules and regulations with respect to security, safety and honest conduct at all parimutuel licensee locations.

(d) The Kansas racing and gaming commission shall have the power to investigate alleged violations of this act and alleged violations of any rules and regulations, orders and final decisions of such commission.

(e) Appropriate security measures shall be required in any and all areas where electronic gaming machines are located. The Kansas racing and gaming commission shall approve all such security measures.

(f) The Kansas racing and gaming commission may provide by rules and regulations for the licensure of key gaming employees and technology providers. Such rules and regulations

may specify employment application forms, fees and procedures for suspension or revocation of any key gaming employee license.

(g) The Kansas racing and gaming commission shall have the power to take any other action as may be reasonable or appropriate to enforce the provisions of this act and any rules and regulations, orders and final decisions of such commission.

(h) The Kansas racing and gaming commission shall require an annual audit of the electronic gaming machine operations of each lottery gaming machine operator contracting with the Kansas lottery. Such audit shall be conducted by a licensed accounting firm approved by the Kansas racing and gaming commission. Such audit shall be conducted at the expense of the lottery gaming machine operator to which such audit applies.

New Sec. 18. (a) It is a class A nonperson misdemeanor for the executive director, any member of the lottery commission, any employee of the Kansas lottery or any member, employee or appointee of the Kansas racing and gaming commission, including stewards and racing judges, knowingly to:

(1) Participate in the operation of or have a financial interest in any business which has been issued a concessionaire license, racing or wagering or electronic gaming machine equipment or services license, facility owner license or facility manager license, or any business which sells goods or services to an organization licensee;

(2) participate directly or indirectly as an owner, operator, manager or consultant in electronic gaming in Kansas;

(3) place a wager on or bet or play an electronic gaming machine in Kansas;

(4) accept any compensation, gift, loan, entertainment, favor or service from any parimutuel licensee, except such suitable facilities and services within a racetrack facility operated by an organization licensee as may be required to facilitate the performance of the executive director's, member's, employee's or appointee's official duties;

(5) enter into any business dealing, venture or contract with an owner or lessee of a parimutuel licensee location in Kansas; or

(6) engage in any activity described in subsection (a) (1), (2), (4) or (5) within two years from the last day of service as such executive director, member, employee or appointee.

(b) It is a severity level 8, nonperson felony for any person playing or using any electronic gaming machine at a parimutuel licensee location in Kansas knowingly to:

(1) Use other than a lawful coin or legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in an electronic gaming machine, except that in the playing of any electronic gaming machine or similar gaming device, it shall be lawful for any person to use gaming billets, tokens or similar objects therein which are approved by the Kansas lottery;

(2) possess or use, while on the premises of a parimutuel licensee location any cheating or thieving device, including but not limited to, tools, wires, drills, coins attached to strings or wires or electronic or magnetic devices to facilitate removing from any electronic gaming machine any money or contents thereof, except that a duly authorized agent or employee of the Kansas lottery, the Kansas racing and gaming commission or a parimutuel licensee may possess and use any of the foregoing only in furtherance of the agent's or employee's employment at the parimutuel licensee location;

(3) possess or use while on the premises of any parimutuel licensee location any key or device designed for the purpose of or suitable for opening or entering any electronic gaming machine or similar gaming device or drop box, except that a duly authorized agent or employee of the Kansas lottery, the Kansas racing and gaming commission or a parimutuel licensee may possess and use any of the foregoing only in furtherance of the agent's or employee's employment at the parimutuel licensee location; or

(4) wager prior to obtaining the age of 21 years.

New Sec. 19. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to provide electronic gaming machine equipment or services, as designated by rules and regulations of the commission, to an organization licensee unless such business has been issued an electronic gaming machine equipment or services license by the executive director. Such equipment and services shall include, but are not limited to, surveillance, electronic computer components, random number generator or cabinet thereof and token redemption equipment or services.

(b) Business required to be licensed pursuant to this section shall apply for electronic gaming machine equipment or services licenses in a manner and upon forms prescribed and furnished by the Kansas racing and gaming commission. The Kansas racing and gaming commission shall require disclosure of information about the owners and officers of each applicant and may require such owners and officers to submit to fingerprinting. The Kansas racing and gaming commission also may require disclosure of information about and fingerprinting of such employees of each applicant as the commission considers necessary. Electronic gaming machine equipment or services licenses shall be issued for a period of time established by the executive director but not to exceed 10 years. The Kansas racing and gaming commission, by rules and regulations, shall establish a schedule of application fees and license fees for electronic gaming machine equipment or services licenses based upon the type and size of business. The application fee shall not be refundable if the business fails to qualify for a license. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the Kansas racing and gaming commission shall require the applicant to pay to the Kansas racing and gaming commission, at such times and in such form as required by the executive director, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

(c) The Kansas racing and gaming commission shall require applicants as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the Kansas lottery and the Kansas racing and gaming commission to search without warrant the licensee's premises and personal property and the persons of its owners, officers and employees while engaged in the licensee's business within the premises of the racetrack facility or adjacent facilities under the control of the organization licensee, for the purpose of investigating criminal violations of this act or violations of rules and regulations of the commission.

(d) The Kansas racing and gaming commission may refuse to issue an electronic gaming machine equipment or services license to any business if any person having an interest ownership in such business, any person who is an officer of such business or any person employed by such business within the racetrack facility:

(1) Has been convicted of a felony in a court of any state or of the United States, has been adjudicated in the last 10 years, in any such court of committing as a juvenile an act which, if committed by an adult, would constitute a felony or has been convicted of a crime in any other state or country which would constitute a felony if committed under the same circumstances pursuant to Kansas law;

(2) has been convicted of a felony violation of any law of any state or of the United States involving gambling or controlled substances or has been adjudicated in the last 10 years in any such court or committing as a juvenile an act which, if committed by an adult, would constitute such a felony violation;

(3) fails to disclose any material fact or provides information, knowing such information to be false, in connection with the application for the license;

(4) has been found by the executive director to have violated any provision of this act or any rule and regulation of the executive director; or

(5) has failed to meet any monetary or tax obligation to the federal government or to any state or local government.

(e) The executive director may suspend or revoke the electronic gaming machine equipment or services license of any business for any reason which would justify refusal to issue such a license.

(f) The commission may provide by rules and regulations for the temporary suspension of an electronic gaming machine equipment or services license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been suspended or revoked as a result of proceedings conducted pursuant to subsection (e).

New Sec. 20. (a) No taxes, fees, charges, transfers or distributions, other than those provided for in this act, shall be made or levied from or against the net machine income of the Kansas lottery by any political subdivision of the state.

(b) No license tax, permit fee, occupation tax, operation or machine tax or fee shall be imposed, levied or assessed exclusively upon gaming by any political subdivision of the state.

New Sec. 21. No tax credit, tax abatement, enterprise zone or tax increment financing shall be available to any lottery gaming machine operator licensed pursuant to this act, nor shall any political or taxing subdivision of the state or any agency or instrumentality of such political or taxing subdivision transfer or make available any real or personal property to a lottery gaming machine operator at less than fair market value.

New Sec. 22. All sales of electronic gaming machine games shall be exempt from sales taxes imposed pursuant to K.S.A. 12-187 *et seq.*, and 79-3601 *et seq.*, and amendments thereto.

New Sec. 23. Each lottery gaming machine operator shall hold the executive director of the Kansas lottery, the Kansas lottery commission, the executive director of the Kansas racing and gaming commission, the Kansas racing and gaming commission and the state harmless from and defend and pay for the defense of any and all claims which may be asserted against the executive director, the commission, the executive director of the Kansas racing and gaming commission and the state, or the agents or employees thereof, arising from the operation of electronic gaming machines located at parimutuel licensee location of such lottery gaming machine operator. The provisions of this section shall not apply to any claims arising from the negligence or willful misconduct of the executive director, the commission, the executive director of the Kansas racing and gaming commission, the Kansas racing and gaming commission and the state, or the agents or employees thereof.

New Sec. 24. (a) The executive director, with the approval of the governor, may contract with Boot Hill Gaming, Inc., a wholly owned subsidiary of Boot Hill Museum, Inc., a nonprofit corporation exempt from payment of federal income taxes under section 501 (c)(3) of the federal internal revenue code, as in effect on the effective date of this act, to operate electronic gaming machines at a single specified location in Ford county, Kansas, where the operation of such machines will promote tourism and economic development. The executive director shall not contract with Boot Hill Gaming, Inc., to operate electronic gaming machines pursuant to this section unless the operation of such machines is first approved by the voters of Ford county, Kansas, as provided in subsection (b).

(b) (1) Electronic gaming machines shall be operated pursuant to this section only if the qualified voters of Ford county have voted by a majority vote to permit operation of electronic gaming machines within the county as follows:

The board of county commissioners of Ford county may submit by resolution, and shall submit upon presentation of a petition filed in accordance with this subsection, to the qualified voters of the county a proposition to permit the operation of electronic gaming machines within the county. The proposition shall be submitted to the voters either in a countywide special election called by the board of county commissioners for that purpose and held not less than 90 days after the resolution is adopted or the petition is filed or at the next general election, as shall be specified by the board of county commissioners or in the petition, as the case may be.

A petition to submit a proposition to the qualified voters of Ford county pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified voters of the county equal in number to not less than 10% of the voters of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition: "We request an election to determine whether the operation of electronic gaming machines by the Kansas lottery shall be permitted in Ford county."

Upon the adoption of a resolution or the submission of a valid petition calling for an election, the county election officer shall cause the following proposition to be placed on the ballot at the election called for that purpose: "Shall the operation of electronic gaming machines by the Kansas lottery be permitted in Ford county?" If a majority of the votes cast and counted at such election is in favor of permitting the operation of such machines within the county, the Kansas lottery may enter a contract pursuant to this act for operation

of such machines within the county. If a majority of the votes cast and counted at an election under this section is against permitting the operation of such machines within the county, the Kansas lottery shall not contract pursuant to this act for the operation of such machines within the county. The county election officer shall transmit a copy of the certification of the results of the election to the executive director and to the Kansas racing and gaming commission.

(2) The election provided for by this subsection (b) shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

(3) If in any election provided for by this subsection (b) a majority of the votes cast and counted is against permitting the operation of electronic gaming machines in the county, another election submitting the issue of the operation of such machines and games in the county shall not be held for at least two years from the date of such election. No election to submit the question of permitting electronic gaming machines shall be called and held during the period of time between December 15, 2004 through January 1, 2007.

(c) The executive director may charge Boot Hill Gaming, Inc., an administrative application fee, reasonably related to the costs of processing the application to become a lottery gaming machine contractor.

(d) A contract pursuant to this section shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, except upon approval by the executive director, or subject to being encumbered or hypothecated. No interest in the contract shall descend by the laws of testate or intestate devolution but any interest shall cease and expire upon the death of the operator or interest holders in the operator except that executors, administrators or representatives of the estate of any deceased operator and the trustee of any insolvent or bankrupt operator may continue to operate pursuant to the contract under order of the appropriate court for no longer than one year after the death, bankruptcy or insolvency of such operator.

(e) The lottery gaming machine operator shall be issued a lottery gaming machine operator certificate which shall be conspicuously displayed at the place where the lottery gaming machine operator is authorized to operate and manage electronic gaming machines.

(f) To be a lottery gaming machine operator, Boot Hill Gaming, Inc., must:

(1) Have sufficient financial resources to support the activities required under this act;

(2) be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the electronic gaming machines will be operated; and

(3) be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.

(g) The lottery gaming machine operator, at the operator's expense, shall purchase for the Kansas lottery a license for all software programs used by such lottery gaming machine operator to operate electronic gaming machines. The Kansas lottery shall be the licensee and owner of all such software programs and shall sublicense such software programs to each lottery gaming machine operator. The lottery gaming machine contractor may own or lease, on behalf of the Kansas lottery and at the operator's expense, electronic gaming machines for placement at the location specified by contract or the Kansas lottery with the consent of the operator may lease such machines for placement at the location specified by contract, subject to reimbursement of the Kansas lottery by the operator for all expenses related to leasing, installing, operating and managing such machines. Electronic gaming machines purchased or leased by the lottery gaming machine operator, at the operator's expense, may be installed, operated or managed, owned or leased by a lottery gaming machine operator or by a technology provider under contract with the lottery gaming machine operator as provided by this act. All electronic gaming machines under this act shall be subject to the ultimate control of the Kansas lottery in accordance with this act. Each specific type of electronic gaming machine shall be approved by the Kansas lottery in accordance with K.S.A. 74-8710, and amendments thereto. The use of progressive electronic gaming machines is expressly permitted.

(h) Each contract between the Kansas lottery and the lottery gaming machine operator shall provide that the Kansas lottery shall receive all of the net machine income derived from the operation of electronic gaming machines at the location specified by contract.

(i) Contracts authorized by this section may include provisions relating to:

(1) Accounting procedures to determine the net machine income, unclaimed merchandise and credits.

(2) The location and operation of electronic gaming machines. Except as provided by this act, the days and hours of operation and the number of such electronic gaming machines shall not be restricted.

(3) Minimum requirements for an electronic gaming machine operator to provide qualified oversight, security and supervision of the operation of electronic gaming machines, including the use of qualified personnel with experience in applicable technology.

(4) The eligibility requirements for employees of the lottery gaming machine operator who will have responsibility for the handling of cash or tokens. Such requirements may include a background investigation performed by the Kansas racing and gaming commission and that any key gaming employee shall be licensed as provided by this act.

(5) Provision for termination of the contract by either party for cause, including but not limited to, failure of the lottery gaming machine operator to collect and remit net machine income as provided by this act.

(6) Any other provision deemed necessary by the parties to the contract.

(j) The initial term of a contract pursuant to this section shall be not less than the remaining term of the Kansas lottery. Such contract may be renewed with each extension of the Kansas lottery as provided in K.S.A. 74-8723, and amendments thereto.

(k) (1) The Kansas lottery shall examine prototypes of electronic gaming machines and shall notify the Kansas racing and gaming commission which such types of electronic gaming machines are in compliance with the requirements of this act.

(2) No electronic gaming machine shall be operated pursuant to this act unless the executive director of the Kansas racing and gaming commission first issues a certificate for such machine authorizing its use pursuant to this act.

(3) Each electronic gaming machine shall have the certificate prominently displayed thereon. Any machine which does not display the certificate required by this section is contraband and a public nuisance subject to confiscation by any law enforcement officer.

(4) The executive director shall require any manufacturer, supplier, provider, lottery gaming machine operator or other person seeking the examination and certification of electronic gaming machines to pay the anticipated actual costs of the examination in advance. After the completion of the examination, the executive director shall refund any overpayment or charge and collect amounts sufficient to reimburse the executive director for any underpayment of actual costs. The executive director may contract for the examination of electronic gaming machines as required by this subsection, and may rely upon testing done by or for other states regulating electronic gaming machines, if the executive director deems such testing to be reliable and in the best interest of the state of Kansas.

(l) Electronic gaming machines operated pursuant to this act shall:

(1) Pay out an average of not less than 87% of the amount wagered over the life of the machine;

(2) be directly linked to a central lottery communications system to provide auditing and other program information as approved by the Kansas lottery. The executive director shall select the computer system most suitable for conducting the monitoring and auditing functions required by this act. The communications systems certified by the Kansas lottery shall not limit participation to only one electronic gaming machine manufacturer, distributor, supplier or provider; and

(3) be on-line and in constant communication with a central computer located at a location determined by the executive director. The lottery gaming machine operator shall lease or purchase at its own expense for the Kansas lottery all gaming equipment necessary to implement such central communications and auditing functions.

(m) No employee, contractor or other person in any way affiliated with a lottery gaming machine contractor shall loan money to or otherwise extend credit to patrons of the location where electronic gaming machines are operated pursuant to this act.

New Sec. 25. The executive director shall have the power to:

(a) Enter into contracts with Boot Hill Gaming, Inc., for placement and replacement of electronic gaming machines at the locations specified by contract. Such contracts shall be subject to rules and regulations adopted pursuant to this act but shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(b) Examine or cause to be examined by any agent or representative designated by the executive director any books, papers, records or memoranda of the lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of the Kansas lottery act or rules and regulations adopted thereunder.

(c) Issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of the lottery gaming machine operator, or to compel the appearance of the lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of this act or rules and regulations adopted hereunder. Subpoenas issued under the provisions of this subsection may be served upon natural persons and corporations in the manner provided in K.S.A. 60-304, and amendments thereto, for the service of process by any officer authorized to serve subpoenas in civil actions or by the executive director or an agent or representative designated by the executive director. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

(d) Inspect and view the operation of all machines, systems or facilities where electronic gaming machines controlled and operated by the Kansas lottery are located.

(e) Inspect and approve, prior to publication or distribution, all advertising by a lottery gaming machine operator which includes any reference to the Kansas lottery.

New Sec. 26. (a) The executive director shall collect all net machine income from the lottery gaming machine operator authorized pursuant to section 24, and amendments thereto. The executive director shall remit the entire amount to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the electronic gaming machine fund established pursuant to section 7, and amendments thereto.

(b) Subject to the provisions of section 32, and amendments thereto, not less often than once each week, the state treasurer shall transfer from the account of each lottery gaming machine operator in the electronic gaming machine fund to the state general fund an amount equal to the following:

(1) Of the first \$50,000,000 net machine income of such operator during any fiscal year, 20%.

(2) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 22.5%.

(3) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 25%.

(4) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 27.5%.

(5) Of any additional amounts of net machine income of such operator during such fiscal year, 30%.

(c) Subject to the provisions of section 32, and amendments thereto, not more often than once each week, the state treasurer shall transfer from the account of the lottery gaming machine operator in the electronic gaming machine fund the following percentages of the balance remaining after transfer of moneys pursuant to subsection (b):

(1) To the problem gambling grant fund established pursuant to K.S.A. 2002 Supp. 79-4805, and amendments thereto, .25%, not to exceed \$3,000,000 in any fiscal year;

(2) to the Boot Hill Museum, 1%;

(3) to the live greyhound racing purse supplement fund, 2.5%;

(4) to the live horse racing purse supplement fund, 2.5%;

(5) to the state tourism fund established pursuant to K.S.A. 74-9003, and amendments thereto, 1.5%, of which an amount equal to 1% of net machine income shall be placed in a separate account in such fund to be used for grants for economic development and tourism development within the 22 counties of southwest Kansas identified as the southwest Kansas

tourism region by the division of travel and tourism of the department of commerce and housing;

(6) to Ford county, Kansas, 3%.

(d) Subject to the provisions of section 32, and amendments thereto, after the distribution of moneys pursuant to subsection (b), the state treasurer, not less than once each week, shall remit the balance in the account of the lottery gaming machine operator to such operator.

New Sec. 27. (a) The executive director, with the approval of the governor, may contract with a person to operate electronic gaming machines at a single specified location in Geary county, Kansas, where the operation of such machines will promote tourism and economic development. The executive director shall not enter a contract pursuant to this section unless the operation of such machines is first approved by the voters of Geary county, Kansas, as provided in subsection (b).

(b) (1) Electronic gaming machines shall be operated pursuant to this section only if the qualified voters of Geary county have voted by a majority vote to permit operation of electronic gaming machines within the county as follows:

The board of county commissioners of Geary county may submit by resolution, and shall submit upon presentation of a petition filed in accordance with this subsection, to the qualified voters of the county a proposition to permit the operation of electronic gaming machines within the county. The proposition shall be submitted to the voters either in a countywide special election called by the board of county commissioners for that purpose and held not less than 90 days after the resolution is adopted or the petition is filed or at the next general election, as shall be specified by the board of county commissioners or in the petition, as the case may be.

A petition to submit a proposition to the qualified voters of Geary county pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified voters of the county equal in number to not less than 10% of the voters of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition: "We request an election to determine whether the operation of electronic gaming machines by the Kansas lottery shall be permitted in Geary county."

Upon the adoption of a resolution or the submission of a valid petition calling for an election, the county election officer shall cause the following proposition to be placed on the ballot at the election called for that purpose: "Shall the operation of electronic gaming machines by the Kansas lottery be permitted in Geary county?" If a majority of the votes cast and counted at such election is in favor of permitting the operation of such machines within the county, the Kansas lottery may enter a contract pursuant to this act for operation of such machines within the county. If a majority of the votes cast and counted at an election under this section is against permitting the operation of such machines within the county, the Kansas lottery shall not contract pursuant to this act for the operation of such machines within the county. The county election officer shall transmit a copy of the certification of the results of the election to the executive director and to the Kansas racing and gaming commission.

(2) The election provided for by this subsection (b) shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

(3) If in any election provided for by this subsection (b) a majority of the votes cast and counted is against permitting the operation of electronic gaming machines in the county, another election submitting the issue of the operation of such machines and games in the county shall not be held for at least two years from the date of such election. No election to submit the question of permitting electronic gaming machines shall be called and held during the period of time between December 15, 2004 through January 1, 2007.

(c) The executive director may charge an administrative application fee, reasonably related to the costs of processing the application to become a lottery gaming machine contractor.

(d) A contract pursuant to this section shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable,

except upon approval by the executive director, or subject to being encumbered or hypothecated. No interest in the contract shall descend by the laws of testate or intestate devolution but any interest shall cease and expire upon the death of the operator or interest holders in the operator except that executors, administrators or representatives of the estate of any deceased operator and the trustee of any insolvent or bankrupt operator may continue to operate pursuant to the contract under order of the appropriate court for no longer than one year after the death, bankruptcy or insolvency of such operator.

(e) The lottery gaming machine operator shall be issued a lottery gaming machine operator certificate which shall be conspicuously displayed at the place where the lottery gaming machine operator is authorized to operate and manage electronic gaming machines.

(f) To be a lottery gaming machine operator, such person must:

(1) Have sufficient financial resources to support the activities required under this act;

(2) be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the electronic gaming machines will be operated; and

(3) be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.

(g) The lottery gaming machine operator, at the operator's expense, shall purchase for the Kansas lottery a license for all software programs used by such lottery gaming machine operator to operate electronic gaming machines. The Kansas lottery shall be the licensee and owner of all such software programs and shall sublicense such software programs to each lottery gaming machine operator. The lottery gaming machine contractor may own or lease, on behalf of the Kansas lottery and at the operator's expense, electronic gaming machines for placement at the location specified by contract or the Kansas lottery with the consent of the operator may lease such machines for placement at the location specified by contract, subject to reimbursement of the Kansas lottery by the operator for all expenses related to leasing, installing, operating and managing such machines. Electronic gaming machines purchased or leased by the lottery gaming machine operator, at the operator's expense, may be installed, operated or managed, owned or leased by a lottery gaming machine operator or by a technology provider under contract with the lottery gaming machine operator as provided by this act. All electronic gaming machines under this act shall be subject to the ultimate control of the Kansas lottery in accordance with this act. Each specific type of electronic gaming machine shall be approved by the Kansas lottery in accordance with K.S.A. 74-8710, and amendments thereto. The use of progressive electronic gaming machines is expressly permitted.

(h) Each contract between the Kansas lottery and the lottery gaming machine operator shall provide that the Kansas lottery shall receive all of the net machine income derived from the operation of electronic gaming machines at the location specified by contract.

(i) Contracts authorized by this section may include provisions relating to:

(1) Accounting procedures to determine the net machine income, unclaimed merchandise and credits.

(2) The location and operation of electronic gaming machines. Except as provided by this act, the days and hours of operation and the number of such electronic gaming machines shall not be restricted.

(3) Minimum requirements for an electronic gaming machine operator to provide qualified oversight, security and supervision of the operation of electronic gaming machines, including the use of qualified personnel with experience in applicable technology.

(4) The eligibility requirements for employees of the lottery gaming machine operator who will have responsibility for the handling of cash or tokens. Such requirements may include a background investigation performed by the Kansas racing and gaming commission and that any key gaming employee shall be licensed as provided by this act.

(5) Provision for termination of the contract by either party for cause, including but not limited to, failure of the lottery gaming machine operator to collect and remit net machine income as provided by this act.

(6) Any other provision deemed necessary by the parties to the contract.

(j) The initial term of a contract pursuant to this section shall be not less than the remaining term of the Kansas lottery. Such contract may be renewed with each extension of the Kansas lottery as provided in K.S.A. 74-8723, and amendments thereto.

(k) (1) The Kansas lottery shall examine prototypes of electronic gaming machines and shall notify the Kansas racing and gaming commission which such types of electronic gaming machines are in compliance with the requirements of this act.

(2) No electronic gaming machine shall be operated pursuant to this act unless the executive director of the Kansas racing and gaming commission first issues a certificate for such machine authorizing its use pursuant to this act.

(3) Each electronic gaming machine shall have the certificate prominently displayed thereon. Any machine which does not display the certificate required by this section is contraband and a public nuisance subject to confiscation by any law enforcement officer.

(4) The executive director shall require any manufacturer, supplier, provider, lottery gaming machine operator or other person seeking the examination and certification of electronic gaming machines to pay the anticipated actual costs of the examination in advance. After the completion of the examination, the executive director shall refund any overpayment or charge and collect amounts sufficient to reimburse the executive director for any underpayment of actual costs. The executive director may contract for the examination of electronic gaming machines as required by this subsection, and may rely upon testing done by or for other states regulating electronic gaming machines, if the executive director deems such testing to be reliable and in the best interest of the state of Kansas.

(l) Electronic gaming machines operated pursuant to this act shall:

(1) Pay out an average of not less than 87% of the amount wagered over the life of the machine;

(2) be directly linked to a central lottery communications system to provide auditing and other program information as approved by the Kansas lottery. The executive director shall select the computer system most suitable for conducting the monitoring and auditing functions required by this act. The communications systems certified by the Kansas lottery shall not limit participation to only one electronic gaming machine manufacturer, distributor, supplier or provider; and

(3) be on-line and in constant communication with a central computer located at a location determined by the executive director. The lottery gaming machine operator shall lease or purchase at its own expense for the Kansas lottery all gaming equipment necessary to implement such central communications and auditing functions.

(m) No employee, contractor or other person in any way affiliated with a lottery gaming machine contractor shall loan money to or otherwise extend credit to patrons of the location where electronic gaming machines are operated pursuant to this act.

New Sec. 28. The executive director shall have the power to:

(a) Enter into contracts with a person pursuant to section 27, and amendments thereto, for placement and replacement of electronic gaming machines at the location specified by contract. Such contracts shall be subject to rules and regulations adopted pursuant to this act but shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(b) Examine or cause to be examined by any agent or representative designated by the executive director any books, papers, records or memoranda of the lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of the Kansas lottery act or rules and regulations adopted thereunder.

(c) Issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of the lottery gaming machine operator, or to compel the appearance of the lottery gaming machine operator for the purpose of ascertaining compliance with the provisions of this act or rules and regulations adopted hereunder. Subpoenas issued under the provisions of this subsection may be served upon natural persons and corporations in the manner provided in K.S.A. 60-304, and amendments thereto, for the service of process by any officer authorized to serve subpoenas in civil actions or by the executive director or an agent or representative designated by the executive director. In the case of the refusal of any person to comply with any such subpoena, the

executive director may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

(d) Inspect and view the operation of all machines, systems or facilities where electronic gaming machines controlled and operated by the Kansas lottery are located.

(e) Inspect and approve, prior to publication or distribution, all advertising by a lottery gaming machine operator which includes any reference to the Kansas lottery.

New Sec. 29. (a) The executive director shall collect all net machine income from the lottery gaming machine operator authorized pursuant to section 27, and amendments thereto. The executive director shall remit the entire amount to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the electronic gaming machine fund established pursuant to section 7, and amendments thereto.

(b) Subject to the provisions of section 32, and amendments thereto, not less often than once each week, the state treasurer shall transfer from the account of each lottery gaming machine operator in the electronic gaming machine fund to the state general fund an amount equal to the following:

(1) Of the first \$50,000,000 net machine income of such operator during any fiscal year, 20%.

(2) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 22.5%.

(3) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 25%.

(4) Of the next \$50,000,000 net machine income of such operator during such fiscal year, 27.5%.

(5) Of any additional amounts of net machine income of such operator during such fiscal year, 30%.

(c) Subject to the provisions of section 32, not more often than once each week, the state treasurer shall transfer from the account of the lottery gaming machine operator in the electronic gaming machine fund the following percentages of the balance remaining after transfer of moneys pursuant to subsection (b):

(1) To the problem gambling grant fund established pursuant to K.S.A. 2002 Supp. 79-4805, and amendments thereto, .25%, not to exceed \$3,000,000 in any fiscal year;

(2) to the live greyhound racing purse supplement fund, 2.5%;

(3) to the live horse racing purse supplement fund, 2.5%;

(4) to the state tourism fund established pursuant to K.S.A. 74-9003, and amendments thereto, 2.5%; and

(5) to Geary county, Kansas, 3%.

(d) Subject to the provisions of section 32, and amendments thereto, after the distribution of moneys pursuant to subsection (b), the state treasurer, not less than once each week, shall remit the balance in the account of the lottery gaming machine operator to such operator.

New Sec. 30. If a disagreement arises between the executive director and the Kansas racing and gaming commission with regard to their respective duties or responsibilities in carrying out the purposes of the Kansas gaming act, such disagreement shall be resolved by the governor in a manner not inconsistent with the provisions of this act.

New Sec. 31. As a condition precedent to contracting for the privilege of being a lottery gaming machine operator, parimutuel licensees shall file with the secretary of state of this state written consent, irrevocable, that any action or garnishment proceeding may be commenced against such licensees in the proper court of any county in this state in which the case of action shall arise or in which the plaintiff may reside by the service of process on a resident agent, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the licensee. The written consent shall state that the courts of this state have jurisdiction over the person of such licensee and are the proper and convenient forum for such action and shall waive the right to request a change of jurisdiction or venue to a court outside that state and that all actions arising under this act and commenced by the licensee shall be brought in this state's court as the proper and convenient forum. Such consent shall be executed by the licensee

and if a corporation, by the president and secretary of the corporate licensee, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers authorizing the president and secretary to execute the same.

New Sec. 32. (a) As a condition precedent to contracting for the privilege of being a lottery gaming machine operator under the Kansas gaming act, each operator shall make an advance payment of the amount due under subsection (b) of section 8, subsection (b) of section 26 or subsection (b) of section 29, and amendments thereto. The aggregate amount of such payments by all operators shall not exceed \$30,000,000.

(b) On or before December 31, 2003, the executive director shall determine the amount owed by each lottery gaming machine operator under subsection (a). Such amount shall be due and payable on a date determined by the executive director, but not later than June 30, 2004.

(c) Except as provided by subsection (d), no moneys shall be transferred as provided by subsection (c) of section 8, subsection (c) of section 26 or subsection (c) of section 29, and amendments thereto. One half of the amount paid by an operator under subsection (a) shall be allowed as a credit against the amount due under subsection (b) of section 8, subsection (b) of section 26 or subsection (b) of section 29, and amendments thereto, for fiscal year 2005 and the balance shall be allowed as a credit against such amount due for fiscal year 2006.

(d) Transfers of moneys as provided by subsection (c) of section 8, subsection (c) of section 26 or subsection (c) of section 29, and amendments thereto, shall commence in fiscal year 2005 and in fiscal year 2006 at the time any amount remitted by the operator exceeds the credit allowed under subsection (c) for each such fiscal year.

Sec. 33. K.S.A. 74-8705 is hereby amended to read as follows: 74-8705. (a) Major procurement contracts shall be awarded in accordance with K.S.A. 75-3738 through 75-3744, and amendments thereto, or subsection (b), as determined by the director, except that:

(1) The contract or contracts for the initial lease of facilities for the Kansas lottery shall be awarded upon the evaluation and approval of the director, the secretary of administration and the director of architectural services; *or*

(2) the commission shall designate certain major procurement contracts or portions thereof to be awarded, in accordance with rules and regulations of the commission, solely to minority business enterprises.

(b) The director may award any major procurement contract by use of a procurement negotiating committee. Such committee shall be composed of: (1) The executive director or a Kansas lottery employee designated by the executive director; (2) the chairperson of the commission or a commission member designated by the chairperson; and (3) the director of the division of purchases or an employee of such division designated by the director. Prior to negotiating a major procurement contract, the committee shall solicit bids or proposals thereon. The division of purchases shall provide staff support for the committee's solicitations. Upon receipt of bids or proposals, the committee may negotiate with one or more of the persons submitting such bids or proposals and select from among such persons the person to whom the contract is awarded. Such procurements shall be open and competitive and shall consider relevant factors, including security, competence, experience, timely performance and maximization of net revenues to the state. If a procurement negotiating committee is utilized, the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, shall not apply. Meetings conducted by the procurement negotiating committee shall be exempt from the provisions of the Kansas open meeting act, K.S.A. 75-4317 through 75-4320a, and amendments thereto.

(c) Before a major procurement contract is awarded, the executive director shall conduct a background investigation of: (1) The vendor to whom the contract is to be awarded; (2) all officers and directors of such vendor; (3) all persons who own a 5% or more interest in such vendor; (4) all persons who own a controlling interest in such vendor; and (5) any subsidiary or other business in which such vendor owns a controlling interest. The vendor shall submit appropriate investigation authorizations to facilitate such investigation. The executive director may require, in accordance with rules and regulations of the commission, that a vendor submit any additional information considered appropriate to preserve the integrity and security of the lottery. In addition, the executive director may conduct a back-

ground investigation of any person having a beneficial interest in a vendor. The secretary of revenue, securities commissioner, attorney general and director of the Kansas bureau of investigation shall assist in any investigation pursuant to this subsection upon request of the executive director. Whenever the secretary of revenue, securities commissioner, attorney general or director of the Kansas bureau of investigation assists in such an investigation and incurs costs in addition to those attributable to the operations of the office or bureau, such additional costs shall be paid by the Kansas lottery. The furnishing of assistance in such an investigation shall be a transaction between the Kansas lottery and the respective officer and shall be settled in accordance with K.S.A. 75-5516, and amendments thereto.

Upon the request of the chairperson, the Kansas bureau of investigation and other criminal justice agencies shall provide to the chairperson all background investigation information including criminal history record information, arrest and nonconviction data, criminal intelligence information and information relating to criminal and background investigations of a vendor to whom a major procurement contract is to be awarded. Such information, other than conviction data, shall be confidential and shall not be disclosed, except as provided in this section. In addition to any other penalty provided by law, disclosure of such information shall be grounds for removal from office or termination of employment.

(d) All major procurement contracts shall be subject to approval of the commission.

(e) (1) *Except as provided by paragraph (2), the executive director shall not agree to any renewal or extension of a major procurement contract unless such extension or renewal is awarded in the manner provided by this section.*

(2) *The provisions of paragraph (1) shall not apply to the extension or renegotiation of an existing contract with a vendor for the purposes of providing services for the monitoring and control of electronic gaming machines under the Kansas gaming act. The provisions of this subsection shall expire on June 30, 2005.*

Sec. 34. K.S.A. 74-8710 is hereby amended to read as follows: 74-8710. (a) The commission, upon the recommendation of the executive director, shall adopt rules and regulations governing the establishment and operation of a state lottery as necessary to carry out the purposes of this act. Temporary rules and regulations may be adopted by the commission without being subject to the provisions and requirements of K.S.A. 77-415 through 77-438, and amendments thereto, but shall be subject to approval by the attorney general as to legality and shall be filed with the secretary of state and published in the Kansas register. Temporary and permanent rules and regulations may include but shall not be limited to:

(1) Subject to the provisions of subsection (c), the types of lottery games to be conducted, including but not limited to instant lottery, on-line and traditional games, but not including games on video lottery machines or lottery machines.

(2) The manner of selecting the winning tickets or shares, except that, if a lottery game utilizes a drawing of winning numbers, a drawing among entries or a drawing among finalists, such drawings shall always be open to the public and shall be recorded on both video and audio tape.

(3) The manner of payment of prizes to the holders of winning tickets or shares.

(4) The frequency of the drawings or selections of winning tickets or shares.

(5) The type or types of locations at which tickets or shares may be sold.

(6) The method or methods to be used in selling tickets or shares.

(7) Additional qualifications for the selection of lottery retailers and the amount of application fees to be paid by each.

(8) The amount and method of compensation to be paid to lottery retailers, including special bonuses and incentives.

(9) Deadlines for claims for prizes by winners of each lottery game.

(10) Provisions for confidentiality of information submitted by vendors pursuant to K.S.A. 74-8705, and amendments thereto.

(11) Information required to be submitted by vendors, in addition to that required by K.S.A. 74-8705, and amendments thereto.

(12) The major procurement contracts or portions thereof to be awarded to minority business enterprises pursuant to subsection (a) of K.S.A. 74-8705, and amendments thereto, and procedures for the award thereof.

(13) *Provisions to implement, administer and enforce the Kansas gaming act.*

(14) *The types of electronic gaming machines to be operated at parimutuel licensee locations pursuant to the Kansas gaming act.*

(b) No new lottery game shall commence operation after the effective date of this act unless first approved by the governor or, in the governor's absence or disability, the lieutenant governor. *This subsection shall not apply to electronic gaming machine games.*

(c) The lottery shall adopt rules and regulations concerning the game of keno. Such rules and regulations shall require that the amount of time which elapses between the start of games shall not be less than four minutes.

Sec. 35. K.S.A. 74-8711 is hereby amended to read as follows: 74-8711. (a) There is hereby established in the state treasury the lottery operating fund.

(b) *Except as otherwise provided by the Kansas gaming act*, the executive director shall remit all moneys collected from the sale of lottery tickets and shares and any other moneys received by or on behalf of the Kansas lottery 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 lottery operating fund. Moneys credited to the fund shall be expended or transferred only as provided by this act. Expenditures from such 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 executive director or by a person designated by the executive director.

(c) Moneys in the lottery operating fund shall be used for:

(1) The payment of expenses of the lottery, which shall include all costs incurred in the operation and administration of the Kansas lottery, *other than expenses incurred pursuant to the Kansas gaming act*; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including but not limited to supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications and distribution of tickets and shares; and reimbursement of costs of facilities and services provided by other state agencies;

(2) the payment of compensation to lottery retailers;

(3) transfers of moneys to the lottery prize payment fund pursuant to K.S.A. 74-8712, and amendments thereto;

(4) transfers to the state general fund pursuant to K.S.A. 74-8713, and amendments thereto;

(5) transfers to the state gaming revenues fund pursuant to subsection (d) of this section and as otherwise provided by law; and

(6) transfers to the county reappraisal fund as prescribed by law.

(d) The director of accounts and reports shall transfer moneys in the lottery operating fund to the state gaming revenues fund created by K.S.A. 79-4801, and amendments thereto, on or before the 15th day of each month in an amount certified monthly by the executive director and determined as follows, whichever is greater:

(1) An amount equal to the moneys in the lottery operating fund in excess of those needed for the purposes described in subsections (c)(1) through (c)(4); or

(2) except for pull-tab lottery tickets and shares, an amount equal to not less than 30% of total monthly revenues from the sales of lottery tickets and shares less estimated returned tickets. In the case of pull-tab lottery tickets and shares, an amount equal to not less than 20% of the total monthly revenues from the sales of pull-tab lottery tickets and shares less estimated returned tickets.

Sec. 36. K.S.A. 2002 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271—74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2004.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2004.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil

and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d 65-1,178 through 65-1,199 or K.S.A. 2002 Supp. 17-5909, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2002 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) *Counties may not exempt from or effect changes in the Kansas lottery act.*

(34) *Counties may not exempt from or effect changes in the Kansas gaming act.*

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 37. K.S.A. 2002 Supp. 79-4805 is hereby amended to read as follows: 79-4805. (a) There is hereby established in the state treasury the problem gambling grant fund. All moneys credited to such fund shall be used only for the awarding of grants under this section. Such fund shall be administered in accordance with this section and the provisions of appropriation acts.

(b) All expenditures from the problem gambling grant fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved in the manner prescribed by law.

(c) There is hereby established a state grant program to provide assistance for the direct treatment of persons diagnosed as suffering from pathological gambling *the continued training of addiction professionals, the marketing of programs funded pursuant to this section* and to provide funding for research regarding the impact of gambling on residents of Kansas. Research grants awarded under this section may include, but need not be limited to, grants for determining the effectiveness of education, *treatment* and prevention efforts on the prevalence of pathological gambling in Kansas. All grants shall be made after open solicitation of proposals and evaluation of proposals against criteria established in rules and regulations adopted by the secretary of the department of social and rehabilitation services. Both public and private entities shall be eligible to apply for and receive grants under the provisions of this section.

(d) The secretary of the department of social and rehabilitation services is hereby authorized to receive moneys from any grants, gifts, contributions or bequests made for the purpose of funding grants under this section and to expend such moneys for the purpose for which received.

(e) All grants made in accordance with this section shall be made from the problem gambling grant fund. The secretary shall administer the provisions of this section and shall adopt rules and regulations establishing criteria for qualification to receive grants and such other matters deemed necessary by the secretary for the administration of this section. Such rules and regulations shall include, but need not be limited to, a requirement that each recipient of a grant to provide treatment for pathological gamblers report at least annually to the secretary the grantee's measurable achievement of specific outcome goals.

(f) For the purpose of this section "pathological gambling" means the disorder by that name described in the most recent edition of the diagnostic and statistical manual.

"Sec. 38. K.S.A. 74-8702, 74-8705, 74-8710 and 74-8711 and K.S.A. 2002 Supp. 19-101a and 79-4805 are hereby repealed.

Sec. 39. This act shall take effect and be in force from and after its publication in the Kansas register.;"

On page 1, by striking all in the title and inserting "AN ACT concerning the Kansas lottery; concerning lottery games and electronic gaming machines; amending K.S.A. 74-8702, 74-8705, 74-8710 and 74-8711 and K.S.A. 2002 Supp. 19-101a and 79-4805 and repealing the existing sections.;"

Roll call was demanded.

On roll call, the vote was: Yeas 67; Nays 57; Present but not voting: 0; Absent or not voting: 1.

Yeas: Aurand, Ballard, Ballou, Beggs, Betts, Boyer, Burroughs, Carlin, Compton, Cox, Crow, Davis, Dillmore, Dreher, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Gordon, Grant, Henderson, Henry, Holland, Horst, Huff, Humerickhouse, Huntington, D. Johnson, Kassebaum, Kirk, Klein, Kuetner, Larkin, Loganbill, M. Long, Loyd, Minor, Judy Morrison, Neighbor, Newton, Nichols, Novascone, O'Malley, O'Neal, Owens, Patterson, Peterson, Phelps, Powell, Reardon, Rehorn, Ruff, Sawyer, Schwartz, B. Sharp, S. Sharp, Showalter, Shriver, Storm, Thull, Toelkes, Ward, Wilk, Wilson, Winn, Yoder.

Nays: Barbieri-Lightner, Bethell, Brunk, Burgess, Campbell, Carter, Craft, Dahl, DeCastro, Decker, Edmonds, Faber, Freeborn, Goering, Goico, Hayzlett, Hill, Holmes, Howell, Huebert, Hutchins, Huy, Jack, E. Johnson, Kauffman, Krehbiel, Landwehr, Light, P. Long, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Myers, Neufeld, Osborne, Ostmeyer, Pauls, Powers, Reitz, Schwab, Shultz, Siegfried, Sloan, Svaty, Swenson, Tafanelli, Thimesch, Vickrey, D. Williams, J. Williams, Yonally.

Present but not voting: None.

Absent or not voting: Pottorff.

The motion of Rep. Ballou prevailed.

Also, on motion of Rep. Wilson **HB 2053** be amended as amended by House Committee of the Whole, in section 8 of the amendment by House Committee of the Whole on motion of Representative Ballou, in subsection (d), before the period, by inserting "except that 0.10% of the balance in the account of the lottery gaming machine operator at the pari-mutuel licensee location in Crawford county shall be credited to the Frontenac bison maintenance fund created by subsection (e)"; after subsection (d) of section 8, by inserting:

"(e) There is hereby created within the state treasury the Frontenac bison maintenance fund. All expenditures from the fund shall be made for the purpose of maintaining, developing and expanding the display of bison by the department of wildlife and parks on land owned by the department in Frontenac, Kansas. All expenditures from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of wildlife and parks or the secretary's designee.;"

Also, on motion of Rep. Grant **HB 2053** be amended as amended by House Committee of the Whole, by striking the House Committee of the Whole amendments inserted on motion of Representative Wilson; in section 8 of the amendment by House Committee of the Whole on motion of Representative Ballou, in subsection (d), before the period, by inserting "except that: (1) 0.10% of the balance in the account of the lottery gaming machine

operator at the parimutuel licensee location in Crawford county shall be credited to the Frontenac bison maintenance fund created by subsection (e); and (2) 0.20% of the balance in the account of the lottery gaming machine operator at the parimutuel licensee location in Crawford county shall be credited to the U.S. 69 highway maintenance fund created by subsection (f)"; after subsection (d) of section 8, by inserting:

"(e) There is hereby created within the state treasury the Frontenac bison maintenance fund. All expenditures from the fund shall be made for the purpose of maintaining, developing and expanding the display of bison by the department of wildlife and parks on land owned by the department in Frontenac, Kansas. All expenditures from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of wildlife and parks or the secretary's designee.

(f) There is hereby created within the state treasury the U.S. highway 69 maintenance fund. All expenditures from the fund shall be made for the purpose of maintaining U.S. highway 69 from the north end of the Arma bypass to Atkinson road in the city of Frontenac. All expenditures from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation or the secretary's designee. When the state ceases to have responsibility for maintenance of U.S. highway 69 from the north end of the Arma bypass to Atkinson road in the city of Frontenac, the county shall have responsibility for maintenance of the highway from the north end of the Arma bypass to the north city limit of Frontenac and the city of Frontenac shall have responsibility for the highway from the north city limit of Frontenac to Atkinson road in the city of Frontenac and ½ of all moneys credited to the fund shall be paid to Crawford county and ½ shall be paid to the city of Frontenac.";

Also, on motion of Rep. Peterson **HB 2053** be amended, as amended by House Committee of the Whole on motion of Rep. Ballou, on page 21, in line 9, by inserting in subsection 18(a) in the first sentence before "the executive director" by inserting: "any member of the Kansas Legislature, any member of the board of county commissioners in which the facility is located,";

Also, roll call was demanded on motion of Rep. Barbieri-Lightner to amend **HB 2053** as amended by House Committee of the Whole, in the amendment to the bill as adopted on the motion of Representative Ballou, in section 8, on page 16 of the amendment, by striking all of subsection (c) and inserting:

"(c) Subject to the provisions of section 32, and amendments thereto, not less than once each week, the state treasurer shall transfer the following percentages of the balance remaining, after transfer of moneys pursuant to subsection (b), in each account in the electronic gaming machine fund for receipt of moneys from lottery gaming machine operators which are parimutuel licensees:

(1) To the problem gambling grant fund established pursuant to K.S.A. 2002 Supp. 79-4805, and amendments thereto, .25%, not to exceed \$3,000,000 in any fiscal year;

(2) to the youth services aid and assistance account within the state general fund, .20% to be expended on the emergency shelter program;

(3) to the nonprofit organization licensed by the Kansas racing and gaming commission to conduct races at the parimutuel licensee location, 1%, pursuant to the management contract;

(4) to the county where the parimutuel licensee location is located, 3%;

(5) to the live greyhound racing purse supplement fund, 3.5%; and

(6) to the live horse racing purse supplement fund, 3.5%.";

In section 26, on page 34 of the amendment, by striking all of subsection (c) and inserting:

"(c) Subject to the provisions of section 32, and amendments thereto, not more often than once each week, the state treasurer shall transfer from the account of the lottery gaming machine operator in the electronic gaming machine fund the following percentages of the balance remaining after transfer of moneys pursuant to subsection (b):

(1) To the problem gambling grant fund established pursuant to K.S.A. 2002 Supp. 79-4805, and amendments thereto, .25%, not to exceed \$3,000,000 in any fiscal year;

(2) to the youth services aid and assistance account within the state general fund, .20% to be expended on the emergency shelter program;

(3) to the Boot Hill Museum, 1%;

(4) to the live greyhound racing purse supplement fund, 2.5%;

(5) to the live horse racing purse supplement fund, 2.5%;

(6) to the state tourism fund established pursuant to K.S.A. 74-9003, and amendments thereto, 1.5%, of which an amount equal to 1% of net machine income shall be placed in a separate account in such fund to be used for grants for economic development and tourism development within the 22 counties of southwest Kansas identified as the southwest Kansas tourism region by the division of travel and tourism of the department of commerce and housing;

(7) to Ford county, Kansas, 3%.”;

In section 29, on page 42 of the amendment, by striking all of subsection (c) and inserting:

“(c) Subject to the provisions of section 32, not more often than once each week, the state treasurer shall transfer from the account of the lottery gaming machine operator in the electronic gaming machine fund the following percentages of the balance remaining after transfer of moneys pursuant to subsection (b):

(1) To the problem gambling grant fund established pursuant to K.S.A. 2002 Supp. 79-4805, and amendments thereto, .25%, not to exceed \$3,000,000 in any fiscal year;

(2) to the youth services aid and assistance account within the state general fund, .20% to be expended on the emergency shelter program;

(3) to the live greyhound racing purse supplement fund, 2.5%;

(4) to the live horse racing purse supplement fund, 2.5%;

(5) to the state tourism fund established pursuant to K.S.A. 74-9003, and amendments thereto, 2.5%; and

(6) to Geary county, Kansas, 3%.”;

On roll call, the vote was: Yeas 104; Nays 20; Present but not voting: 0; Absent or not voting: 1.

Yeas: Aurand, Ballard, Barbieri-Lightner, Bethell, Betts, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Edmonds, Faber, Feuerborn, Freeborn, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kauffman, Klein, Krehbiel, Landwehr, Larkin, Light, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Peterson, Phelps, Powell, Powers, Reitz, Ruff, Sawyer, Schwab, Schwartz, S. Sharp, Showalter, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thull, Toelkes, Vickrey, Ward, D. Williams, J. Williams, Wilson, Yoder, Yonally.

Nays: Ballou, Beggs, Cox, Dreher, Flaharty, Flora, Henderson, Huff, Humerickhouse, Kassebaum, Kirk, Kuether, Nichols, Reardon, Rehorn, B. Sharp, Shriver, Thimesch, Wilk, Winn.

Present but not voting: None.

Absent or not voting: Pottorff.

The motion of Rep. Barbieri-Lightner prevailed.

Also, on motion of Rep. Burroughs to amend **HB 2053**, the motion did not prevail.

Also, on motion of Rep. O'Neal **HB 2053** be amended as amended by House Committee of the Whole, in section 7 of the amendment adopted on motion of Representative Ballou, following subsection (c), by inserting the following:

“(d) Moneys in the electronic gaming machine fund shall be administered by the chief justice of the supreme court or the chief justice's designee. The chief justice shall receive an administrative fee in an amount not to exceed 25% of the moneys in such fund. Such administrative fee shall be credited to the judiciary operations account of the state general fund.”;

Also, on motion of Rep. McCreary to amend **HB 2053**, the motion did not prevail.

Also, on motion of Rep. Aurand **HB 2053** be amended as amended by House Committee of the Whole, in section 8 of the amendment adopted on motion of Representative Ballou, in part (5) of subsection (c), by striking “and”; in part (6) of subsection (c), before the period, by inserting “; and

(7) to the fund established for restoration and repair of the statehouse pursuant to K.S.A. 75-2262, and amendments thereto, 2.0%";

In section 26 of the amendment adopted on motion of Representative Ballou, in part (7) of subsection (c), before the period, by inserting "; and

(8) to the fund established for restoration and repair of the statehouse pursuant to K.S.A. 75-2262, and amendments thereto, 2.0%";

Also, on motion of Rep. Powell to amend **HB 2053**, the motion did not prevail.

Also, roll call was demanded on motion of Rep. Goico to amend as amended by House Committee of the Whole, in section 7 of the amendment adopted on motion of Representative Ballou, following subsection (c), by inserting the following:

"(d) Of moneys initially deposited in the electronic gaming machine fund, 25% shall be credited to school districts to fund teacher compensation and benefits. Such funds shall be distributed based on a school districts full-time pupil enrollment.";

And by renumbering the remaining subsections accordingly;

On roll call, the vote was: Yeas 69; Nays 55; Present but not voting: 0; Absent or not voting: 1.

Yeas: Ballard, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Campbell, Carlin, Carter, Compton, Dahl, Davis, DeCastro, Decker, Edmonds, Faber, Freeborn, Gatewood, Goering, Goico, Gordon, Hayzlett, Holmes, Horst, Howell, Huebert, Huntington, Hutchins, Huy, Jack, E. Johnson, Kauffman, Krehbiel, Landwehr, Light, P. Long, Loyd, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Powell, Powers, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Sloan, Tafanelli, Toelkes, D. Williams, J. Williams, Yoder, Yonally.

Nays: Aurand, Ballou, Beggs, Betts, Burroughs, Cox, Craft, Crow, Dillmore, Dreher, Feuerborn, Flaharty, Flora, Gilbert, Grant, Henderson, Henry, Hill, Holland, Huff, Humerickhouse, D. Johnson, Kassebaum, Kirk, Klein, Kuether, Larkin, Loganbill, M. Long, McKinney, Minor, Neighbor, Nichols, Novascone, Pauls, Peterson, Phelps, Reardon, Rehorn, Reitz, Ruff, Sawyer, B. Sharp, Showalter, Shriver, Storm, Svaty, Swenson, Thimesch, Thull, Vickrey, Ward, Wilk, Wilson, Winn.

Present but not voting: None.

Absent or not voting: Pottorff.

The motion of Rep. Goico prevailed (see further action, this Committee of the Whole report).

Also, on motion of Rep. Mays to amend **HB 2053**, the motion did not prevail.

Also, having voted on the prevailing side on the Goico amendment, Rep. Yonally moved that the Committee of the Whole reconsider its action. The motion prevailed. The question then reverted back to the Goico amendment, which was withdrawn.

Also, roll call was demanded on motion of Rep. Mason to amend **HB 2053**, as amended by House Committee of the Whole, on page 34, in line 2, by striking "20%" and inserting "30%";

On roll call, the vote was: Yeas 96; Nays 25; Present but not voting: 0; Absent or not voting: 4.

Yeas: Ballard, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Craft, Dahl, Davis, DeCastro, Decker, Dillmore, Edmonds, Faber, Feuerborn, Flaharty, Freeborn, Gatewood, Goering, Gordon, Grant, Hayzlett, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kauffman, Kirk, Krehbiel, Landwehr, Larkin, Light, P. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Nichols, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Phelps, Powell, Powers, Reitz, Ruff, Schwab, Schwartz, S. Sharp, Showalter, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, D. Williams, J. Williams, Wilson, Yoder.

Nays: Aurand, Ballou, Beggs, Betts, Cox, Crow, Dreher, Flora, Gilbert, Henderson, Huff, Kassebaum, Klein, Kuether, Loganbill, M. Long, Minor, Peterson, Reardon, Rehorn, Sawyer, Shriver, Ward, Wilk, Winn.

Present but not voting: None.

Absent or not voting: Goico, Pottorff, B. Sharp, Yonally.

The motion of Rep. Mason prevailed.

Also, on motion of Rep. Faber to rerefer **HB 2053** to Committee on Appropriations, the motion did not prevail.

Also, roll call was demanded on motion of Rep. Hutchins to amend **HB 2053**, as amended by House Committee of the Whole, in Section 7 of the Ballou amendment following subsection (c), insert the following: "of the moneys deposited in the electronic gaming machine fund, such amount as necessary to pay the 13th check if adequate amounts of money are not available from the KPERs retirement dividend reserve fund.";

On roll call, the vote was: Yeas 110; Nays 9; Present but not voting: 0; Absent or not voting: 6.

Yeas: Ballard, Barbieri-Lightner, Bethell, Betts, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Edmonds, Faber, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Larkin, Light, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Peterson, Phelps, Powell, Powers, Reardon, Reitz, Ruff, Sawyer, Schwab, Schwartz, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, D. Williams, J. Williams, Wilson, Yoder, Yonally.

Nays: Aurand, Ballou, Beggs, Cox, Dreher, Huff, Kassebaum, Neighbor, Wilk.

Present but not voting: None.

Absent or not voting: Compton, Freeborn, Pottorff, Rehorn, B. Sharp, Winn.

The motion of Rep. Hutchins prevailed.

Also, roll call was demanded on motion of Rep. Goico to amend **HB 2053** as amended by House Committee of the Whole, in section 7 of the amendment adopted on motion of Representative Ballou, following subsection (c), by inserting the following:

"(f) Of moneys initially deposited in the electronic gaming machine fund, 25% shall be credited to school districts to fund teacher compensation and benefits. Such funds shall be distributed based on a school districts full-time pupil enrollment. Any moneys distributed to school districts pursuant to this subsection shall not be subject to any statutory limitations of base state aid per pupil and such funds may be disbursed over and above such statutory limitations.";

And by renumbering the remaining subsections accordingly;

On roll call, the vote was: Yeas 70; Nays 42; Present but not voting: 0; Absent or not voting: 13.

Yeas: Ballard, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Burroughs, Campbell, Carter, Dahl, Davis, DeCastro, Decker, Edmonds, Faber, Feuerborn, Goering, Goico, Gordon, Hayzlett, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Huntington, Hutchins, Huy, D. Johnson, E. Johnson, Kauffman, Klein, Krehbiel, Light, P. Long, Loyd, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Ostmeyer, Owens, Patterson, Powell, Powers, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Sloan, Tafanelli, Toelkes, Ward, D. Williams, Yoder, Yonally.

Nays: Aurand, Beggs, Betts, Carlin, Compton, Cox, Craft, Dillmore, Dreher, Flaharty, Flora, Gatewood, Gilbert, Grant, Henderson, Huff, Humerickhouse, Jack, Kassebaum, Kirk, Kuether, Larkin, M. Long, McKinney, J. Miller, Osborne, Pauls, Peterson, Phelps, Reardon, Reitz, Ruff, B. Sharp, Shriver, Svaty, Swenson, Thimesch, Thull, Vickrey, Wilk, J. Williams, Winn.

Present but not voting: None.

Absent or not voting: Ballou, Crow, Freeborn, Landwehr, Loganbill, Minor, Nichols, Pottorff, Rehorn, Sawyer, Showalter, Storm, Wilson.

The motion of Rep. Goico prevailed; and **HB 2053** be passed as amended.

On motion of Rep. Neufeld **HB 2471** be amended on page 4, in line 7, by striking “the effective date of this act, of the \$3,408,099” and inserting “July 1, 2003, of the \$3,189,583”; in line 9, by striking all before “from” and inserting “§3(a) of 2003 Senate Bill No. 6”;

Also, on further motion of Rep. Neufeld **HB 2471** be amended on page 38, in line 39, by subtracting \$239,535 from the dollar amount and by adjusting the dollar amount in line 39 accordingly; following line 39, by inserting:

“For the fiscal year ending June 30, 2004 ..... \$460,969”;

On page 42, in line 13, by subtracting \$254,952 from the dollar amount in line 13 and by adjusting the dollar amount in line 13 accordingly;

Also, on further motion of Rep. Neufeld **HB 2471** be amended on page 15, in line 42, by adding \$130,000 to the dollar amount and by adjusting the dollar amount in line 42 accordingly;

On page 16, in line 12, by adding \$130,000 to the dollar amount and by adjusting the dollar amount in line 12 accordingly;

Also, on further motion of Rep. Neufeld **HB 2471** be amended on page 4, in line 9, by striking all before “from” and inserting “§3(a) of 2003 Senate Bill No. 6”;

Also, on further motion of Rep. Neufeld **HB 2471** be amended on page 12, in line 22, by striking “economic”; in line 23, by striking “development initiatives” and inserting “general”;

Also, on further motion of Rep. Neufeld **HB 2471** be amended on page 48, following line 24, by inserting a new section to read as follows:

“Sec. 80.

LEGISLATIVE COORDINATING COUNCIL

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year or years specified, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures other than refunds authorized by law shall not exceed the following:

Legislative research department special revenue fund	
For the fiscal year ending June 30, 2003.....	No limit
For the fiscal year ending June 30, 2004.....	No limit”;

Also, roll call was demanded on motion of Rep. Gatewood to amend **HB 2471** on page 1, following line 39, by inserting the following material to read as follows:

“(b) In addition to the payment of \$4,000 authorized by K.S.A. 74-4989, and amendments thereto, for a lump-sum death benefit, the executive director of the Kansas public employees retirement system shall pay an additional amount of \$1,000 from the Kansas public employees retirement system to each retirant’s beneficiary during the fiscal year commencing on July 1, 2003.”;

On roll call, the vote was: Yeas 100; Nays 24; Present but not voting: 0; Absent or not voting: 1.

Yeas: Aurand, Ballard, Ballou, Beggs, Betts, Brunk, Burgess, Burroughs, Campbell, Carlin, Compton, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Jack, D. Johnson, Kassebaum, Kirk, Klein, Kuether, Landwehr, Larkin, Loganbill, M. Long, P. Long, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Nichols, O’Malley, O’Neal, Ostmeyer, Owens, Patterson, Pauls, Peterson, Phelps, Powell, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, Schwab, Schwartz, B. Sharp, Showalter, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, D. Williams, J. Williams, Wilson, Winn, Yonally.

Nays: Barbieri-Lightner, Bethell, Boyer, Carter, Cox, Dreher, Edmonds, Faber, Freeborn, Huntington, E. Johnson, Kauffman, Krehbiel, Light, Loyd, Mason, Jim Morrison, Novascone, Osborne, S. Sharp, Shriver, Shultz, Wilk, Yoder.

Present but not voting: None.

Absent or not voting: Pottorff.

The motion of Rep. Gatewood prevailed.

Also, on motion of Rep. Ward **HB 2471** be amended on page 15, in line 12, by adding \$3,436,175 to the dollar amount and by adjusting the dollar amount in line 12 accordingly;

On page 18, in line 39, by adding \$178,000 to the dollar amount and by adjusting the dollar amount in line 39 accordingly;

On page 19, following line 14, by inserting new material to read as follows:

“Community corrections

For the fiscal year ending June 30, 2004..... \$1,641,340”

Also, on motion of Rep. J. Williams to amend **HB 2471**, Rep. Neufeld requested the question be divided. The request was subsequently withdrawn. The question then reverted back to the motion of Rep. J. Williams and the bill be amended on page 42, after line 2, by inserting the following:

“LTC — medicaid assistance — HCBS/FE

For the fiscal year ending June 30, 2004..... \$254,952”;

Also on page 42, by striking all in lines 10 through 13;

And by relettering subsections accordingly;

Also, on motion of Rep. Huebert **HB 2471** be amended on page 27, following line 42, by inserting the following material to read as follows:

“(g) In addition to the other purposes for which expenditures may be made by the state board of regents from moneys appropriated from the state general fund or any special revenue fund for fiscal year 2004 for the state board of regents authorized by this or other appropriation act of the 2003 regular session of the legislature, notwithstanding the provisions of any other statute, expenditures shall be made by the state board of regents for fiscal year 2004 from the moneys appropriated from the state general fund or any special revenue fund for development, adoption and implementation of a policy and any necessary administrative procedures to provide a waiver of all tuition, fees and other charges for enrollment without charge of tuition or fees for each person who was a prisoner of war while serving in any military service of the United States of America, who is a resident of Kansas and who is enrolled at a state educational institution under the control and supervision of the state board of regents, so long as such person is eligible for such enrollment, but not to exceed 12 semesters of instruction or the equivalent thereof, at any such state educational institution: *Provided*, That, as used in this subsection, “military service of the United States of America” includes any active service in any armed service of the United States of American and any member of the Kansas army or air national guard in active federal service and “prisoner of war” means an individual who is a prisoner of war under Article 4 of the third Geneva Convention and any individual who is in military service of the United States of America in an armed conflict and who is taken prisoner by opposing forces, whether or not under an official declaration of war, including the recent armed conflicts in Iraq, Afghanistan, Kuwait, Herzegovina and Bosnia.”;

Also, on motion of Rep. Minor **HB 2471** be amended on page 41, following line 28, by inserting the following material to read as follows:

“(r)(1) During the fiscal year ending June 30, 2003, the position limitation established by section 131(a) of chapter 204 of the 2002 Session Laws of Kansas for Larned State Hospital of 725.8 full-time and regular part-time positions equated to full-time, excluding seasonal and temporary positions, shall not be exceeded, except upon approval of the state finance council.

(2) On July 1, 2003, the position limitation established by section 85(a) of 2003 Senate Bill No. 6 for Larned State Hospital is hereby increased from 663.0 to 792.8.”;

Also, on motion of Rep. Owens **HB 2471** be amended on page 26, after line 12, by inserting the following:

“(c) During the fiscal year ending June 20, 2004, in any case where an allotment system has been applied during fiscal year 2004 to appropriations of the juvenile justice authority from the childrens initiatives fund for fiscal year 2004 for intervention and graduated sanctions community grants, pursuant to K.S.A. 75-3722 and amendments thereto, and any local district receiving an intervention and graduated sanctions community grant has such grant reduced under such allotment which causes any reduction in the core programing of such

local district, such local district may make expenditures for such core programming from moneys received from moneys appropriated from the children's initiatives fund for fiscal year 2004 for the juvenile justice authority for prevention program grants, notwithstanding any provision of any statute or any grant agreement to the contrary.”;

Also, on motion of Rep. Sloan to amend **HB 2471**, the motion did not prevail.

Also, roll call was demanded on motion of Rep. Toelkes to amend **HB 2471** on page 1, following line 39, by inserting the following:

“(b) Notwithstanding the provisions of K.S.A. 74-49,111 and amendments thereto, for the fiscal year commencing July 1, 2003, the executive director of the Kansas public employees retirement system shall transfer from the Kansas public employees retirement fund to the retirant dividend payment reserve of the Kansas public employees retirement fund the amount required to pay the maximum benefits authorized by K.S.A. 74-49,111 and amendments thereto: *Provided*, That any benefits paid during the fiscal year commencing July 1, 2003, shall not be subject to the provisions of subsection (8) of K.S.A. 74-4920 and amendments thereto.”;

On roll call, the vote was: Yeas 89; Nays 35; Present but not voting: 0; Absent or not voting: 1.

Yeas: Ballard, Ballou, Betts, Brunk, Burgess, Burroughs, Campbell, Carlin, Compton, Craft, Crow, Dahl, Davis, DeCastro, Dillmore, Faber, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Henderson, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Kirk, Klein, Kuether, Landwehr, Larkin, Loganbill, M. Long, P. Long, Mays, McKinney, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Nichols, O'Neal, Osborne, Ostmeyer, Owens, Pauls, Peterson, Phelps, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, B. Sharp, Showalter, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, D. Williams, J. Williams, Wilson, Winn, Yonally.

Nays: Aurand, Barbieri-Lightner, Beggs, Bethell, Boyer, Carter, Cox, Decker, Dreher, Edmonds, Freeborn, Haylett, Huff, Humerickhouse, Huntington, Krehbiel, Light, Loyd, Mason, McCreary, McLeland, Merrick, Neufeld, Newton, Novascone, O'Malley, Patterson, Powell, Schwab, Schwartz, S. Sharp, Shriver, Shultz, Wilk, Yoder.

Present but not voting: None.

Absent or not voting: Pottorff.

The motion of Rep. Toelkes prevailed.

Also, on motion of Rep. O'Neal **HB 2471** be amended on page 45, following line 38, by inserting the following material to read as follows:

“(b) The director of accounts and reports shall not make the transfer of \$57,385 from the health care stabilization fund of the health care stabilization fund board of governors to the state general fund which was directed to be made on July 1, 2003, by section 32(c) of 2003 Senate Bill No. 6.”;

Also, roll call was demanded on motion of Rep. Loyd to amend **HB 2471** on page 30, by striking all in lines 27 through 43;

On page 31, by striking all in lines 1 through 9;

By renumbering remaining sections accordingly;

On roll call, the vote was: Yeas 59; Nays 63; Present but not voting: 0; Absent or not voting: 3.

Yeas: Ballard, Beggs, Betts, Burroughs, Carlin, Craft, Crow, Dillmore, Dreher, Faber, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Grant, Henderson, Henry, Hill, Holland, Holmes, Horst, Howell, Huy, Jack, Kassebaum, Kirk, Klein, Kuether, Landwehr, Larkin, Loganbill, M. Long, Loyd, McKinney, J. Miller, Minor, Nichols, Ostmeyer, Pauls, Peterson, Reardon, Rehorn, Ruff, Sawyer, B. Sharp, Showalter, Shriver, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Ward, Wilk, J. Williams, Wilson, Winn.

Nays: Aurand, Ballou, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Campbell, Carter, Compton, Cox, Dahl, Davis, Decker, Edmonds, Freeborn, Goering, Goico, Gordon, Haylett, Huebert, Huff, Humerickhouse, Huntington, Hutchins, D. Johnson, E. Johnson, Kauffman, Krehbiel, Light, P. Long, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone,

O'Malley, O'Neal, Osborne, Owens, Patterson, Powell, Powers, Reitz, Schwab, Schwartz, S. Sharp, Shultz, Siegfried, Sloan, Storm, Vickrey, D. Williams, Yoder, Yonally.

Present but not voting: None.

Absent or not voting: DeCastro, Phelps, Pottorff.

The motion of Rep. Loyd did not prevail.

Also, on motion of Rep. Carlin to amend **HB 2471**, the motion did not prevail.

Also, roll call was demanded on motion of Rep. Davis to amend **HB 2471** on page 30, in line 1 by adding \$15,620,553 to the dollar amount and by adjusting the dollar amount in line 1 accordingly;

On page 38, in line 35, by adding \$1,400,000 to the dollar amount and by adjusting the dollar amount in line 35 accordingly; after line 39, by inserting the following:

“For the fiscal year ending June 30, 2004 ..... \$6,300,000”;

Also on page 38, in line 41, by adding \$4,200,000 to the dollar amount and by adjusting the dollar amount in line 41 accordingly;

On page 42, after line 2, by inserting the following:

“LTC — medicaid assistance — HCBS/FE

For the fiscal year ending June 30, 2004..... \$3,400,000

Senior care act

For the fiscal year ending June 30, 2004..... \$1,700,000”;

On roll call, the vote was: Yeas 61; Nays 62; Present but not voting: 0; Absent or not voting: 2.

Yeas: Ballard, Betts, Boyer, Burroughs, Campbell, Carlin, Crow, Davis, Dillmore, Faber, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Grant, Henderson, Henry, Hill, Holland, Huntington, Jack, Kassebaum, Kirk, Klein, Kuether, Larkin, Loganbill, M. Long, McKinney, J. Miller, Minor, Neighbor, Nichols, O'Malley, O'Neal, Pauls, Peterson, Phelps, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, B. Sharp, S. Sharp, Showalter, Shriver, Sloan, Storm, Svaty, Swenson, Thimesch, Thull, Toelkes, Ward, J. Williams, Wilson, Winn, Yonally.

Nays: Aurand, Ballou, Barbieri-Lightner, Beggs, Bethell, Brunk, Burgess, Carter, Compton, Cox, Craft, Dahl, DeCastro, Decker, Dreher, Edmonds, Freeborn, Goering, Goico, Gordon, Hayzlett, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, D. Johnson, E. Johnson, Kauffman, Krehbiel, Landwehr, Light, P. Long, Loyd, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, Osborne, Ostmeyer, Owens, Patterson, Powell, Schwab, Schwartz, Shultz, Siegfried, Tafanelli, Vickrey, Wilk, D. Williams, Yoder.

Present but not voting: None.

Absent or not voting: Huy, Pottorff.

The motion of Rep. Davis did not prevail.

Also, roll call was demanded on motion of Rep. Sawyer to amend **HB 2471** on page 3, by striking all in lines 4 through 12;

On roll call, the vote was: Yeas 61; Nays 62; Present but not voting: 0; Absent or not voting: 2.

Yeas: Ballard, Betts, Burroughs, Campbell, Carlin, Crow, Davis, Dillmore, Edmonds, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Grant, Henderson, Henry, Hill, Holland, Howell, Huntington, Jack, Kassebaum, Kirk, Klein, Kuether, Larkin, Loganbill, M. Long, Loyd, McKinney, J. Miller, Minor, Nichols, O'Neal, Pauls, Peterson, Phelps, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, B. Sharp, S. Sharp, Showalter, Shriver, Sloan, Storm, Svaty, Thimesch, Thull, Toelkes, Ward, Wilk, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: Aurand, Ballou, Barbieri-Lightner, Beggs, Bethell, Boyer, Brunk, Burgess, Carter, Compton, Cox, Craft, Dahl, DeCastro, Decker, Dreher, Faber, Freeborn, Goering, Goico, Gordon, Hayzlett, Holmes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, D. Johnson, E. Johnson, Kauffman, Krehbiel, Landwehr, Light, P. Long, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, Osborne, Ostmeyer, Owens, Patterson, Powell, Schwab, Schwartz, Shultz, Siegfried, Tafanelli, Vickrey, D. Williams.

Present but not voting: None.

Absent or not voting: Pottorff, Swenson.

The motion of Rep. Sawyer did not prevail.

Also, on motion of Rep. Feuerborn **HB 2471** be amended on page 42, in line 16, by striking all following "fund"; by striking all in line 17; in line 18, by striking "program" where it appears for the last time and inserting "in excess of any appropriation required to match federal funds under the federal older Americans act"; in line 20, by striking "all such sources for the in-home" and inserting "the state general fund for the federal older Americans act";

Also, on motion of Rep. Crow to amend **HB 2471**, the motion did not prevail.

Also, on motion of Rep. Yoder to amend **HB 2471**, Rep. Neufeld requested a ruling on the amendment being germane to the bill. The Rules Chair ruled the amendment not germane.

Also, on motion of Rep. Wilson to amend **HB 2471**, the motion did not prevail; and the bill be passed as amended.

#### REPORTS OF STANDING COMMITTEES

The Committee on **Appropriations** recommends **SB 261** be amended on page 5, by striking all in line 4 and inserting the following:

"Sec. 7. K.S.A. 2002 Supp. 32-906 is hereby amended to read as follows: 32-906. (a) Except as otherwise provided by law or rules and regulations of the secretary, a valid Kansas fishing license is required to fish or to take any bullfrog in this state.

(b) The provisions of subsection (a) do not apply to fishing by:

(1) A person, or a member of a person's immediate family domiciled with such person, on land owned by such person or on land leased or rented by such person for agricultural purposes;

(2) a resident of this state who is less than 16 years of age or who is 65 or more years of age;

(3) a nonresident who is less than 16 years of age;

(4) a person fishing in a private water fishing impoundment unless waived pursuant to K.S.A. 32-975 and amendments thereto;

(5) a resident of an adult care home, as defined by K.S.A. 39-923 and amendments thereto, licensed by the secretary of ~~health and environment~~ *aging*;

(6) an inmate in an honor camp operated by the secretary of corrections, pursuant to an agreement between the secretary of corrections and the secretary of wildlife and parks;

(7) a person on dates designated pursuant to subsection (f);

(8) a person fishing under a valid institutional group fishing license issued pursuant to subsection (g); or

(9) a participant in a fishing clinic sponsored or cosponsored by the department, during the period of time that the fishing clinic is being conducted.

(c) The fee for a fishing license shall be the amount prescribed pursuant to K.S.A. 32-988 and amendments thereto.

(d) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid throughout the state.

(e) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid from the date of issuance and expires on December 31 following its issuance, except that the secretary may issue a:

(1) Permanent license pursuant to K.S.A. 32-929 and amendments thereto;

(2) lifetime license pursuant to K.S.A. 32-930 and amendments thereto;

(3) nonresident fishing license valid for a period of five days; and

(4) resident or nonresident fishing license valid for a period of 24 hours.

(f) The secretary may designate by resolution two days each calendar year during which persons may fish by legal means without having a valid fishing license.

(g) The secretary shall issue an annual institutional group fishing license to each facility operating under the jurisdiction of or licensed by the secretary of social and rehabilitation services and to any veterans administration medical center in the state of Kansas upon application by such facility or center to the secretary of wildlife and parks for such license.

All applications for facilities under the jurisdiction of the secretary of social and rehabilitation services shall be made with the approval of the secretary of social and rehabilitation

services and shall provide such information as the secretary of wildlife and parks requires. All applications for any veterans administration medical center shall be made with the approval of the director of such facility and shall provide such information as the secretary of wildlife and parks requires. Persons who have been admitted to and are currently residing at the facility or center, not to exceed 20 at any one time, may fish under an institutional group fishing license within the state while on a group trip, group outing or other group activity which is supervised by the facility or center. Persons fishing under an institutional group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and to all rules and regulations relating to fishing.

The staff personnel of the facility or center supervising the group trip, group outing or other group activity shall have in their possession the institutional license when engaged in supervising any activity requiring the license. Such staff personnel may assist group members in all aspects of their fishing activity.

(h) The secretary may issue a special nonprofit group fishing license to any community, civic or charitable organization which is organized as a not-for-profit corporation, for use by such community, civic or charitable organization for the sole purpose of conducting group fishing activities for handicapped or developmentally disabled individuals. All applications for a special nonprofit group fishing license shall be made to the secretary or the secretary's designee and shall provide such information as required by the secretary.

Handicapped or developmentally disabled individuals, not to exceed 20 at any one time, may fish under a special nonprofit group fishing license while on a group trip, outing or activity which is supervised by the community, civic or charitable organization. Individuals fishing under a special nonprofit group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and rules and regulations relating to fishing.

The staff personnel of the community, civic or charitable organization supervising the group trip, outing or activity shall have in their possession the special nonprofit group fishing license when engaged in supervising any activity requiring the special nonprofit group fishing license. Such staff personnel may assist group members in all aspects of their fishing activity.

Sec. 8. K.S.A. 2002 Supp. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) "Adult care home" means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of ~~health and environment~~ *aging*.

(2) "Nursing facility" means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) "Intermediate care facility for the mentally retarded" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by mental retardation or related conditions need services to compensate for activities of daily living limitations.

(5) "Assisted living facility" means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week for the support of resident independence.

The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) "Residential health care facility" means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree or relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-day-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) "Home plus" means any residence or facility caring for not more than eight individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the staff and rules and regulations developed by the department of health and environment on aging. An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than eight-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous.

(8) "Boarding care home" means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

(10) "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

(11) "Skilled nursing care" means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

- (16) "Licensing agency" means the secretary of ~~health and environment~~ *aging*.
- (17) "Skilled nursing home" means a nursing facility.
- (18) "Intermediate nursing care home" means a nursing facility.
- (19) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.
- (20) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.
- (21) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the ~~licensing agency~~ *secretary of health and environment* on principles of assisted living and such other requirements as may be established by the ~~licensing agency~~ *secretary of health and environment* by rules and regulations.
- (22) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting.
- (23) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.
- (24) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.
- (25) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.
- (26) The term "intermediate personal care home" for purposes of those individuals applying for or receiving veterans' benefits means residential health care facility.
- (b) The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provide services only to hospice patients.
- ~~(c) Facilities licensed under K.S.A. 39-1501 *et seq.* and amendments thereto or K.S.A. 75-3307b and amendments thereto or under this section as an intermediate personal care home or with license applications on file with the licensing agency as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.~~
- ~~(c)~~ (c) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.
- ~~(d)~~ (d) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.
- ~~(e)~~ (e) Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.
- ~~(f)~~ (f) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.

Sec. 9. K.S.A. 39-924 is hereby amended to read as follows: 39-924. The purpose of this act is the development, establishment, and enforcement of standards (1) for the care, treatment, health, safety, welfare and comfort of individuals in adult care homes licensed by the secretary of ~~health and environment~~ *aging* and (2) for the construction, general hygiene, maintenance and operation of said adult care homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of such individuals in adult care homes.

Sec. 10. K.S.A. 39-925 is hereby amended to read as follows: 39-925. (a) The administration of ~~this the adult care home licensure act shall be under the secretary of health and environment~~ *is hereby transferred from the secretary of health and environment to the secretary of aging, except as otherwise provided by this act. On the effective date of this act, the administration of the adult care home licensure act shall be under authority of the secretary of aging* as the licensing agency in conjunction with the state fire marshal, and shall have the assistance of the county, city-county or multicounty health departments, local fire and safety authorities and other agencies of government in this state. *The secretary of aging shall appoint an officer to administer the adult care home licensure act and such officer shall be in the unclassified service under the Kansas civil service act.*

(b) *The secretary of aging shall be a continuation of the secretary of health and environment as to the programs transferred and shall be the successor in every way to the powers, duties and functions of the secretary of health and environment for such programs, except as otherwise provided by this act. On and after the effective date of this act, for each of the programs transferred, every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of aging shall be deemed to have the same force and effect as if performed by the secretary of health and environment in whom such powers were vested prior to the effective date of this act.*

(c) (1) *No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred adult care home survey, certification and licensing programs, and reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such programs. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the effective date of this act or thereafter.*

(2) *No suit, action or other proceeding, judicial or administrative, pertaining to the adult care home survey, certification and licensing programs or to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.*

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

(4) *Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-923 et seq., and amendments thereto, K.S.A. 39-1401 et seq., and amendments thereto, or the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq., and amendments thereto, currently pertaining to adult care home certification, survey and licensing or reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.*

(5) *All orders and directives under the adult care home licensure act by the secretary of health and environment in existence immediately prior to the effective date of the transfer of powers, duties and functions by this act, shall continue in force and effect and shall be deemed to be duly issued orders, and directives of the secretary of aging, until reissued, amended or nullified pursuant to law.*

(d) (1) *All rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, which promote the safe, proper and adequate treatment and care of individuals in adult care homes, except those specified in subsection (d)(2) of this section, shall continue to be effective and shall be deemed to be rules and regulations of the secretary of*

*aging, until revised, amended, revoked or nullified by the secretary of aging, or otherwise, pursuant to law.*

(2) *The following rules and regulations of the department of health and environment adopted pursuant to K.S.A. 39-923 et seq., and amendments thereto, and in effect on the effective date of this act, shall remain the rules and regulations of the secretary of health and environment: K.A.R. 28-39-164 through 28-39-174.*

(e) *All contracts shall be made in the name of "secretary of aging" and in that name the secretary of aging may sue and be sued on such contracts. The grant of authority under this subsection shall not be construed to be a waiver of any rights retained by the state under the 11th amendment to the United States constitution and shall be subject to and shall not supersede the provisions of any appropriation act of this state.*

Sec. 11. K.S.A. 39-926 is hereby amended to read as follows: 39-926. It shall be unlawful for any person or persons acting jointly or severally to operate an adult care home within this state except upon license first had and obtained for that purpose from the secretary of ~~health and environment~~ *aging* as the licensing agency upon application made therefor as provided in this act, and compliance with the requirements, standards, rules and regulations, promulgated under its provisions.

Sec. 12. K.S.A. 39-930 is hereby amended to read as follows: 39-930. The fee for license to operate an adult care home shall be a base amount plus an additional amount for each bed of such home which shall be paid to the secretary of ~~health and environment~~ *aging* before the license is issued. The fee shall be fixed by rules and regulations of the secretary of ~~health and environment~~ *aging*. The fee shall be deposited in the state treasury and credited to the state general fund unless the evaluation and inspection was made by a county, city-county or multicounty health department at the direction of the secretary of health and environment and the papers required are completed and filed with the secretary, then 40% of the fee collected shall be forwarded to such county, city-county or multicounty health department. If a facility has a change of administrator after the commencement of the licensing period, the fee shall be \$15 and shall be deposited in the state treasury and credited to the state general fund.

Sec. 13. K.S.A. 2002 Supp. 39-936 is hereby amended to read as follows: 39-936. (a) The presence of each resident in an adult care home shall be covered by a statement provided at the time of admission, or prior thereto, setting forth the general responsibilities and services and daily or monthly charges for such responsibilities and services. Each resident shall be provided with a copy of such statement, with a copy going to any individual responsible for payment of such services and the adult care home shall keep a copy of such statement in the resident's file. No such statement shall be construed to relieve any adult care home of any requirement or obligation imposed upon it by law or by any requirement, standard or rule and regulation adopted pursuant thereto.

(b) A qualified person or persons shall be in attendance at all times upon residents receiving accommodation, board, care, training or treatment in adult care homes. The licensing agency may establish necessary standards and rules and regulations prescribing the number, qualifications, training, standards of conduct and integrity for such qualified person or persons attendant upon the residents.

(c) (1) The licensing agency shall require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to the mentally retarded which has been granted an exception by the ~~licensing agency~~ *secretary of health and environment* upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, employed on and after the effective date of this act who provide direct, individual care to residents and who do not administer medications to residents and who have not completed a course of education and training relating to resident care and treatment approved by the ~~licensing agency~~ *secretary of health and environment* or are not participating in such a course on the effective date of this act to complete successfully 40 hours of training in basic resident care skills. Any unlicensed person who has not completed 40 hours of training relating to resident care and treatment approved by the ~~licensing agency~~ *secretary of health and environment* shall not provide direct, individual care to residents. The 40 hours of training shall be supervised by a registered professional nurse and the content and administration thereof shall comply with

rules and regulations adopted by the ~~licensing agency~~ *secretary of health and environment*. The 40 hours of training may be prepared and administered by an adult care home or by any other qualified person and may be conducted on the premises of the adult care home. The 40 hours of training required in this section shall be a part of any course of education and training required by the ~~licensing agency~~ *secretary of health and environment* under subsection (c)(2).

(2) The licensing agency may require unlicensed employees of an adult care home, except an adult care home licensed for the provision of services to the mentally retarded which has been granted an exception by the ~~licensing agency~~ *secretary of health and environment* upon a finding by the licensing agency that an appropriate training program for unlicensed employees is in place for such adult care home, who provide direct, individual care to residents and who do not administer medications to residents after 90 days of employment to successfully complete an approved course of instruction and an examination relating to resident care and treatment as a condition to continued employment by an adult care home. A course of instruction may be prepared and administered by any adult care home or by any other qualified person. A course of instruction prepared and administered by an adult care home may be conducted on the premises of the adult care home which prepared and which will administer the course of instruction. The licensing agency shall not require unlicensed employees of an adult care home who provide direct, individual care to residents and who do not administer medications to residents to enroll in any particular approved course of instruction as a condition to the taking of an examination, but the ~~licensing agency~~ *secretary of health and environment* shall prepare guidelines for the preparation and administration of courses of instruction and shall approve or disapprove courses of instruction. Unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents may enroll in any approved course of instruction and upon completion of the approved course of instruction shall be eligible to take an examination. The examination shall be prescribed by the ~~licensing agency~~ *secretary of health and environment*, shall be reasonably related to the duties performed by unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications to residents and shall be the same examination given by the ~~licensing agency~~ *secretary of health and environment* to all unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications.

(3) The ~~licensing agency~~ *secretary of health and environment* shall fix, charge and collect a fee to cover all or any part of the costs of the licensing agency under this subsection (c). The fee shall be fixed by rules and regulations of the ~~licensing agency~~ *secretary of health and environment*. The fee 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 state general fund.

(4) The ~~licensing agency~~ *secretary of health and environment* shall establish a state registry containing information about unlicensed employees of adult care homes who provide direct, individual care to residents and who do not administer medications in compliance with the requirements pursuant to PL 100-203, Subtitle C, as amended November 5, 1990.

(5) No adult care home shall use an individual as an unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications unless the facility has inquired of the state registry as to information contained in the registry concerning the individual.

(6) Beginning July 1, 1993, the adult care home must require any unlicensed employee of the adult care home who provides direct, individual care to residents and who does not administer medications and who since passing the examination required under paragraph (2) of this subsection has had a continuous period of 24 consecutive months during none of which the unlicensed employee provided direct, individual care to residents to complete an approved refresher course. The ~~licensing agency~~ *secretary of health and environment* shall prepare guidelines for the preparation and administration of refresher courses and shall approve or disapprove courses.

(d) Any person who has been employed as an unlicensed employee of an adult care home in another state may be so employed in this state without an examination if the secretary of health and environment determines that such other state requires training or examination, or both, for such employees at least equal to that required by this state.

(e) All medical care and treatment shall be given under the direction of a physician authorized to practice under the laws of this state and shall be provided promptly as needed.

(f) No adult care home shall require as a condition of admission to or as a condition to continued residence in the adult care home that a person change from a supplier of medication needs of their choice to a supplier of medication selected by the adult care home. Nothing in this subsection (f) shall be construed to abrogate or affect any agreements entered into prior to the effective date of this act between the adult care home and any person seeking admission to or resident of the adult care home.

(g) Except in emergencies as defined by rules and regulations of the licensing agency and except as otherwise authorized under federal law, no resident may be transferred from or discharged from an adult care home involuntarily unless the resident or legal guardian of the resident has been notified in writing at least 30 days in advance of a transfer or discharge of the resident.

(h) No resident who relies in good faith upon spiritual means or prayer for healing shall, if such resident objects thereto, be required to undergo medical care or treatment.

Sec. 14. K.S.A. 39-938 is hereby amended to read as follows: 39-938. Adult care homes shall comply with all the lawfully established requirements and rules and regulations of the secretary of ~~health and environment~~ *aging* and the state fire marshal, and any other agency of government so far as pertinent and applicable to adult care homes, their buildings, operators, staffs, facilities, maintenance, operation, conduct, and the care and treatment of residents. The administrative rules and regulations of the state board of cosmetology and of the Kansas board of barbering shall not apply to adult care homes.

Sec. 15. K.S.A. 39-940 is hereby amended to read as follows: 39-940. (a) The secretary of ~~health and environment~~ *aging* may prescribe and supply necessary forms for applications, reports, records and inspections for adult care homes. All prescribed records shall be open to inspection by the designated agents of the agencies administering this act.

(b) It shall be unlawful to:

(1) Make false entries in such records;

(2) omit any information required or make any false report concerning any adult care home; or

(3) file or cause to be filed such false or incomplete records or reports with the department of ~~health and environment~~ *on aging* or with any agency administering this act, knowing that such records or reports are false or incomplete.

Sec. 16. K.S.A. 39-944 is hereby amended to read as follows: 39-944. Notwithstanding the existence or pursuit of any other remedy, the secretary of ~~health and environment~~ *aging*, as the licensing agency, in the manner provided by the act for judicial review and civil enforcement of agency actions, may maintain an action in the name of the state of Kansas for injunction or other process against any person or agency to restrain or prevent the operation of an adult care home without a license under this act.

Sec. 17. K.S.A. 39-945 is hereby amended to read as follows: 39-945. A correction order may be issued by the secretary of ~~health and environment~~ *aging* or the secretary's designee to a person licensed to operate an adult care home whenever the state fire marshal or the marshal's representative or a duly authorized representative of the secretary of ~~health and environment~~ *aging* inspects or investigates an adult care home and determines that the adult care home is not in compliance with the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated or rules and regulations promulgated thereunder which individually or jointly affects significantly and adversely the health, safety, nutrition or sanitation of the adult care home residents. The correction order shall be served upon the licensee either personally or by certified mail, return receipt requested. The correction order shall be in writing, shall state the specific deficiency, cite the specific statutory provision or rule and regulation alleged to have been violated, and shall specify the time allowed for correction.

Sec. 18. K.S.A. 39-946 is hereby amended to read as follows: 39-946. (a) If upon reinspection by the state fire marshal or the marshal's representative or a duly authorized rep-

representative of the secretary of ~~health and environment~~ *aging*, which reinspection shall be conducted within 14 days from the day the correction order is served upon the licensee, it is found that the licensee of the adult care home which was issued a correction order has not corrected the deficiency or deficiencies specified in the order, the secretary of ~~health and environment~~ *aging* may assess a civil penalty in an amount not to exceed \$500 per day per deficiency against the licensee of an adult care home for each day subsequent to the day following the time allowed for correction of the deficiency as specified in the correction order that the adult care home has not corrected the deficiency or deficiencies listed in the correction order, but the maximum assessment shall not exceed \$2,500. ~~Prior to the assessment of a civil penalty, the case shall be reviewed by a person licensed to practice medicine and surgery.~~ A written notice of assessment shall be served upon the licensee of an adult care home either personally or by certified mail, return receipt requested.

(b) Before the assessment of a civil penalty, the secretary of *aging* shall consider the following factors in determining the amount of the civil penalty to be assessed: (1) The severity of the violation; (2) the good faith effort exercised by the adult care home to correct the violation; and (3) the history of compliance of the ownership of the adult care home with the rules and regulations. If the secretary of ~~health and environment~~ *aging* finds that some or all deficiencies cited in the correction order have also been cited against the adult care home as a result of any inspection or investigation which occurred within 18 months prior to the inspection or investigation which resulted in such correction order, the secretary of ~~health and environment~~ *aging* may double the civil penalty assessed against the licensee of the adult care home, the maximum not to exceed \$5,000.

(c) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the licensee, unless a longer period of time is granted by the secretary. If a civil penalty is not paid within the applicable time period, the secretary of ~~health and environment~~ *aging* may file a certified copy of the notice of assessment with the clerk of the district court in the county where the adult care home is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

Sec. 19. K.S.A. 39-947 is hereby amended to read as follows: 39-947. Any licensee against whom a civil penalty has been assessed under K.S.A. 39-946, and amendments thereto, may appeal such assessment within 10 days after receiving a written notice of assessment by filing with the secretary of ~~health and environment~~ *aging* written notice of appeal specifying why such civil penalty should not be assessed. Such appeal shall not operate to stay the payment of the civil penalty. Upon receipt of the notice of appeal, the secretary of ~~health and environment~~ *aging* shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. If the secretary of *aging* sustains the appeal, any civil penalties collected shall be refunded forthwith to the appellant licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary of *aging*. If the secretary of *aging* denies the appeal and no appeal from the secretary is taken to the district court in accordance with the provisions of the act for judicial review and civil enforcement of agency actions, the secretary of *aging* shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 20. K.S.A. 39-948 is hereby amended to read as follows: 39-948. (a) A licensee may appeal to the district court from a decision of the secretary of *aging* under K.S.A. 39-947, and amendments thereto. The appeal shall be tried in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

(b) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty. If the court sustains the appeal, the secretary of ~~health and environment~~ *aging* shall refund forthwith the payment of any civil penalties to the licensee with interest at the rate established by K.S.A. 16-204, and amendments thereto, from the date of payment of the civil penalties to the secretary. If the court denies the appeal, the secretary of ~~health and environment~~ *aging* shall dispose of any civil penalties collected as provided in K.S.A. 39-949, and amendments thereto.

Sec. 21. K.S.A. 39-950 is hereby amended to read as follows: 39-950. The secretary of ~~health and environment~~ *aging* may adopt rules and regulations necessary to carry out the provisions of this act.

Sec. 22. K.S.A. 39-951 is hereby amended to read as follows: 39-951. The authority granted to the secretary of ~~health and environment~~ *aging* under this act is in addition to other statutory authority the secretary of *aging* has to require the licensing and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of *aging* under article 9 of chapter 39 of the Kansas Statutes Annotated.

Sec. 23. K.S.A. 39-952 is hereby amended to read as follows: 39-952. The secretary of ~~health and environment~~ *aging* or the secretary's designee shall not issue a correction order to a person licensed to operate an adult care home because of a violation of a provision of article 9 of chapter 39 of the Kansas Statutes Annotated or a rule and regulation adopted thereunder which was caused by any person licensed by the state board of healing arts to practice a branch of the healing arts if such person licensed by the state board of healing arts is not an owner, operator or employee of the adult care home and if the person licensed to operate the adult care home shows that such person has exercised reasonable diligence in notifying the person licensed by the state board of healing arts to practice a branch of the healing arts of such person's duty to the residents of the adult care home.

Sec. 24. K.S.A. 39-953a is hereby amended to read as follows: 39-953a. (a) At any time the secretary of ~~health and environment~~ *aging* initiates any action concerning an adult care home in which it is alleged that there has been a substantial failure to comply with the requirements, standards or rules and regulations established under the adult care home licensure act, that conditions exist in the adult care home which are life threatening or endangering to the residents of the adult care home, that the adult care home is insolvent, or that the adult care home has deficiencies which significantly and adversely affect the health, safety, nutrition or sanitation of the adult care home residents, the secretary of *aging* may issue an order, pursuant to the emergency proceedings provided for under the Kansas administrative procedure act, prohibiting any new admissions into the adult care home until further determination by the secretary of *aging*. This remedy granted to the secretary of *aging* is in addition to any other statutory authority the secretary of *aging* has relating to the licensure and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of *aging* under the adult care home licensure act.

(b) This section shall be part of and supplemental to the adult care home licensure act.

Sec. 25. K.S.A. 39-954 is hereby amended to read as follows: 39-954. (a) The secretary of ~~health and environment~~ *aging*, the owner of an adult care home, or the person licensed to operate an adult care home may file an application with the district court for an order appointing the secretary of ~~health and environment~~ *aging* or the designee of the secretary as receiver to operate an adult care home whenever: (1) Conditions exist in the adult care home that are life threatening or endangering to the residents of the adult care home; (2) the adult care home is insolvent; or (3) the secretary of ~~health and environment~~ *aging* has issued an order revoking the license of the adult care home.

(b) The secretary of ~~health and environment~~ *aging* may adopt rules and regulations setting forth the necessary qualifications of persons to be designated receivers and a method for selecting designees.

Sec. 26. K.S.A. 39-958 is hereby amended to read as follows: 39-958. (a) The application for receivership shall be given priority by the district court and shall be heard no later than the seventh ~~(7th)~~ day following the filing of the application. A continuance of no more than ~~ten (10)~~ 10 days may be granted by the district court for good cause. The district court shall give all parties who have filed an answer the opportunity to present evidence pertaining to the application. If the district court finds that the facts warrant the granting of the application, the court shall appoint the secretary of ~~health and environment~~ *aging* or the designee of the secretary as receiver to operate the home.

(b) Upon the appointment of a receiver under this section, the receiver shall be granted a license by the licensing agency to operate an adult care home as provided under the provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof or acts supplemental thereto. The provisions of article 9 of chapter 39 of the Kansas Statutes Annotated, and acts amending the provisions thereof and acts supplemental thereto, relating to inspection prior to granting a license to operate an adult care home and relating to payment of license fees shall not apply to a license granted to a receiver under this section, and such license shall remain in effect during the existence of

the receivership and shall expire on the termination of the receivership. The receiver shall make application for the license on forms provided for this purpose by the licensing agency.

Sec. 27. K.S.A. 39-961 is hereby amended to read as follows: 39-961. (a) The personnel and facilities of the department of ~~health and environment~~ *on aging* shall be available to the receiver for the purposes of carrying out the receiver's duties as receiver as authorized by the secretary of ~~health and environment~~ *aging*.

(b) The department of ~~health and environment~~ *on aging* shall itemize and keep a ledger showing costs of personnel and other expenses establishing the receivership and assisting the receiver and such amount shall be owed by the owner or licensee to the department of ~~health and environment~~ *on aging*. Such department shall submit a bill for such expenses to the receiver for inclusion in the receiver's final accounting. Any amount so billed and until repaid shall constitute a lien against all non-exempt personal and real property of the owner or licensee.

Sec. 28. K.S.A. 39-963 is hereby amended to read as follows: 39-963. (a) The court shall terminate the receivership only under any of the following circumstances:

- (1) Twenty-four months after the date on which the receivership was ordered;
- (2) a new license, other than the license granted to the receiver under K.S.A. 39-958 and amendments thereto, has been granted to operate the adult care home; or
- (3) at such time as all of the residents in the adult care home have been provided alternative modes of health care, either in another adult care home or otherwise.

(b) (1) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the district court and shall make disposition of surplus money at the direction of the district court.

(2) The court may make such additional orders as are appropriate to recover the expenses and costs to the department of ~~health and environment~~ *on aging* and the secretary of social and rehabilitation services incurred pursuant to K.S.A. 39-960 or 39-961 and amendments thereto.

Sec. 29. K.S.A. 39-965 is hereby amended to read as follows: 39-965. (a) If the secretary of ~~health and environment~~ *aging* determines that an adult care home is in violation of or has violated any requirements, standards or rules and regulations established under the adult care home licensure act which violation can reasonably be determined to have resulted in, caused or posed serious physical harm to a resident, the secretary of *aging* in accordance with proceedings under the Kansas administrative procedure act, may assess a civil penalty against the licensee of such adult care home in an amount of not to exceed \$1,000 per day per violation for each day the secretary finds that the adult care home was not in compliance with such requirements, standards or rules and regulations but the maximum assessment shall not exceed \$10,000.

(b) All civil penalties assessed shall be due and payable in accordance with subsection (c) of K.S.A. 39-946 and K.S.A. 39-947 and amendments thereto.

(c) The secretary of ~~health and environment~~ *aging* may adopt rules and regulations which shall include due process procedures for the issuance of civil penalties relating to nursing facilities.

(d) The authority to assess civil penalties granted to the secretary of ~~health and environment~~ *aging* under this section is in addition to any other statutory authority of the secretary relating to the licensure and operation of adult care homes and is not to be construed to limit any of the powers and duties of the secretary of *aging* under the adult care home licensure act.

(e) This section shall be part of and supplemental to the adult care home licensure act.

Sec. 30. K.S.A. 39-969 is hereby amended to read as follows: 39-969. (a) The ~~licensing agency~~ *secretary of health and environment* shall upon request receive from the Kansas bureau of investigation, without charge, such criminal history record information relating to criminal convictions as necessary for the purpose of determining initial and continuing qualifications of an operator.

(b) This section shall be part of and supplemental to the adult care home licensure act.

New Sec. 31. (a) On July 1, 2003, certain powers, duties and functions of the secretary of health and environment under K.S.A.39-1401 through 39-1411, and amendments thereto,

are hereby transferred from the secretary of health and environment to the secretary of aging, as provided by this act.

(b) No suit, action or other proceeding, judicial or administrative, which pertains to any of the transferred reporting of abuse, neglect or exploitation of adult care home residents, which is lawfully commenced, or could have been commenced, by or against the secretary of health and environment in such secretary's official capacity or in relation to the discharge of such secretary's official duties, shall abate by reason of the transfer of such program. The secretary of aging shall be named or substituted as the defendant in place of the secretary of health and environment in any suit, action or other proceeding involving claims arising from facts or events first occurring either on or before the date the pertinent program is transferred or on any date thereafter.

(c) No suit, action or other proceeding, judicial or administrative, pertaining to the reporting of abuse, neglect or exploitation of adult care home residents which otherwise would have been dismissed or concluded shall continue to exist by reason of any transfer under this act.

(d) Any final appeal decision of the department of health and environment entered pursuant to K.S.A. 39-1401 *et seq.*, and amendments thereto, or the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 *et seq.*, and amendments thereto, currently pertaining to reporting of abuse, neglect or exploitation of adult care home residents, transferred pursuant to this act shall be binding upon and applicable to the secretary of aging and the department on aging.

Sec. 32. K.S.A. 2002 Supp. 39-1402, as amended by section 3 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1402. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a teacher, a bank trust officer and any other officers of financial institutions, a legal representative or a governmental assistance provider who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department of health and environment on aging with respect to residents defined under ~~subsections subsection (a)(1) and (a)(2)~~ of K.S.A. 39-1401 and amendments thereto, *to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto*, and to the department of social and rehabilitation services and appropriate law enforcement agencies with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition

which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department of ~~health and environment~~ *on aging* with respect to residents defined under ~~subsections~~ *subsection (a)(1) and (a)(2)* of K.S.A. 39-1401 and amendments thereto, *to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto,* and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous public place in every adult care home and medical care facility in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

Sec. 33. K.S.A. 39-1404, as amended by section 5 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1404. (a) The department of health and environment or the department of social and rehabilitation services upon receiving a report that a resident is being, or has been, abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services shall:

(1) When a criminal act has occurred or has appeared to have occurred, immediately notify, in writing, the appropriate law enforcement agency;

(2) make a personal visit with the involved resident:

(A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved resident;

(B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger; or

(C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

(3) Complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved resident and what action and services, if any, are required. The investigation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case; and

(4) prepare, upon a completion of the evaluation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation; recommended action; a determination of whether protective services are needed; and any follow up.

(b) The department which investigates the report shall inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken if required upon completion of the investigation or sooner if such measures do not jeopardize the investigation.

(c) The department of ~~health and environment~~ *on aging* may inform the chief administrative officer of a facility as defined by K.S.A. 39-923 and amendments thereto *within 30 days* of confirmed findings of resident abuse, neglect or exploitation.

Sec. 34. K.S.A. 39-1405, as amended by section 6 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1405. (a) The secretary of ~~health and environment~~ *aging* shall forward to the secretary of social and rehabilitation services any finding ~~that a resident~~ *with respect to residents defined under (a)(1) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services. The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding with respect to residents defined under (a)(2) of K.S.A. 39-1401, and amendments thereto, who may be in need of protective services.* If the secretary of social and rehabilitation services determines that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident consents, or if the resident lacks capacity to consent, the secretary may obtain consent from such resident's

legal representative. If a resident or such resident's legal representative, or both, fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments thereto whether a petition for appointment of a guardian or conservator, or both, should be filed.

(b) If the caretaker or legal representative, or both, of a resident who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such resident, the secretary of social and rehabilitation services may seek to obtain an injunction enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The petition in such action shall allege specific facts sufficient to show that the resident is in need of protective services and consents to their provision and that the caretaker or legal representative, or both, refuses to allow the provision of such services. If the judge, by clear and convincing evidence, finds that the resident is in need of protective services and has been prevented by the caretaker or legal representative, or both, from receiving such services, the judge shall issue an order enjoining the caretaker or legal representative, or both, from interfering with the provision of protective services to the resident. The court may appoint a new legal representative if the court deems that it is in the best interest of the resident.

Sec. 35. K.S.A. 39-1406, as amended by section 7 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1406. Any person, department or agency authorized to carry out the duties enumerated in this act, including investigating law enforcement agencies and the long-term care ombudsman shall have access to all relevant records. The authority of the secretary of social and rehabilitation services ~~and~~, the secretary of health and environment, *and the secretary of aging* under this act shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any resident, subject to any specific requirement for individual consent of the resident.

Sec. 36. K.S.A. 39-1409, as amended by section 10 of 2003 House Bill No. 2254, is hereby amended to read as follows: 39-1409. In performing the duties set forth in this act, the secretary of social and rehabilitation services, the secretary of health and environment, *the secretary of aging* or an appropriate law enforcement agency may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health departments and may utilize any other public or private agency, group or individual who is appropriate and who may be available to assist such department or agency in the investigation and determination of whether a resident is being, or has been, abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation, except that any internal investigation conducted by any caretaker under investigation shall be limited to the least serious category of report as specified by the secretary of health and environment, *the secretary of aging* or the secretary of social and rehabilitation services, as applicable.

Sec. 37. K.S.A. 39-1411 is hereby amended to read as follows: 39-1411. (a) The secretary of ~~health and environment~~ *aging* shall maintain a register of the reports received and investigated by the department of ~~health and environment~~ *on aging* under K.S.A. 39-1402 and 39-1403, and amendments to such sections, and the findings, evaluations and actions recommended by the department *on aging* with respect to such reports. *The secretary of health and environment shall maintain a register of the reports received and investigated by the department of health and environment under K.S.A. 39-1402 and 39-1403, and amendments thereto, and the findings, evaluations and actions recommended by the department of health and environment with respect to such reports.* The findings, evaluations and actions shall be subject to the Kansas administrative procedure act and any requirements of state or federal law relating thereto except that the secretary shall not be required to conduct a hearing in cases forwarded to the appropriate state authority under subsection (b). The register shall be available for inspection by personnel of the department of health and environment *or the department on aging* as specified by the secretary of health and environment *or the secretary of aging* and to such other persons as may be required by federal law and designated by the secretary of health and environment *or the secretary of aging* by rules and regulations. Information from the register shall be provided as specified in K.S.A.

~~2002 Supp. 65-6205 and amendments thereto. The secretary of health and environment shall forward a copy of any report of abuse, neglect or exploitation of a resident of an adult care home to the secretary of aging.~~

(b) The secretary of ~~health and environment~~ *aging* shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. ~~The secretary of health and environment shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider.~~ The appropriate state regulatory authority, after notice to the alleged perpetrator and a hearing on such matter if requested by the alleged perpetrator, may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority. The secretary of ~~health and environment~~ *aging* may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any adult care home or medical care facility under the jurisdiction of the secretary of *aging*. ~~The secretary of health and environment may consider the finding of abuse, neglect or exploitation in any licensing action taken with respect to any medical care facility under the jurisdiction of the secretary of health and environment.~~

(c) If the investigation of the department of health and environment ~~or the department on aging~~ indicates reason to believe that the resident is in need of protective services, that finding and all information relating to that finding shall be forwarded by the secretary of health and environment ~~or the secretary of aging~~ to the secretary of social and rehabilitation services.

(d) Except as otherwise provided in this section, the report received by the department of health and environment ~~or the department on aging~~ and the written findings, evaluations and actions recommended shall be confidential and shall not be subject to the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of health and environment ~~or the department on aging~~ or any person mentioned in such report shall not be disclosed unless such person specifically requests or agrees in writing to such disclosure or unless a judicial or administrative proceeding results therefrom. In the event that an administrative or judicial action arises, no use of the information shall be made until the judge or presiding officer makes a specific finding, in writing, after a hearing, that under all the circumstances the need for the information outweighs the need for confidentiality. Except as otherwise provided in this section, no information contained in the register shall be made available to the public in such a manner as to identify individuals.

Sec. 38. K.S.A. 39-924, 39-925, 39-926, 39-930, 39-938, 39-940, 39-944, 39-945, 39-946, 39-947, 39-948, 39-950, 39-951, 39-952, 39-953a, 39-954, 39-958, 39-961, 39-963, 39-965, 39-969, 39-1404, as amended by section 5 of 2003 House Bill No. 2254, 39-1405, as amended by section 6 of 2003 House Bill No. 2254, 39-1406, as amended by section 7 of 2003 House Bill No. 2254, 39-1409, as amended by section 10 of 2003 House Bill No. 2254, 39-1411, 74-8001 and 74-9303 and K.S.A. 2002 Supp. 32-906, 39-923, 39-936 and 39-1402, as amended by section 3 of 2003 House Bill No. 2254, are hereby repealed.”;

By renumbering the remaining section accordingly;

On page 1, in the title, in line 9, following “ACT” by inserting “concerning the transfer of certain powers, duties and functions between certain state agencies;”; in line 10, by striking all following “Inc.”; in line 11, by striking all before the semicolon and inserting “and powers, duties and functions from the department of health and environment to the department on aging; amending K.S.A. 39-924, 39-925, 39-926, 39-930, 39-938, 39-940, 39-944, 39-945, 39-946, 39-947, 39-948, 39-950, 39-951, 39-952, 39-953a, 39-954, 39-958, 39-961, 39-963, 39-965, 39-969, 39-1404, as amended by section 5 of 2003 House Bill No. 2254, 39-1405, as amended by section 6 of 2003 House Bill No. 2254, 39-1406, as amended by section 7 of 2003 House Bill No. 2254, 39-1409, as amended by section 10 of 2003 House Bill No. 2254, 39-1411 and 74-8001 and K.S.A. 2002 Supp. 32-906, 39-923, 39-936 and 39-1402, as amended by section 3 of 2003 House Bill No. 2254, and repealing the existing sections”; and the bill be passed as amended.

**MESSAGE FROM THE SENATE**

Announcing passage of **HB 2399**, as amended by **S. Sub. for HB 2399**.

**MOTIONS TO CONCUR AND NONCONCUR**

On motion of Rep. Neufeld, the House nonconcurred in Senate amendments to **S. Sub. for HB 2399** and asked for a conference.

Speaker Mays thereupon appointed Reps. Neufeld, Shultz and Nichols as conferees on the part of the House.

**REPORT ON ENROLLED RESOLUTIONS**

**HR 6025** reported correctly enrolled and properly signed on May 1, 2003.

On motion of Rep. Aurand, the House adjourned until 10:30 a.m., Friday, May 2, 2003.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

