

# Journal of the Senate

FIFTY-THIRD DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Friday, March 28, 2003—10:00 a.m.

The Senate was called to order by President Dave Kerr.

The roll was called with thirty-nine senators present.

Senator Feleciano was excused.

President Kerr introduced as guest chaplain, Archbishop James Patrick Keleher, Kansas City, who delivered the invocation:

Heavenly Father, we recall that small group of dispirited and confused disciples that gathered in the upper room after your Son's departure. When all of a sudden on that Pentecost Sunday a great wind was heard and the building shook and tongues of fire appeared and behold the Holy Spirit descended upon them and with that mighty presence everything changed for the better though not always easier.

Father, the marvelous Holy Spirit brought into that chamber of disciples the gift of wisdom so they might know what to do; the Spirit brought into that chamber the gift of strength so that knowing what to do they might have the courage to carry it out, and, finally, the Spirit of love brought a wonderful bond of unity so that they would hold each other in mutual respect and understanding-despite their differences-for the rest of their lives.

And so my prayer, Heavenly Father, is for these men and women in this historic chamber that the same Spirit may descend upon them today and for the rest of their work this year.

May The Spirit give them the wisdom and insight they need to match scarce resources and great demands with compassion especially for the underserved and needy; may the Spirit fill them with the courage to move ahead with tough decisions no matter what the outcry; may the Spirit assist them in maintaining a bond of unity for the sake of the Kansas citizens they represent; may they deal with their differences in honest but respectful ways.

May they realize also that we are in the midst of the great forty days of Lent when your Son, Our Lord, fasted and prayed and so remind them, Heavenly Father, that He prays for them now in this hour of decision and He sends them His Spirit so that they may carry out their awesome responsibilities for the glory of God and the welfare of this great State of Kansas.

*May there always be work for your hands to do.*

*May your purse always hold a coin or two.*

*May the sun always shine on your windowpane.*

*May a rainbow be certain to follow each rain.*

*May the hand of a friend always be near you.*

*May God fill your heart with gladness to cheer you.*

## PRESENTATION OF PETITIONS

The following petition was presented, read and filed:

**SP 10**, A petition by the Board of County Commissioners of Riley County, Kansas, on behalf of the citizens of the county do hereby proclaim overwhelming support for the mil-

itary action being undertaken in Iraq, signed by Alvan D. Johnson, Chair, and the two other members.

#### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to Committees as indicated:

Agriculture: **HCR 5017, HCR 5019.**  
 Assessment and Taxation: **SB 277, SB 278.**  
 Commerce: **SB 276; HB 2267.**  
 Committee of the Whole: **HB 2426.**  
 Federal and State Affairs: **HCR 5016.**  
 Ways and Means: **SB 275.**

#### REFERRAL OF APPOINTMENTS

The following appointment made by the Governor and submitted to the senate for confirmation, was referred to Committee as indicated:

*By the Governor:*

*Member, Kansas Public Employees Retirement System Board of Trustees:*

Jarold W. Boettcher, effective upon the date of confirmation by the Senate, to serve at the pleasure of the Governor.

(Ways and Means)

#### MESSAGE FROM THE GOVERNOR

**SB 26, SB 133** approved on March 26, 2003.

#### MESSAGE FROM THE HOUSE

Announcing passage of **HB 2287, HB 2416, HB 2418.**

Passage of **SB 63, SB 91, SB 206.**

Passage of **SB 7**, as amended, **SB 14**, as amended, **SB 33**, as amended, **SB 67**, as amended; **Substitute SB 104**, as amended; **SB 110**, as amended, **SB 123**, as amended; **SB 145**, as amended by **House Substitute for SB 145**; **SB 225**, as amended, **SB 235**, as amended, **SB 237**, as amended.

The House concurs in Senate amendments to **HB 2034.**

The House concurs in Senate amendments to **HB 2224.**

The House nonconcurs in Senate amendments to **HB 2003**, requests a conference and has appointed Representatives Vickrey, Ostmeyer and Toelkes as conferees on the part of the House.

The House nonconcurs in Senate amendments to **HB 2032**, requests a conference and has appointed Representatives O'Neal, Patterson and Pauls as conferees on the part of the House.

The House nonconcurs in Senate amendments to **HB 2038**, requests a conference and has appointed Representatives D. Johnson, Powell and Thimesch as conferees on the part of the House.

The House nonconcurs in Senate amendments to **HB 2122**, requests a conference and has appointed Representatives Vickrey, Ostmeyer and Toelkes as conferees on the part of the House.

The House nonconcurs in Senate amendments to **HB 2131**, requests a conference and has appointed Representatives Holmes, Krehbiel and Kuether as conferees on the part of the House.

The House nonconcurs in Senate amendments to **HB 2135**, requests a conference and has appointed Representatives Hayzlett, Faber and M. Long as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **House Substitute for SB 27** and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 61** and has appointed Representatives O'Neal, Patterson and Pauls as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 64** and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 71** and has appointed Representatives O'Neal, Patterson and Pauls as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **Substitute SB 83** and has appointed Representatives Decker, Beggs and Crow as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 103** and has appointed Representatives Myers, Powers and Wilson as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 131** and has appointed Representatives D. Johnson, Powell and J. Miller as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 178** and has appointed Representatives Vickrey, Ostmeier and Toelkes as conferees on the part of the House.

Announcing passage of **HB 2456**.

Passage of **SB 36**, as amended, **SB 205**, as amended, **SB 223**, as amended.

The House nonconcur in Senate amendments to **HB 2233**, requests a conference and has appointed Representatives Barbieri-Lightner, Dreher and B. Sharp as conferees on the part of the House.

#### INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

**HB 2287**, **HB 2416**, **HB 2418**, **HB 2456** were thereupon introduced and read by title.

#### CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Umbarger moved the Senate concur in house amendments to **SB 55**.

**SB 55**. An act concerning school districts; relating to the powers and duties of the governing bodies thereof; amending K.S.A. 72-8205 and repealing the existing section.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The Senate concurred.

Senator Umbarger moved the Senate concur in house amendments to **SB 119**.

**SB 119**. An act concerning teachers; relating to hearings provided upon notice of non-renewal or termination of contracts of employment; amending K.S.A. 72-5438, 72-5440, 76-11a05, 76-11a06, 76-11a07, 76-11a08, 76-11a09, 76-11a10, 76-11a11, 76-11a12, 76-11a13 and 76-11a14 and repealing the existing sections.

On roll call, the vote was: Yeas 32, Nays 7, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Lee, Morris, Oleen, Schmidt, Schodorf, Steineger, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Bunten, Kerr, Lyon, O'Connor, Pugh, Salmans, Taddiken.

Absent or Not Voting: Feleciano.

The Senate concurred.

Senator Umbarger moved the Senate concur in house amendments to **SB 120**.

**SB 120**, An act concerning school districts; relating to the powers and duties of the board of education; relating to certain expenditures; amending K.S.A. 72-5126 and 72-6760 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The Senate concurred.

Senator Donovan moved the Senate concur in house amendments to **SB 159**.

**SB 159**, An act relating to the division of vehicles; concerning drivers' licenses and identification cards; amending K.S.A. 8-243, as amended by section 2 of 2003 Senate Bill No. 16, and 8-1329 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The Senate concurred.

#### REPORT ON ENGROSSED BILLS

**SB 243**, **SB 252**, **SB 253** reported correctly engrossed March 28, 2003.

#### REPORT ON ENROLLED BILLS

**SR 1833** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 27, 2003.

#### FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

**SB 243**, An act concerning uniform controlled substances; amending K.S.A. 65-4111, 65-4150, 65-4159, 65-4160, 65-4161 and 65-7006 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 33, Nays 6, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Emler, Gilstrap, Harrington, Hensley, Huelskamp, Jackson, Jordan, Lee, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Downey, Gooch, Goodwin, Haley, Kerr, Oleen.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote NO on **SB 243**. Due to the budget crisis we are facing, I do not believe this in the best interest of our state at this time to spend our resources on creating new prison beds. This bill has the potential of increasing the states prison bed needs (using the Frazier Court ruling) by 61 to 100 new beds by the end of FY 2004 and between 381 to 612 added beds by the end of FY 2013.—GRETA GOODWIN

Senators Haley, Kerr and Oleen request the record to show they concur with the "Explanation of Vote" offered by Senator Goodwin on **SB 243**.

**SB 252**, An act transferring the functions of the office of state fire marshal to the board of fire services; amending K.S.A. 31-136, 40-252, 65-506, 75-1506, 75-1510, 75-1515 and 75-1516 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 25, Nays 13, Present and Passing 1, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Donovan, Emler, Goodwin, Huelskamp, Jordan, Kerr, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Brownlee, Corbin, Gilstrap, Gooch, Haley, Harrington, Hensley, Jackson, Lee, Pugh, Schodorf, Steineger, Taddiken.

Present and Passing: Downey.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**SB 253**, An act concerning capital improvements for state agencies; making and concerning appropriations for the fiscal years ending June 30, 2004, and June 30, 2005, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2002 Supp. 76-6b05 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**SCR 1607**, A proposition to revise article 10 of the constitution of the state of Kansas, relating to redistricting of legislative districts, state board of education districts and congressional districts, was considered on final action.

On roll call, the vote was: Yeas 20, Nays 19, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brungardt, Buhler, Downey, Emler, Gooch, Goodwin, Hensley, Kerr, Lee, Lyon, Morris, Oleen, Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Nays: Barone, Brownlee, Bunten, Clark, Corbin, Donovan, Gilstrap, Haley, Harrington, Huelskamp, Jackson, Jordan, O'Connor, Pugh, Salmans, Steineger, Taddiken, Tyson, Wagle.

Absent or Not Voting: Feleciano.

A two-thirds constitutional majority having not voted in favor of the resolution **SCR 1607** was not adopted.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote "no" on **SCR 1607** which would have amended the Kansas constitution by changing the procedure we use to redistrict.

Redrawing our legislative districts during the 2002 session became contentious for the Senate. So do many other bills and issues we must deal with. We cannot abdicate our responsibility to carry out our duties. We must rise to the occasion and handle the challenge with grace and dignity.

Our current process insures the people of Kansas have a voice in redistricting. This would be diminished under an appointed council proposed in this resolution.—KARIN BROWNLEE

Senators Barone and Gilstrap request the record to show they concur with the "Explanation of Vote" offered by Senator Brownlee on **SCR 1607**.

MR. PRESIDENT: I vote "aye" on **SCR 1607** because I believe Kansas citizens should be allowed to decide whether an independent commission, rather than elected politicians, should be in charge of redistricting. Thirteen states have acknowledged the inherent conflict of intent that arises when legislators draw their own districts and have entrusted that task to an outside entity. Redistricting should be about ensuring that every citizen can have an equal voice in government—not about advancing the causes of politicians or the interests of political parties. We should trust the citizens of Kansas to decide whether our current system sufficiently achieves that purpose.—DEREK SCHMIDT

Senators Downey, Kerr, Oleen and Umbarger request the record to show they concur with the "Explanation of Vote" offered by Senator Schmidt on **SCR 1607**.

**HB 2009**, An act concerning the state board of regents; relating to certain fees imposed thereby; amending K.S.A. 72-4530 and 72-4938 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 2, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jordan, Kerr, Lee, Lyon, Morris, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Huelskamp, O'Connor.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**Sub HB 2036**, An act concerning petroleum products; relating to diesel fuel; misrepresentations regarding biodiesel; penalties; fuel purchases for state motor vehicles; amending K.S.A. 2002 Supp. 55-443 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: O'Connor.

Absent or Not Voting: Feleciano.

The substitute bill passed, as amended.

**HB 2078**, An act concerning wildlife and parks; relating to hunting permits; commercialization of wildlife; penalties therefor; amending K.S.A. 32-1005 and K.S.A. 2002 Supp. 32-937, 32-988 and 32-1047 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 29, Nays 10, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Hensley, Jackson, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Clark, Corbin, Donovan, Harrington, Huelskamp, Lyon, Pugh, Salmans, Steineger.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote aye on **HB 2078** and offer the following:

*Little Woodland God*  
Judy Van der Veer.

I think that surely there's a god  
For little hunted things;  
A god whose eyes watch tenderly  
the droop of dying wings.

A little woodland god who sits  
Beneath a forest tree,  
With baby rabbits in his arms  
And squirrels up on his knee.

And when a hunter bravely shoots  
A deer with dreaming eyes,

I think that little god is there  
To love it when it dies.

But all the hungry orphan things  
Who weakly call and call  
For mothers who can never come  
He loves the best of all.

He tells the breeze to softly blow,  
He tells the leaves to fall;  
He covers little frightened things  
When they have ceased to call.

Submitted by David Haley

**HB 2090.** An act concerning the department of corrections; relating to inmate work crews; agency relationship; amending K.S.A. 75-52,116 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed.

**HB 2120.** An act regulating traffic; concerning unattended motor vehicles; amending K.S.A. 8-1573 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 34, Nays 4, Present and Passing 1, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Emler, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schodorf, Steineger, Taddiken, Tyson, Umbarger, Vratil, Wagle.

Nays: Haley, Lee, Schmidt, Teichman.

Present and Passing: Downey.

Absent or Not Voting: Feleciano.

The bill passed.

**HB 2121.** An act concerning crimes, criminal procedure and punishment; relating to aid to indigent defendants; application fee; conditions of bond; amending K.S.A. 21-3836 and K.S.A. 2002 Supp. 22-4529 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Pugh.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2130.** An act concerning transmission of electric power; relating to siting of certain transmission lines; concerning recovery of certain costs of certain utilities; amending K.S.A. 66-1,180 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley,

Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2132.** An act concerning county jails; relating to inmate fees to defray maintenance costs; amending K.S.A. 19-1930 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed.

**HB 2171.** An act concerning adult care home administrators; relating to licensure; amending K.S.A. 65-3503, 65-3504, 65-3506 and 65-3508 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed.

**HB 2192.** An act relating to the division of vehicles; concerning certain fees for drivers' licenses and identification cards; amending K.S.A. 8-240, 8-267 and 8-1324 and K.S.A. 2002 Supp. 8-1325 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 28, Nays 11, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gooch, Goodwin, Harrington, Hensley, Jackson, Jordan, Kerr, Lee, Morris, Oleen, Schodorf, Steineger, Teichman, Tyson, Umbarger, Vratil.

Nays: Brownlee, Gilstrap, Haley, Huelskamp, Lyon, O'Connor, Pugh, Salmans, Schmidt, Taddiken, Wagle.

Absent or Not Voting: Feleciano.

The bill passed.

**Sub HB 2197.** An act concerning persons with disabilities; relating to assistance dogs and certain other dogs; prohibiting certain acts and providing penalties for violations; amending K.S.A. 39-1101, 39-1102, 39-1103, 39-1107, 39-1108 and 39-1109 and K.S.A. 2002 Supp. 21-4318 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The substitute bill passed.

**HB 2205.** An act concerning property taxation; relating to exemptions, fair market value and special assessments; amending K.S.A. 79-201q, 79-201s and 79-503a and K.S.A. 2002 Supp. 79-213 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley,

Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2231**. An act concerning schools and school districts; relating to the powers and duties of local boards of education; amending K.S.A. 72-6407, 72-67,115, 72-8801, 72-8804, 72- 8808 and 72-8810 and repealing the existing section; also repealing K.S.A. 72-6407a and 72- 7108a, 72-8807 and 72-8809, was considered on final action.

On roll call, the vote was: Yeas 10, Nays 29, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Brownlee, Buhler, Jordan, Morris, O'Connor, Oleen, Salmans, Vratil.

Nays: Barnett, Barone, Brungardt, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Pugh, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Wagle.

Absent or Not Voting: Feleciano.

A constitutional majority having failed to vote in favor of the bill, **HB 2231** did not pass.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote yes on **HB 2231**. This bill includes the contents of **SB 22** which allows public schools greater budget flexibility by authorizing districts to use capital outlay funds to pay for the increased fixed costs of utilities and insurance premiums. This provision would not be necessary if the state were meeting its obligation to adequately fund public schools. The defeat of this measure today is puzzling in light of the fact that **SB 22** previously passed the Senate on a vote of 27 yeas to 13 nays. These reasonable accommodations are very important to the public schools of my community—public schools that are valued by my constituents. I want to use this opportunity to place the Senate on notice. Without the provisions of **SB 22** or a reasonable increase in local option budget authority (30%) or an appropriate increase in state aid for public education I will not be able to support legislation to raise additional revenue for the state.—DAVID ADKINS

MR. PRESIDENT: I vote no on **HB 2231**, which authorizes the payment of utility costs and property insurance premiums from a district's Capital Outlay Fund. This is a major policy change for our state, as Capital Outlay Funds are authorized by statute to be used only for the "acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing and equipping of buildings necessary for school district purposes", and authorize capital expenditures for such purposes as the purchase of buses, boilers, new roofs, gym floors, etc.

Since there is no property tax cap on Capital Outlay Funds, and not all districts have them, the mill levy may be raised by a simple resolution of the school board, and if funds are used to pay district operational expenses, it will surely follow that the time will come when property taxes of the district must be raised to cover the original intent of the fund, which is the maintenance and repair of the districts building.

This is another back door property tax increase that will surprise people all across this state when their tax bills arrive in November.—BILL BUNTEN

Senators Barone, Clark, Donovan, Emler, Gilstrap, Harrington and Jackson requests the record to show they concur with the "Explanation of Vote" offered by Senator Bunten on **HB 2231**.

MR. PRESIDENT: I vote no on **HB 2231**. I support the original contents of **HB 2231**, which would allow school districts to establish pre-schools where a shortage exists. The bill passed the House overwhelmingly and was not opposed by anyone in Senate committee so I feel confident if **HB 2231** fails today on final action, the preschool portion could be added in conference. I must reluctantly vote no because **SB 22** was added to this bill in committee. I supported **SB 22** earlier in the session in an effort to keep the process of looking for more funding for schools alive. Yet today, **SB 22** appears to be this year's school finance plan. **SB 22** is terribly inequitable. It allows school districts that have large property tax bases to raise large amounts of money to fund items normally funded out of the general fund. I believe

passage of this bill adds to the argument that our current system is not working.—CHRISTINE DOWNEY

Senator Goodwin requests the record to show she concurs with the “Explanation of Vote” offered by Senator Downey on **HB 2231**.

**HB 2234**, An act relating to the behavioral sciences; licensure reciprocity; amending K.S.A. 65-5807, 65-6309, 65-6406 and 74-5315 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2247**, An act concerning the environment; providing for prohibition or restriction of activities on and use of certain contaminated real property; relating to waste tires; amending K.S.A. 65-3424, 65-3424a, 65-3424b, 65-3424g, 65-3424k and 65-3426 and repealing the existing sections; also repealing K.S.A. 65-3424m, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2288**, An act concerning elections; relating to conformity with the help America vote act of 2002; amending K.S.A. 25-216, 25-414, 25-1122d, 25-1216, 25-2111, 25-2908 and 25-3008 and K.S.A. 2002 Supp. 25-106, 25-409, 25-2309 and 25-2706 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 25, Nays 14, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Corbin, Donovan, Emler, Harrington, Jackson, Jordan, Kerr, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Barone, Clark, Downey, Gilstrap, Gooch, Goodwin, Haley, Hensley, Huelskamp, Lee, Lyon, Pugh, Steineger, Tyson.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **HB 2288**. The requirements set forward by the federal government in the Help Americans Vote Act are very clear, and I support them. However, this bill goes so far beyond those guidelines it actually threatens the rights of Kansans to have their votes counted.

This Legislature needs to be concerned with increasing the number of people who participate in our democracy, but this bill will do just the opposite. Placing unnecessary identification requirements on every Kansas voter will not only prevent people from casting their votes, it will discourage them from even going to the polls. Kansans are protective of their privacy, and the needless identification requirements in this bill will create mistrust among many of the electorate.

Our Governor has made it clear she is a proponent of personal privacy. In addition, I know she believes, as I do, that the more barriers and potential for deterrence we put up in front of voters, the fewer voters we will have.

It's true, voting is a right and a responsibility. But that does not mean we should make it a hardship as well.—ANTHONY HENSLEY

Senators Barone, Downey, Haley, Goodwin and Lee request the record to show they concur with the “Explanation of Vote” offered by Senator Hensley on **HB 2288**.

MR. PRESIDENT: We should be promoting voter participation, not discouraging it. **HB 2288** will clearly make it more difficult for honest Kansas citizens to rightfully cast their votes. The federal requirements under the new Help America Vote Act are clearly limited, so why would we implement new heavy-handed regulations on Kansas voters far more restrictive than necessary? Our election system in Kansas is one of which we can be proud—not one to burden with requirements limiting the involvement of Kansans in our government.—TIM HUELSKAMP

**S Sub for HB 2308**, An act concerning the use of names derived from public records; repealing K.S.A. 21-3914, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O’Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The substitute bill passed.

**HB 2314**, An act concerning the juvenile justice authority; relating to the Kansas juvenile correctional complex; amending K.S.A. 38-1602, 72-978, 74-5344 and 76-3201 and K.S.A. 2002 Supp. 75-3765 and repealing the existing sections; also repealing K.S.A. 75-52,143, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O’Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed.

**HB 2332**, An act relating to employment security law; concerning social security benefits; amending K.S.A. 44-704 and 44-757 and K.S.A. 2002 Supp. 44-706 and 44-710 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 2, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jordan, Kerr, Lee, Lyon, Morris, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Jackson, O’Connor.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote YES on **HB 2332**. This bill represents a bi-partisan compromise to provide badly needed benefits to long-term unemployed Kansans and their families.

While the Governor’s original plan was to suspend the waiting week at the front of the system, this bill would provide benefits at the end of the system through two additional weeks of unemployment benefits.

There is no pride in authorship when it comes to helping unemployed workers. What should make us proud is voting for a bi-partisan compromise that serves as an economic stimulus by providing \$9 million in benefits to unemployed Kansans.—ANTHONY HENSLEY

Senators Barone, Downey, Gilstrap, Goodwin, Gooch and Lee request the record to show they concur with the “Explanation of Vote” offered by Senator Barone on **SB 263**.

MR. PRESIDENT: I vote no on **HB 2332** not because I oppose the unemployment benefits extension for 2 weeks, but because passage of this bill undeniably draws down the unemployment reserve thus necessitating an increase in unemployment taxes. These taxes are unfairly extracted from the Small Businesses who have historically employed the majority of Kansans and whose actions have least affected the unemployment reserve. This further acts as a disincentive for small businesses to hire new employees.—DAVID JACKSON

Senator O'Connor requests the record to show she concurs with the "Explanation of Vote" offered by Senator Jackson on **HB 2332**.

**HB 2353**, An act concerning the employment security laws; relating to domestic violence; amending K.S.A. 2002 Supp. 44-706 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 35, Nays 4, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Donovan, Jackson, Pugh, Tyson.

Absent or Not Voting: Feleciano.

The bill passed.

**HB 2369**, An act concerning the state employee suggestion program; relating to employee suggestion bonus awards; amending K.S.A. 2002 Supp. 75-37,105 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2374**, An act concerning public utilities; relating to procedures to recover certain security costs, was considered on final action.

On roll call, the vote was: Yeas 35, Nays 4, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Adkins, Corbin, Lee, Schmidt.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

## INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Buhler introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1834—

A RESOLUTION in memory of Bob Billings.

WHEREAS, Robert G. "Bob" Billings, 65, of Lawrence, died February 13, 2003, at his home. A native of Russell, he came to Lawrence in 1955 where he became an outstanding student at the University of Kansas and a pillar of the Lawrence community as president of Alvamar, Inc., a recreational and real estate development company; and

WHEREAS, Bob Billings graduated from high school in Russell where he was president of the high school student council, co-captain of the football team and was named the Kansas High School Basketball Player of the Year. He came to the University of Kansas as a Summerfield Scholar and earned a bachelor's degree in economics, business and political science;

his scholastic record caused him to be named to membership in Phi Beta Kappa. He was president of the Alpha Tau Omega fraternity and named its national outstanding undergraduate in 1959, student body president, vice-president of the Schem senior men's honor society and the recipient of the University of Kansas' Hilltopper Award, the top student award for graduating seniors. He was a guard on the University of Kansas men's basketball team, playing on the team that included Wilt Chamberlain that went to the NCAA finals. As a basketball player he received All Big Eight Conference honorable mention in 1958 and in 1959 was given the Forrest C. Allen Award as the University of Kansas senior athlete with the highest academic standing; and

WHEREAS, Bob Billings remained at the University of Kansas after graduation as the Director of the Office of Student Financial Aid after completing a year of graduate work in business administration. He held this position for 10 years before entering into the real estate development business. The development on the west side of Lawrence named Alvarado in honor of his parents, Alva and Margaret Billings, encompasses nearly 3,000 acres developed into multiple residential areas, associated businesses and the crown jewel of the area, the nationally recognized public golf course and Alvarado Country Club complex; and

WHEREAS, Bob Billings was honored in 1988 by being given the Distinguished Service Citation from the University of Kansas and in 1984 by being given the Fred Ellsworth Medallion, the highest honor of the University of Kansas Alumni Association, for "unique and significant service to the university". Bob Billings was honored in 1984 by Baker University as the Lawrence Business Person of the Year and in 1989 by the Native Sons and Daughters of Kansas as the Kansan of the Year; and

WHEREAS, Mr. Billings served on the University of Kansas Alumni Association board of directors, the University of Kansas Athletic Corporation board, the University of Kansas Endowment Association board of trustees and the University of Kansas School of Business board of advisors; and

WHEREAS, He was a member of the Williams Educational Fund and the University of Kansas Endowment Association Chancellor's Club as well as a contributor to the Spencer Museum of Art, the Lied Center and the Robert J. Dole Institute of Politics; and

WHEREAS, He was keenly interested in the Lawrence community having served on the Lawrence Memorial Hospital board, on the Lawrence Memorial Hospital Endowment Association board, as Drive Chairman for the Lawrence United Fund, on the Villages board, on the Penn House board, on the boards of American Investors Life Insurance Company and AmVestors Financial Corporation, on the board of the Kansas Public Service Company, on the board of the Lawrence Chamber of Commerce, on the board of the Reuter Organ Company and on the board of Leadership Lawrence; and

WHEREAS, Bob Billings is survived by his wife, the former Beverly A. Smith, who is president of Alvarado Realty, Inc.: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we extend our deepest sympathy to the family of Bob Billings and acknowledge that we have lost one of the brightest stars ever to cross the Kansas prairie; and

*Be it further resolved:* That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to Mrs. Robert G. Billings, 1611 St. Andrews Drive, Lawrence, KS 66047.

On emergency motion of Senator Buhler **SR 1834** was adopted unanimously.

Guests introduced by Senator Buhler were Mr. Billings' wife, Beverly Smith-Billings; Monte Johnson and John and Mike McGrew.

Senator Emler introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1835—

A RESOLUTION congratulating and commending the Moundridge High School girls basketball team and Coaches Toews, Otte and Schrag for winning the 2003 Class 2A State Basketball Championship.

WHEREAS, The Moundridge High School girls basketball team won the 2003 Kansas State High School Activities Association Class 2A State Basketball Championship with a

thrilling 73 to 55 victory over Osborne High School in the state championship game at Manhattan on March 15; and

WHEREAS, The Moundridge High School "Lady Wildcats" basketball team have won six state championships, more than any other class 2A girls team; and

WHEREAS, To get to the championship game, the Moundridge girls defeated Horton in an overtime battle and caused Olpe to be defeated for the first time this season in the semifinal game; and

WHEREAS, The members of this outstanding basketball team have received statewide recognition for their fine sportsmanship and athletic abilities; and

WHEREAS, The success of this team was due to its excellent teamwork, strong competitive spirit and determination to win. The team also had the enthusiastic support of the school's administrators, the faculty, the students, the players' parents and many area citizens: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That the Moundridge High School girls basketball team and Coaches Toews, Otte and Schrag be congratulated and commended for winning the 2003 Kansas State High School Activities Association Class 2A State Basketball Championship; and

*Be it further resolved:* That the Secretary of the Senate be directed to send 15 enrolled copies of this resolution to Ms. Rosabel Flax, Principal, Moundridge High School, 526 E. Cole, Moundridge, Kansas 67107-0610.

On emergency motion of Senator Emler **SR 1835** was adopted unanimously.

Senator Emler introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1836—

A RESOLUTION congratulating and commending the McPherson High School boys basketball team and Coach Kinnamon for winning the 2003 Class 5A State Basketball Championship.

WHEREAS, The McPherson High School boys basketball team won the 2003 Kansas State High School Activities Association Class 5A State Basketball Championship with a thrilling double overtime victory over Highland Park High School of Topeka in the state championship game at Topeka on March 15; and

WHEREAS, The McPherson High School "Bullpups" basketball team finished the season with a record of 24 wins and one loss; and

WHEREAS, This year's championship gives the team its 10th state championship and the third in the last eight years. The Bullpups were undefeated in Ark Valley League competition having a 14 and 0 record. Head Coach Kurt Kinnamon was named Coach of the Year and senior Aubrey Bruner, the team's point guard, was named as the league's most valuable player and as All-Class, All-State by the Wichita Eagle and Topeka Capital Journal newspapers. Additionally, the team's center, Jordan Fithian, was named to the first team for the Ark Valley League; and

WHEREAS, The members of this outstanding basketball team have received statewide recognition for their fine sportsmanship and athletic abilities; and

WHEREAS, The success of this team was due to its excellent teamwork, strong competitive spirit and determination to win. The team also had the enthusiastic support of the school's administrators, the faculty, the students, the players' parents and many area citizens: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That the McPherson High School boys basketball team and Coach Kinnamon be congratulated and commended for winning the 2003 Kansas State High School Activities Association Class 5A State Basketball Championship; and

*Be it further resolved:* That the Secretary of the Senate be directed to send 15 enrolled copies of this resolution to Lew Faust, Principal, McPherson High School, 801 E. 1st, McPherson, Kansas 67460-3699.

On emergency motion of Senator Emler **SR 1836** was adopted unanimously.

Senator Emler congratulated and introduced team members: Aubrey Bruner, Kevin Bruner, Anthony Gross, Tim Kliewer, Jordan Fithian, Jamie Crist, Dale Snell, Braden Hawk,

Nick Hague, Aaron Sents, Terrell Robinson, Adam Wagoner, Justin Loecker and Matt Hoffman; Head Coach, Kurt Kinnamon and Assistant Coaches, Gorden Peck and James Wiens.

Senator Salmans introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1837—

A RESOLUTION congratulating and commending the Ness City High School girls basketball team and Coach Brian Henry for winning the 2003 Class 1A State Basketball Championship.

WHEREAS, The Ness City High School girls basketball team won the 2003 Kansas State High School Activities Association Class 1A State Basketball Championship with a thrilling 34 to 30 victory over Centralia High School in the state championship game at Hays on March 15; and

WHEREAS, The Ness City High School “Lady Eagles” basketball team finished the season with a record of 27 wins and 0 losses; and

WHEREAS, The members of this outstanding basketball team have received statewide recognition for their fine sportsmanship and athletic abilities; and

WHEREAS, The success of this team was due to its excellent teamwork, strong competitive spirit and determination to win. The team also had the enthusiastic support of the school’s administrators, the faculty, the students, the players’ parents and many area citizens: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That the Ness City High School girls basketball team and Coach Brian Henry be congratulated and commended for winning the 2003 Kansas State High School Activities Association Class 1A State Basketball Championship; and

*Be it further resolved:* That the Secretary of the Senate be directed to send 15 enrolled copies of this resolution to Jerry Wenciker, Principal, Ness City High School, 200 N. 5th Street, Ness City, Kansas 67560.

On emergency motion of Senator Salmans **SR 1837** was adopted unanimously.

#### COMMITTEE OF THE WHOLE

On motion of Senator Oleen, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Schodorf in the chair.

The morning session recommended **HB 2035**, **HB 2254** be amended by adoption of the committee amendments, and the bills be passed as amended.

**HB 2005** be amended by adoption of the committee amendments, be further amended by motion of Senator Corbin as amended by Senate Committee, on page 1, after line 16, by inserting the following:

“Section 1. K.S.A. 12-191 is hereby amended to read as follows: 12-191. All retail transactions consummated within a county or city having a retail sales tax, which transactions are subject to the Kansas retailers’ sales tax, shall also be subject to such county or city retail sales tax. Except as hereinafter provided, all retail sales, for the purpose of this act, shall be considered to have been consummated at the ~~place of business of the retailer~~ *location determined by the sourcing rules as provided in section 16, and amendments thereto. The retail sales or transfer of watercraft, modular homes, manufactured homes or mobile homes, shall be considered consummated at the place of business of the retailer and sourced to such location. The retail sale, excluding the lease or rental, of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of section 16, and amendments thereto, shall be considered consummated at the place of business of the retailer and sourced to such location. The isolated or occasional sale of any motor vehicle or trailer shall be considered consummated at the taxing jurisdiction where the sale is made. If the sale negotiations occurred in different cities or counties, the situs of the sale for local sales tax purposes shall be the place where the motor vehicle or trailer was kept at the time negotiations were first entered into.* In the event the place of business of a retailer is doubtful the place or places at which the retail sales are consummated for the purposes of this act shall be determined under rules and regulations adopted by the secretary of

revenue which rules and regulations shall be considered with state and federal law insofar as applicable. Retail sales involving the use, consumption, or furnishing of gas, water, electricity and heat, for the purposes of this act, shall be considered to have been consummated at the situs of the user or recipient thereof, and retail sales involving the use or furnishing of telephone service or services taxed under subsection (k) of K.S.A. 79-3603, and amendments thereto, shall be considered to have been consummated at the situs of the subscriber billed therefor. Retail sales involving the leasing of telecommunication or data processing equipment commonly used in connection with telephone services shall be considered to have been consummated at the situs of the lessee. Retail sales involving the furnishing of services taxable under subsections (p), (q) and (r) of K.S.A. 79-3603, and amendments thereto, pursuant to a contract under which the sale of such services and the furnishing of tangible personal property exceeds \$10,000 per contract per contractor shall be considered to have been consummated at the situs where such services are performed. The director of taxation is hereby authorized to request and receive from any retailer or from any city or county levying the tax such information as may be reasonably necessary to determine the liability of retailers for any county or city sales tax. The collection of any sales tax of a county or city approved at any election shall commence on the first day of the calendar quarter next following the 90th day after the date that the city or county has provided written notice to the director of taxation of the election authorizing the levy of such tax. *The collection of any such sales tax applicable to printed catalog purchases wherein the purchaser computed the tax based upon local tax rates published in the catalog, shall not commence until the first day of the calendar quarter next following the 150th day after the date that the city or county has provided written notice to the director of taxation of the election authorizing the levy of such tax. The director of taxation shall provide notice to sellers of such taxes within 30 days after receiving such notice from the city or county.*

A city retailers' sales tax shall not become effective within any area annexed by a city levying such tax until the first day of the calendar quarter next following the 90th day after the date that the governing body of such city provided the state department of revenue with a certified copy of the annexation ordinance and a map of the city detailing the annexed area. *The director of taxation shall provide notice to sellers of such tax within 30 days after receiving such notice from the city or county.*

Whenever any sales tax, imposed by any city or county under the provisions of this act, shall become effective, at any time prior to the time that revenue derived therefrom may be budgeted for expenditure in such year, such revenue shall be credited to the funds of the taxing subdivision or subdivisions and shall be carried forward to the credit of such funds for the ensuing budget year in the manner provided for carrying forward balances remaining in such funds at the end of a budget year.

Sec. 2. K.S.A. 12-198 is hereby amended to read as follows: 12-198. (a) A compensating use tax for the privilege of using or storing within a city or county any *tangible personal property or any vehicle* which is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or any vessel, as defined by K.S.A. 82a-802, and amendments thereto, *or using, consuming or realizing the benefits from within a city or county any service that would otherwise be subject to retailer's sales tax if purchased in this state*, is hereby imposed by every city, county or municipal university imposing a retailers' sales tax. The rate of any such tax shall be fixed at the same rate as such city's, county's or university's retailers' sales tax. Any city, county or municipal university imposing a compensating use tax is prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Such tax shall be identical in its application and exemptions therefrom to the Kansas compensating tax, and all laws and rules and regulations of the state department of revenue relating to the Kansas compensating tax shall apply to such local compensating use tax insofar as the same may be made applicable.

(b) The secretary of revenue is authorized to administer, enforce and collect a city's, county's or municipal university's compensating use tax and to adopt such rules and regulations necessary for the efficient and effective administration, enforcement and collection thereof. The state director of taxation shall cause such taxes to be collected within the boundaries of such taxing subdivision at the same time and in the same manner provided

for the collection of the state compensating use tax. All moneys collected by the director of taxation pursuant to the provisions of this section shall be credited to the city and county compensating use tax fund or to the municipal university compensating use tax fund, which funds are hereby established in the state treasury. Any refund due on any city's, county's municipal university's compensating use tax collected pursuant to this section shall be paid out of the sales tax refund fund and reimbursement to such fund shall be made by the director of taxation from collections of local compensating use tax revenue. All moneys collected pursuant to this section for a city or county shall be remitted at least quarterly by the state treasurer to the treasurer of such city, county or university.

(c) All revenue received by any county treasurer from a countywide compensating use tax shall be apportioned among the county and each city located in such county in the same manner as provided in K.S.A. 12-192, and amendments thereto, for the apportionment of revenue received from a countywide retailers' sales tax.

Sec. 3. K.S.A. 75-5151 is hereby amended to read as follows: 75-5151. The secretary of revenue may require, consistent with sound cash management policies, that any taxpayer whose total sales tax liability exceeds \$100,000 in any calendar year, any taxpayer whose total withholding tax liability exceeds \$100,000 in any calendar year, and any person owing any taxes or fees in connection with any return, report or document other than for sales tax or withholding tax liability, shall remit their tax liability by electronic funds transfer no later than the date required for such remittance except that the secretary may adopt rules and regulations prescribing alternative filing and payment dates not later than the last day of the month in which the tax was otherwise due. Electronic funds transfers may be made by wire transfers of funds through the federal reserve system or by any other means established by the secretary, with the approval of the state treasurer, which insures the availability of such funds to the state on the date of payment. Evidence of such payment shall be furnished to the secretary on or before the due date of the tax as established by law. Failure to timely make such payment in immediately available funds or failure to provide such evidence of payment in a timely manner shall subject the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments. *All sales and use tax remittances from model 1, 2 and 3 sellers must be remitted electronically. Any data that accompanies a remittance must be formatted using uniform tax type and payment type codes approved by the secretary.*

Sec. 4. K.S.A. 2002 Supp. 79-3602 is hereby amended to read as follows: 79-3602. ~~(a)~~ "Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number, and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.

~~(b)~~ "Director" means the state director of taxation.

~~(c)~~ "Sale" or "sales" means the exchange of tangible personal property, as well as the sale thereof for money, and every transaction, conditional or otherwise, for a consideration, constituting a sale, including the sale or furnishing of electrical energy, gas, water, services or entertainment taxable under the terms of this act and including, except as provided in the following provision, the sale of the use of tangible personal property by way of a lease, license to use or the rental thereof regardless of the method by which the title, possession or right to use the tangible personal property is transferred. The term "sale" or "sales" shall not mean the sale of the use of any tangible personal property used as a dwelling by way of a lease or rental thereof for a term of more than 28 consecutive days.

~~(d)~~ "Retailer" means a person regularly engaged in the business of selling tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.

~~(e)~~ "Retail sale" or "sale at retail" means all sales made within the state of tangible personal property or electrical energy, gas, water, services or entertainment for use or consumption and not for resale.

~~(f)~~ "Tangible personal property" means corporeal personal property. Such term shall include: (1) Any computer software program which is not a custom computer software program, as described by subsection (s) of K.S.A. 79-3603, and amendments thereto, and

(2) any prepaid telephone calling card or prepaid authorization number, or recharge of such card or number, as described by subsection (b) of K.S.A. 79-3603, and amendments thereto.

—(g)—“selling price” means the total cost to the consumer exclusive of discounts allowed and credited, but including freight and transportation charges from retailer to consumer.

—(h)—“Gross receipts” means the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state, and embraced within the provisions of this act. The taxpayer, may take credit in the report of gross receipts for: (1) An amount equal to the selling price of property returned by the purchaser when the full sale price thereof, including the tax collected, is refunded in cash or by credit, and (2) an amount equal to the allowance given for the trade-in of property.

—(i)—“Taxpayer” means any person obligated to account to the director for taxes collected under the terms of this act.

—(j)—“Isolated or occasional sale” means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. Such term shall include: (1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is nonrecurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property.

—(k)—“Service” means those services described in and taxed under the provisions of K.S.A. 79-3603 and amendments thereto.

—(l)—“Ingredient or component part” means tangible personal property which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following items of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of “ingredient or component part” as herein set forth:

—(1)—Containers, labels and shipping cases used in the distribution of property produced, manufactured or compounded for sale which are not to be returned to the producer, manufacturer or compounder for reuse.

—(2)—Containers, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to be returned to such wholesaler or retailer for reuse.

—(3)—Seeds and seedlings for the production of plants and plant products produced for resale.

—(4)—Paper and ink used in the publication of newspapers.

—(5)—Fertilizer used in the production of plants and plant products produced for resale.

—(6)—Feed for animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber, fur, or the production of offspring for use for any such purpose or purposes.

—(m)—“Property which is consumed” means tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in (1) the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, (2) the providing of services, (3) the irrigation of crops, for sale in the regular course of business, or (4) the storage or processing of grain by a public grain warehouse or other grain storage facility, and which is not reusable

for such purpose. The following is a listing of tangible personal property, included by way of illustration but not of limitation, which qualifies as property which is consumed:

~~—(A) Insecticides, herbicides, germicides, pesticides, fungicides, fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use in commercial or agricultural production, processing or storage of fruit, vegetables, feeds, seeds, grains, animals or animal products whether fed, injected, applied, combined with or otherwise used;~~

~~—(B) electricity, gas and water; and~~

~~—(C) petroleum products, lubricants, chemicals, solvents, reagents and catalysts.~~

~~—(n) “Political subdivision” means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law.~~

~~—(o) “Municipal corporation” means any city incorporated under the laws of Kansas.~~

~~—(p) “Quasi-municipal corporation” means any county, township, school district, drainage district or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.~~

~~—(q) “Nonprofit blood bank” means any nonprofit place, organization, institution or establishment that is operated wholly or in part for the purpose of obtaining, storing, processing, preparing for transfusing, furnishing, donating or distributing human blood or parts or fractions of single blood units or products derived from single blood units, whether or not any remuneration is paid therefor, or whether such procedures are done for direct therapeutic use or for storage for future use of such products.~~

~~—(r) “Educational institution” means any nonprofit school, college and university that offers education at a level above the twelfth grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an “educational institution,” as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include: (1) A group of educational institutions that operates exclusively for an educational purpose; (2) nonprofit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution; (3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.~~

*Except as otherwise provided, as used in the Kansas retailers’ sales tax act:*

(a) “Agent” means a person appointed by a seller to represent the seller before the member states.

(b) “Agreement” means the multistate agreement entitled the streamlined sales and use tax agreement approved by the streamlined sales tax implementing states at Chicago, Illinois on November 12, 2002.

(c) “Alcoholic beverages” means beverages that are suitable for human consumption and contain .05% or more of alcohol by volume.

(d) “Certified automated system (CAS)” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(e) “Certified service provider (CSP)” means an agent certified under the agreement to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(f) “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(g) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(h) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(i) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

(j) "Direct mail" means printed material delivered or distributed by United States mail or other delivery services to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

(k) "Director" means the state director of taxation.

(l) "Educational institution" means any nonprofit school, college and university that offers education at a level above the twelfth grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an "educational institution," as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include: (1) A group of educational institutions that operates exclusively for an educational purpose; (2) nonprofit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution; (3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.

(m) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(n) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages or tobacco.

(o) "Gross receipts" means the total selling price or the amount received as defined in this act, in money, credits, property or other consideration valued in money from sales at retail within this state; and embraced within the provisions of this act. The taxpayer, may take credit in the report of gross receipts for: (1) An amount equal to the selling price of property returned by the purchaser when the full sale price thereof, including the tax collected, is refunded in cash or by credit; and (2) an amount equal to the allowance given for the trade-in of property.

(p) "Ingredient or component part" means tangible personal property which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following items of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of "ingredient or component part" as herein set forth:

(1) Containers, labels and shipping cases used in the distribution of property produced, manufactured or compounded for sale which are not to be returned to the producer, manufacturer or compounder for reuse.

(2) Containers, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to be returned to such wholesaler or retailer for reuse.

(3) Seeds and seedlings for the production of plants and plant products produced for resale.

(4) Paper and ink used in the publication of newspapers.

(5) Fertilizer used in the production of plants and plant products produced for resale.

(6) Feed for animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber, fur, or the production of offspring for use for any such purpose or purposes.

(q) "Isolated or occasional sale" means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of selling such property. Such term shall include: (1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is nonrecurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property.

(r) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(1) Lease or rental does not include: (A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100 or 1% of the total required payments; or

(C) providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect or set-up the tangible personal property.

(2) Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

(3) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-101 et seq. and amendments thereto, or other provisions of federal, state or local law.

(4) This definition will be applied only prospectively from the effective date of this act and will have no retroactive impact on existing leases or rentals.

(s) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(t) "Member state" means a state that has entered in the agreement, pursuant to provisions of article VIII of the agreement.

(u) "Model 1 seller" means a seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(v) "Model 2 seller" means a seller that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(w) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least \$500,000,000, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection a seller includes an affiliated group of sellers using the same proprietary system.

(x) "Municipal corporation" means any city incorporated under the laws of Kansas.

(y) "Nonprofit blood bank" means any nonprofit place, organization, institution or establishment that is operated wholly or in part for the purpose of obtaining, storing, processing, preparing for transfusing, furnishing, donating or distributing human blood or parts or fractions of single blood units or products derived from single blood units, whether or not any remuneration is paid therefor, or whether such procedures are done for direct therapeutic use or for storage for future use of such products.

(z) "Persons" means any individual, firm, copartnership, joint adventure, association, corporation, estate or trust, receiver or trustee, or any group or combination acting as a unit, and the plural as well as the singular number; and shall specifically mean any city or other political subdivision of the state of Kansas engaging in a business or providing a service specifically taxable under the provisions of this act.

(aa) "Political subdivision" means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law.

(bb) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(cc) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software, except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(dd) "Property which is consumed" means tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in (1) the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, (2) the providing of services, (3) the irrigation of crops, for sale in the regular course of business, or (4) the storage or processing of grain by a public grain warehouse or other grain storage facility, and which is not reusable for such purpose. The following is a listing of tangible personal property, included by way of illustration but not of limitation, which qualifies as property which is consumed:

(A) Insecticides, herbicides, germicides, pesticides, fungicides, fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use in commercial or agricultural production, processing or storage of fruit, vegetables, feeds, seeds, grains, animals or animal products whether fed, injected, applied, combined with or otherwise used;

(B) electricity, gas and water; and

(C) petroleum products, lubricants, chemicals, solvents, reagents and catalysts.

(ee) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

(ff) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(gg) “Quasi-municipal corporation” means any county, township, school district, drainage district or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.

(hh) “Registered under this agreement” means registration by a seller with the member states under the central registration system provided in article IV of the agreement.

(ii) “Retailer” means a seller regularly engaged in the business of selling, leasing or renting tangible personal property at retail or furnishing electrical energy, gas, water, services or entertainment, and selling only to the user or consumer and not for resale.

(jj) “Retail sale” or “sale at retail” means any sale, lease or rental for any purpose other than for resale, sublease or subrent.

(kk) “Sale” or “sales” means the exchange of tangible personal property, as well as the sale thereof for money, and every transaction, conditional or otherwise, for a consideration, constituting a sale, including the sale or furnishing of electrical energy, gas, water, services or entertainment taxable under the terms of this act and including, except as provided in the following provision, the sale of the use of tangible personal property by way of a lease, license to use or the rental thereof regardless of the method by which the title, possession or right to use the tangible personal property is transferred. The term “sale” or “sales” shall not mean the sale of the use of any tangible personal property used as a dwelling by way of a lease or rental thereof for a term of more than 28 consecutive days.

(ll) (1) “Sales or selling price” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(A) The seller’s cost of the property sold;

(B) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;

(C) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(D) delivery charges;

(E) installation charges; and

(F) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(2) “Sales or selling price” shall not include:

(A) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(B) interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(C) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(D) the amount equal to the allowance given for the trade-in of property, if separately stated on the invoice, billing or similar document given to the purchaser.

(mm) “Seller” means a person making sales, leases or rentals of personal property or services.

(nn) “Service” means those services described in and taxed under the provisions of K.S.A. 79-3603 and amendments thereto.

(oo) “Sourcing rules” means the rules set forth in sections 16 through 19, K.S.A. 12-191 and 12-191a, and amendments thereto, which shall apply to identify and determine the state and local taxing jurisdiction sales or use taxes to pay, or collect and remit on a particular retail sale.

(pp) “Tangible personal property” means personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam and prewritten computer software.

(qq) "Taxpayer" means any person obligated to account to the director for taxes collected under the terms of this act.

(rr) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

Sec. 5. K.S.A. 2002 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3% on and after July 1, 2002, and before July 1, 2004, 5.2% on and after July 1, 2004, and before July 1, 2005, and 5% on and after July 1, 2005, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or (B) originate outside this state and terminate within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges; (C) any value-added nonvoice service in which computer processing applications are used to act on the form, content, code or protocol of the information to be transmitted; (D) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (E) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001. ~~For the purposes of this subsection the term gross receipts does not include purchases of telephone, telegraph or telecommunications using a prepaid telephone calling card or prepaid authorization number. As used in this subsection, a prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed,~~ and (3) the gross receipts from the provision of services taxable under this subsection which are billed on a combined basis with nontaxable services, shall be accounted for and the tax remitted as follows: The taxable portion of the selling price of those combined services shall include only those charges for taxable services if the selling price for the taxable services can be readily distinguishable in the retailer's books and records from the selling price for the nontaxable services. Otherwise, the gross receipts from the sale of both taxable and nontaxable services billed on a combined basis shall be deemed attributable to the taxable services included therein. Within 90 days of billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the secretary identifying the methodology to be used in determining the taxable portion of the selling price of those combined services. The burden of proving that any receipt or charge is not taxable shall be upon the retailer. Upon request from the customer, the retailer shall disclose to the customer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on a combined basis;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, *except that, on and after*

*January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from:*

(1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated;

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties;

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon;

(i) the gross receipts from the rendering of dry cleaning, pressing, dyeing and laundry services except laundry services rendered through a coin-operated device whether automatic or manually operated;

(j) the gross receipts from the rendering of the services of washing and waxing of vehicles;

(k) the gross receipts from cable, community antennae and other subscriber radio and television services;

(l) (1) except as otherwise provided by paragraph (2), the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen for use by them in erecting structures, or building on, or otherwise improving, altering, or repairing real or personal property.

(2) Any such contractor, subcontractor or repairman who maintains an inventory of such property both for sale at retail and for use by them for the purposes described by paragraph (1) shall be deemed a retailer with respect to purchases for and sales from such inventory, except that the gross receipts received from any such sale, other than a sale at retail, shall be equal to the total purchase price paid for such property and the tax imposed thereon shall be paid by the deemed retailer;

(m) the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section

501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and (2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from: (1) Dues charged by any organization exempt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or (2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. In determining the base for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.

For the purposes of this subsection:

(1) "Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;

(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 *et seq.*, and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and

(4) "residence" shall mean only those enclosures within which individuals customarily live;

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) the gross receipts received from the sale of computer software, *the sale of the service of providing computer software other than prewritten computer software* and the sale of the services of modifying, altering, updating or maintaining computer software. ~~As used in this subsection, "computer software" means information and directions loaded into a computer which dictate different functions to be performed by the computer. Computer software includes any canned or prewritten program which is held or existing for general or repeated sale, even if the program was originally developed for a single end user as custom computer software, whether the computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;~~

(t) the gross receipts received for telephone answering services, mobile telecommunication services, beeper services and other similar services. On and after August 1, 2002, the provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002, shall be applicable to all sales of mobile telecommunication services taxable pursuant to this subsection. The secretary of revenue is hereby authorized and directed to perform any act deemed necessary to properly implement such provisions;

(u) the gross receipts received from the sale of prepaid ~~telephone calling cards or prepaid authorization numbers and the recharge of such cards or numbers. A prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed. If the sale or recharge of such card or number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address, if there is no item shipped then it shall be the customer's billing address calling service as defined in section 19, and amendments thereto;~~ and

(v) the gross receipts received from the sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*, and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*, and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

Sec. 6. K.S.A. 2002 Supp. 79-3606 is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, and dry-cleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by

such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school or educational institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or district described in subsection (s), the total cost of which is paid from funds of such political subdivision or district and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. Nothing in this subsection or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or any such district. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, district described in subsection (s), public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall

be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) sales of aircraft including remanufactured and modified aircraft, sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft sold to persons using directly or through an authorized agent such aircraft and aircraft repair, modification and replacement parts as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft for use outside of the United States;

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manu-

facturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

(o) all sales of animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) all sales of drugs, as defined by K.S.A. 65-1626 and amendments thereto, dispensed pursuant to a prescription order, as defined by K.S.A. 65-1626 and amendments thereto, by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto; *As used in this subsection, "drug" means a compound, substance or preparation and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages, recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, and supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or intended to affect the structure or any function of the body;*

(q) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(r) all sales of ~~prosthetic devices and orthopedic appliances~~ *mobility enhancing equipment* prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry. For the purposes of this subsection, ~~the term prosthetic and orthopedic appliances means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body, used to alleviate the malfunction of any part of the body, or used to assist any disabled person in leading a normal life by facilitating such person's mobility, such term shall include accessories attached or to be attached to motor vehicles, but such term shall not include motor vehicles or personal property which when installed becomes a fixture to real property;~~ *(1) "Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include durable medical equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer; and (2) "prosthetic device" means a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction or support a weak or deformed portion of the body;*

(s) except as provided in K.S.A. 2002 Supp. 82a-2101, and amendments thereto, all sales of tangible personal property or services purchased directly or indirectly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 *et seq.* and amendments thereto, by a rural water district organized or operating under the authority of K.S.A. 82a-612, and amendments thereto, or by a water supply district organized or operating under the authority of K.S.A. 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto, which property or services are used in the construction activities, operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance

of such machinery and equipment. For the purposes of this subsection the term "farm machinery and equipment or aquaculture machinery and equipment" shall include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(v) all sales of food products to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization, and all sales of food products for use in preparing meals for consumption by indigent or homeless individuals whether or not such meals are consumed at a place designated for such purpose;

(w) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes: (1) To residential premises for noncommercial use by the occupant of such premises; (2) for agricultural use and also, for such use, all sales of propane gas; (3) for use in the severing of oil; and (4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b *Second* through *Sixth*. As used in this paragraph, "severing" shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto. *For all sales of natural gas, electricity and heat delivered through mains, lines or pipes pursuant to the provisions of subsection (w)(1) and (w)(2), the provisions of this subsection shall expire on December 31, 2005;*

(x) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises *occurring prior to January 1, 2006;*

(y) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(z) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418 and amendments thereto;

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of used mobile homes or manufactured homes. As used in this subsection: (1) "Mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202 and amendments thereto; and (2) "sales of used mobile homes or manufactured homes" means sales other than the original retail sale thereof;

(cc) all sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115 and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment

for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto. As used in this subsection, "business" and "retail business" have the meanings respectively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

(dd) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture;

(ee) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(ff) on and after July 1, 1988, all sales of new mobile homes or manufactured homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, "mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202 and amendments thereto;

(gg) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(hh) all sales of medical supplies and equipment, *including durable medical equipment*, purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes. *As used in this subsection, "durable medical equipment" means equipment including repair and replacement parts for such equipment, but does not include mobility enhancing equipment as defined in subsection (r) which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury and is not worn in or on the body;*

(ii) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(jj) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based mental retardation facility or mental health center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(kk) (1) (A) all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility;

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

(A) "Integrated production operation" means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible

personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control operations, if any;

(B) "production line" means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs;

(C) "manufacturing or processing plant or facility" means a single, fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. Such term shall not include any facility primarily operated for the purpose of conveying or assisting in the conveyance of natural gas, electricity, oil or water. A business may operate one or more manufacturing or processing plants or facilities at different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail;

(D) "manufacturing or processing business" means a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. (i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution. (ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grinding, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities. (iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, non-industrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair tangible personal property for its owner;

(E) "repair and replacement parts and accessories" means all parts and accessories for exempt machinery and equipment, including, but not limited to, dies, jigs, molds, patterns and safety devices that are attached to exempt machinery or that are otherwise used in production, and parts and accessories that require periodic replacement such as belts, drill bits, grinding wheels, grinding balls, cutting bars, saws, refractory brick and other refractory items for exempt kiln equipment used in production operations;

(F) "primary" or "primarily" mean more than 50% of the time.

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;

(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility;

(C) to act upon, effect, promote or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(D) to guide, control or direct the movement of property undergoing manufacturing or processing;

(E) to test or measure raw materials, the property undergoing manufacturing or processing or the finished product, as a necessary part of the manufacturer's integrated production operations;

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(H) to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer's production operation; or, if purchased or delivered from offsite, from the point where the substance enters the site of the plant or facility to that manufacturer's production operations;

(J) to cool, heat, filter, refine or otherwise treat water, steam, acid, oil, solvents or other substances that are used in production operations;

(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

(M) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation.

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation: (A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development or product design; (B) machinery and equipment that is utilized by a manufacturing or processing business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations, including tools, dies, molds, forms and other parts of qualifying machinery and equipment; (C) portable plants for aggregate concrete, bulk cement and asphalt including cement mixing drums to be attached to a motor vehicle; (D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and (E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(C) transportation, transmission and distribution equipment not primarily used in a production, warehousing or material handling operation at the plant or facility, including the means of conveyance of natural gas, electricity, oil or water, and equipment related thereto, located outside the plant or facility;

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

(F) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

(H) machinery and equipment used for general plant heating, cooling and lighting;

(I) motor vehicles that are registered for operation on public highways; or

(J) employee apparel, except safety and protective apparel that is purchased by an employer and furnished gratuitously to employees who are involved in production or research activities.

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall determine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

(ll) all sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health;

(mm) all sales of seeds and tree seedlings; fertilizers, insecticides, herbicides, germicides, pesticides and fungicides; and services, purchased and used for the purpose of producing plants in order to prevent soil erosion on land devoted to agricultural use;

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

(oo) all sales of tangible personal property purchased by a community action group or agency for the exclusive purpose of repairing or weatherizing housing occupied by low income individuals;

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing educational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(ss) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station;

(tt) all sales of tangible personal property and services purchased by or on behalf of a not-for-profit corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the sole purpose of constructing a Kansas Korean War memorial;

(uu) all sales of tangible personal property and services purchased by or on behalf of any rural volunteer fire-fighting organization for use exclusively in the performance of its duties and functions;

(vv) all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;

(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;

(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;

(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;

(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;

(7) the Kansas chapters of the Parkinson's disease association for the purpose of eliminating Parkinson's disease through medical research and public and professional education related to such disease; and

(8) the National Kidney Foundation of Kansas and Western Missouri for the purpose of eliminating kidney disease through medical research and public and private education related to such disease;

(ww) all sales of tangible personal property purchased by the Habitat for Humanity for the exclusive use of being incorporated within a housing project constructed by such organization;

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later

than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of

this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds 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 or the director's designee;

(bbb) all sales of food for human consumption by an organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof;

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such clinic or center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue;

(eee) on and after January 1, 1999, and before January 1, 2001, all sales of materials and services purchased for the original construction, reconstruction, repair or replacement of grain storage facilities, including railroad sidings providing access thereto;

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state; all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation; and

(ggg) all sales of tangible personal property and services purchased by or on behalf of the Kansas Academy of Science which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and used solely by such academy for the preparation, publication and dissemination of education materials.

Sec. 7. K.S.A. 79-3607 is hereby amended to read as follows: 79-3607. (a) Retailers shall make returns to the director at the times prescribed by this section upon forms prescribed and furnished by the director stating: (1) The name and address of the retailer; (2) the total amount of gross sales of all tangible personal property and taxable services rendered by the retailer during the period for which the return is made; (3) the total amount received during the period for which the return is made on charge and time sales of tangible personal property made and taxable services rendered prior to the period for which the return is made; (4) deductions allowed by law from such total amount of gross sales and from total amount received during the period for which the return is made on such charge and time sales; (5) receipts during the period for which the return is made from the total amount of sales of tangible personal property and taxable services rendered during such period in the course of such business, after deductions allowed by law have been made; (6) receipts during the period for which the return is made from charge and time sales of tangible personal property made and taxable services rendered prior to such period in the course of such business, after deductions allowed by law have been made; (7) gross receipts during the period for which the return is made from sales of tangible personal property and taxable services rendered in the course of such business upon the basis of which the tax is imposed. The return shall include such other pertinent information as the director may require. In making such return, the retailer shall determine the market value of any consideration, other than money, received in connection with the sale of any tangible personal property in the course of the business and shall include such value in the return. Such value shall be subject to review and revision by the director as hereinafter provided. Refunds made by the retailer during the period for which the return is made on account of tangible personal property returned to the retailer shall be allowed as a deduction under subdivision (4) of this section in case the retailer has theretofore included the receipts from such sale in a return made by such retailer and paid taxes therein imposed by this act. The retailer shall, at the time of making such return, pay to the director the amount of tax herein imposed, except as otherwise provided in this section. The director may extend the time for making returns and paying the tax required by this act for any period not to exceed 60 days under such rules and regulations as the secretary of revenue may prescribe. When the total tax for which any retailer is liable under this act, does not exceed the sum of \$80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year. When the total tax liability does not exceed \$1,600 in any calendar year, the retailer shall file returns quarterly on or before the 25th day of the month following the end of each calendar quarter. When the total tax liability exceeds \$1,600 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. When the total tax liability exceeds \$32,000 in any calendar year, the retailer shall be required to pay the sales tax

liability for the first 15 days of each month to the director on or before the 25th day of that month. Any such payment shall accompany the return filed for the preceding month. A retailer will be considered to have complied with the requirements to pay the first 15 days' liability for any month if, on or before the 25th day of that month, the retailer paid 90% of the liability for that fifteen-day period, or 50% of such retailer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs computed at the rate applicable in the month in which the fifteen-day period occurs, and, in either case, paid any underpayment with the payment required on or before the 25th day of the following month. Such retailers shall pay their sales tax liabilities for the remainder of each such month at the time of filing the return for such month. Determinations of amounts of liability in a calendar year for purposes of determining filing requirements shall be made by the director upon the basis of amounts of liability by those retailers during the preceding calendar year or by estimates in cases of retailers having no previous sales tax histories. The director is hereby authorized to modify the filing schedule for any retailer when it is apparent that the original determination was inaccurate.

*(b) All model 1, model 2 and model 3 sellers are required to file returns electronically. Any model 1, model 2 or model 3 seller may submit its sales and use tax returns in a simplified format approved by the director. Any seller that is registered under the agreement, which does not have a legal requirement to register in this state, and is not a model 1, model 2 or model 3 seller, may submit its sales and use tax returns as follows: (1) Upon registration, the director shall provide to the seller the returns required;*

*(2) seller shall file a return anytime within one year of the month of initial registration, and future returns are required on an annual basis in succeeding years; and*

*(3) in addition to the returns required in subsection (b)(2), sellers are required to submit returns in the month following any month in which they have accumulated state and local sales tax funds for this state in the amount of \$1,600 or more.*

Sec. 8. K.S.A. 79-3608 is hereby amended to read as follows: 79-3608. *(a) Except as otherwise provided, it shall be unlawful for any person to engage in the business of selling tangible personal property at retail or furnishing taxable services in this state without a registration certificate from the director of taxation. Application for such certificate shall be made to the director upon forms furnished by the director, and shall state the name of the applicant, the address or addresses at which the applicant proposes to engage in such business, and the character of such business. Utilities taxable under this act shall not be required to register but shall comply with all other provisions of this act. The taxpayer may be registered by an agent. Such appointment of the agent by the taxpayer shall be in writing and submitted to the director. The taxpayer shall be issued a registration certificate to engage in the business for which application is made unless the applicant at the time of making such application owes any sales tax, penalty or interest, and in such case, before a registration certificate is issued, the director of taxation shall require the applicant to pay the amount owed.*

*(b) A separate registration certificate shall be issued for each place of business, and shall be conspicuously displayed therein.*

*(c) A seller registering under the agreement is considered registered in this state and shall not be required to pay any registration fees or other charges to register in this state if the seller has no legal requirement to register. A written signature from the seller registering under the agreement is not required. An agent may register a seller under uniform procedures determined by the secretary. A seller may cancel its registration under the system at any time under uniform procedures determined by the secretary. Cancellation does not relieve the seller of its liability for remitting to this state any taxes collected.*

Sec. 9. K.S.A. 2002 Supp. 79-3650 is hereby amended to read as follows: 79-3650. *(a) A refund request may be filed directly by a consumer or purchaser if the consumer or purchaser: (1) Paid the tax directly to the department; (2) provides evidence that the retailer refused or was unavailable to refund the tax; (3) provides evidence that the retailer did not act upon its refund request in a timely manner as provided in subsection (b), or; (4) provides a notarized statement to the department from the retailer that the retailer: (A) Will not claim a refund of the same tax included in the purchaser's or consumer's refund request; (B) agrees to provide to the consumer or purchaser any information or documentation in*

the retailer's possession needed for submission to the department to support or prove the refund claim; (C) has remitted to the state the tax sought to be refunded; and (D) has not taken or will not take a credit for such tax. A retailer providing false information in any such statement shall be subject to penalties prescribed by K.S.A. 2002 Supp. 79-3615(h), and amendments thereto.

(b) *A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request. In connection with a purchaser's request from a seller for over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller uses either a provider or a system, including a proprietary system, that is certified by the state and has remitted to the state all taxes collected less any deductions, credits or collection allowances. If the director of taxation finds upon proper showing that a consumer or purchaser submitted a refund request to a retailer that was not acted upon by the retailer in a timely manner, the director shall extend the time for filing the request with the department beyond the three year limitation period that is otherwise provided by the time attributed to the delay caused by the retailer.*

Sec. 10. K.S.A. 79-3651 is hereby amended to read as follows: 79-3651. (a) For the purpose of the proper administration of the Kansas retailers' sales tax act and to prevent evasion of the tax imposed thereunder, it shall be presumed that all gross receipts from the sale of tangible personal property or enumerated services are subject to tax until the contrary is established. The burden of proving that a sale is not subject to tax is upon the ~~vendor~~ seller unless the ~~vendor~~ seller takes from the purchaser an exemption certificate to the effect that the property or service purchased is not subject to tax.

(b) An exemption certificate shall relieve the ~~vendor~~ seller from collecting and remitting tax ~~when taken in good faith. A vendor shall be presumed to have accepted an exemption certificate in good faith in the absence of evidence to the contrary. A vendor shall be deemed to have accepted an exemption certificate in good faith if the vendor:~~ (1) Maintains a completed exemption certificate, (2) has ascertained the identity of the person or entity who presented the exemption certificate, and (3) has not been shown by a preponderance of the evidence to have had knowledge that the presentation of the certificate was improper *if the seller has obtained the required identifying information as determined by the director, from the purchaser and the reason for claiming the exemption at the time of purchase and has maintained proper records of exempt transactions pursuant to subsection (a) of K.S.A. 79-3609, and amendments thereto and provided them to the director when requested, except that a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption shall not be relieved from such liability. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred. The purchaser improperly claiming an exemption shall remain liable for the nonpayment of tax.*

(c) The exemption certificate shall be substantially in such form as the director may prescribe. *The seller shall use the standard form for claiming an exemption electronically as adopted by the director.* A ~~vendor~~ seller may require a purchaser to provide a copy of the purchaser's sales tax registration certificate with a resale certificate as a condition for honoring the purchaser's resale exemption claim. *A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.*

(d) To lawfully present a resale exemption certificate the purchaser must be engaged in the business of selling property or services of the same kind that is purchased, hold a registration certificate, and at the time of purchase, either intend to resell the property in the regular course of business or be unable to ascertain whether the property will be resold or used for some other purpose.

(e) Any person who issues a resale certificate or other exemption certificate in order to unlawfully avoid payment of tax for business or personal gain shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition, if the director determines that a person issued a resale certificate in order to unlawfully avoid payment of tax for

business or personal gain, the director shall increase any penalty that is due from the person under K.S.A. 79-3615, and amendments thereto, by \$250 or 10 times the tax due, whichever is greater, on each transaction where the misuse of a resale certificate occurred.

(f) Exemption certificates issued by a nonprofit entity claiming a specific exemption under K.S.A. 79-3606, and amendments thereto, shall bear the name and address of the entity and indicate the subsection under which the exemption is being claimed. Such certificate shall be signed by an officer, office manager or other administrator of the nonprofit entity, *if in paper form*, and contain the driver's license number of the signer. The certificate shall be substantially in such form as the director may prescribe. Payments made on an exempt entity's check, warrant, voucher or is charged to the entity's account shall relieve the ~~vendor~~ seller from collecting and remitting the tax if it is taken in good faith.

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

Sec. 11. K.S.A. 2002 Supp. 79-3703 is hereby amended to read as follows: 79-3703. There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using, storing, or consuming within this state any article of tangible personal property *or using, consuming or otherwise realizing the benefits in this state from any services provided*. Such tax shall be levied and collected in an amount equal to the consideration paid by the taxpayer multiplied by the rate of 5.3% on and after July 1, 2002, and before July 1, 2004, 5.2% on and after July 1, 2004, and before July 1, 2005, and 5% on and after July 1, 2005. Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax of 2% until the earlier of: (1) The date the bonds issued to finance or refinance the redevelopment project undertaken in the district have been paid in full; or (2) the final scheduled maturity of the first series of bonds issued to finance the redevelopment project. All property *or services* purchased or leased within or without this state and *such property* subsequently used, stored or consumed in this state *or such services used by, consumed by or benefiting the purchaser in this state* shall be subject to the compensating tax if the same property, *services* or transaction would have been subject to the Kansas retailers' sales tax had the transaction been wholly within this state.

New Sec. 12. State sales tax rate changes must take effect on the first day of a calendar quarter. The secretary shall make a reasonable effort to provide sellers with as much advance notice as practicable of any rate changes, legislative change in the tax base and amendments to sales and use tax rules and regulations. Failure of a seller to receive such notice or failure of the secretary to provide such notice to a seller or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use tax or otherwise comply with any such legislative, rule or regulatory changes.

New Sec. 13. On and after the databases are developed pursuant to subsections (a), (b) and (c) of section 14 and amendments thereto and after the state has joined and become a member of the agreement, sellers and certified service providers (CSPs) are relieved from liability for state and local sales and use tax for having charged and collected the incorrect amount of sales tax resulting from the seller or certified service provider relying on erroneous data provided by the secretary on tax rates, boundaries or taxing jurisdiction assignments. If the secretary provides an address-based system for assigning taxing jurisdictions that meets the requirements developed pursuant to the federal mobile telecommunications sourcing act, no liability relief is provided to sellers or certified service providers for errors resulting from reliance on the information provided under the provisions of subsection (c) of section 14 and amendments thereto.

New Sec. 14. (a) The secretary shall provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

(b) The secretary shall provide and maintain a database of all sales and use tax rates for all taxing jurisdictions. For the identification of counties and cities, codes corresponding to the rates must be provided according to federal information processing standards (FIPS) as

developed by the national institute of standards and technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the secretary.

(c) The secretary must provide and maintain a database that assigns each five- and nine-digit zip code to the proper rates and taxing jurisdictions. The lowest combined tax rate imposed in the zip code area shall apply if the area includes more than one tax rate in any level of taxing jurisdiction. If a nine-digit zip code designation is not available for a street address, or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the secretary that makes this designation from the street address and the five-digit zip code of the purchaser.

(d) The secretary shall participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal mobile telecommunications sourcing act (4 U.S.C. § 119).

(e) The electronic databases provided for in subsections (a), (b), (c) and (d) shall be in downloadable format as determined by the secretary. The provisions of subsections (c) and (d) do not apply when the purchased product is received by the purchaser at the business location of the seller.

New Sec. 15. (a) The retail sale of a product shall be sourced in accordance with section 16 and amendments thereto. The provisions of section 16 and amendments thereto apply regardless of the characterization of a product as tangible personal property, a digital good or a service. The provisions of section 16 and amendments thereto only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(b) Section 16 and amendments thereto does not apply to sales or use taxes levied on the following: (1) The retail sale or transfer of water craft, modular homes, manufactured homes or mobile homes. The retail sale of these items shall be sourced according to K.S.A. 12-191 and amendments thereto;

(2) the retail sales, excluding lease or rental, of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of section 16 and amendments thereto. The retail sale of these items shall be sourced according to K.S.A. 12-191 and amendments thereto and the lease or rental of these items must be sourced according to subsection (c) of section 16 and amendments thereto; and

(3) telecommunications services, as set out in section 19 and amendments thereto, shall be sourced in accordance with section 19 and amendments thereto.

New Sec. 16. (a) The retail sale, excluding lease or rental, of a product shall be sourced as follows: (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(2) when the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(3) when subsection (a)(1) and (a)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(4) when subsections (a)(1), (a)(2) and (a)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(5) when none of the previous rules of subsection (a)(1), (a)(2), (a)(3) or (a)(4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible

personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(b) The lease or rental of tangible personal property, other than property identified in subsection (c) or (d), shall be sourced as follows: (1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls;

(2) for a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a); and

(3) this subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) The lease or rental of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d), shall be sourced as follows: (1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations;

(2) for a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a); and

(3) this subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(d) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (a), notwithstanding the exclusion of lease or rental in subsection (a). "Transportation equipment" means any of the following: (1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(2) trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers or passenger buses that are: (A) Registered through the international registration plan; and

(B) operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;

(3) aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(4) containers designed for use on and component parts attached or secured on the items set forth in subsection (d)(1), (d)(2) and (d)(3).

(e) As used in this section, the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

(2) making first use of services; or

(3) taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser.

New Sec. 17. (a) Notwithstanding the provisions of section 16 and amendments thereto, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically or a service that the

digital good, computer software delivered electronically or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a multiple points of use or MPU exemption form disclosing this fact.

(b) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay or remit the applicable tax and the purchaser shall be obligated to collect, pay or remit the applicable tax on a direct pay basis.

(c) A purchaser delivering the MPU exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

(d) The MPU exemption form will remain in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (c) and the facts existing at the time of the sale, until it is revoked in writing.

(e) A holder of a direct pay permit shall not be required to deliver the MPU exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection (c) in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.

New Sec. 18. (a) (1) Notwithstanding the provisions of section 16 and amendments thereto, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(2) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(3) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a), the seller shall collect the tax according to subsection (a)(5) of section 16 and amendments thereto. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

New Sec. 19. (a) Except for the defined telecommunication services in subsection (c), the sale of telecommunication service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows: (1) A sale of mobile communications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the mobile telecommunications sourcing act;

(2) a sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and

(3) a sale of prepaid calling service is sourced in accordance with section 16 and amendments thereto, except that in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in subsection (a)(5) of section

16 and amendments thereto shall include as an option the location associate with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows: (1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(2) service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(3) service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced 50% in each level of jurisdiction in which the customer channel termination points are located; and

(4) service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(e) As used in this section: (1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

(3) "communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(4) "customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(5) "customer channel termination point" means the location where the customer either inputs or receives the communication;

(6) "end user" means the person who utilizes the telecommunication service. In the case of an entity, end user means the individual who utilizes the services on behalf of the entity;

(7) "home service provider" means the same as that term in defined in section 124(5) of Public Law 106-252 (mobile telecommunications sourcing act);

(8) "mobile telecommunications service" means the same as that term is defined in section 124(5) of Public Law 106-252 (mobile telecommunications sourcing act);

(9) "place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, place of primary use must be within the licensed service area of the home service provider;

(10) "post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service;

(11) "prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(12) “private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of such channel or channels; and

(13) “service address” means: (A) The location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) if the location in subsection (13)(A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and

(C) if the location in subsections (13)(A) and (13)(B) are not known, the service address means the location of the customer’s place of primary use.

New Sec. 20. (a) A seller is allowed a deduction from taxable sales for bad debts attributable to taxable sales of such seller that have become uncollectable. Any deduction taken that is attributed to bad debts shall not include interest.

(b) The amount of the bad debt deduction shall be calculated pursuant to 26 U.S.C. § 166(b), except that such amount shall be adjusted to exclude financing charges or interest, sales or use taxes charged on the purchase price, uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid and expenses incurred in attempting to collect any debt and repossessed property.

(c) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectable in the seller’s books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a seller who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the seller’s books and records and would be eligible for a bad debt deduction for federal income tax purposes if the seller was required to file a federal income tax return.

(d) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(e) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed by the seller within the applicable statute of limitations for refund claim pursuant to subsection (b) of K.S.A. 79-3609 and amendments thereto; however, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(f) Where filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.

(g) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account must first be applied proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges and any other charges.

(h) In situations where the books and records of the seller, or certified service provider on behalf of the seller, claiming the bad debt allowance support an allocation of the bad debts among the member states, such an allocation is permitted.

New Sec. 21. (a) The purpose of this section is to set forth this state’s policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with model I sellers.

(b) As used in this section: (1) “Confidential taxpayer information” means all information that is protected under this state’s laws, rules and regulations and privileges;

(2) “personally identifiable information” means information that identifies a person; and

(3) “anonymous data” means information that does not identify a person.

(c) A fundamental precept in model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider (CSP) shall perform its tax calculation, remittance and reporting functions without retaining the personally identifiable information of consumers.

(d) The secretary shall provide public notification to consumers, including their exempt purchasers, of the department's practices relating to the collection, use and retention of personally identifiable information.

(e) When any personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased, such information shall no longer be retained by the department.

(f) When personally identifiable information regarding an individual is retained by or on behalf of the department, the secretary shall provide reasonable access by such individual to such individual's own information in the department's possession and a right to correct any inaccurately recorded information.

(g) If anyone other than this state, or a person authorized by this state's law or the agreement, seeks to discover personally identifiable information, the secretary shall make a reasonable and timely effort to notify the individual of such request.

(h) This privacy policy is subject to enforcement by the attorney general.

New Sec. 22. (a) When the seller is computing the amount of tax owed by the purchaser and remitted to the state: (1) Tax computation must be carried to the third decimal place; and

(2) the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

(b) Sellers may elect to compute the tax due on a transaction on an item or an invoice basis. The rounding rule may be applied to the aggregated state and local taxes.

New Sec. 23. (a) The secretary shall complete a taxability matrix. This state's entries in the matrix shall be provided and maintained by the secretary in a database that is in a downloadable format.

(b) The secretary shall provide reasonable notice of changes in the taxability of the products or services listed in the taxability matrix.

(c) Sellers and certified service providers are relieved from liability to this state or any local taxing jurisdiction for having charged and collected the incorrect amount of state or local sales or use tax resulting from the seller or certified service providers relying on erroneous data provided by the secretary in the taxability matrix.

New Sec. 24. The effective date of state or local sales or use tax rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows: (a) For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date; and

(b) for a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

New Sec. 25. (a) The secretary shall participate in an online registration system that will allow sellers to register in this state and other member states.

(b) By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into this state as well as the other member states, including member states joining after the seller's registration. Withdrawal or revocation of this state from the agreement shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of this state.

(c) If the seller has a requirement to register prior to registering under the agreement, the seller must register pursuant to K.S.A. 79-3608 and amendments thereto.

(d) Registration with the central registration system and the collection of sales and use taxes in this state shall not be used as a factor in determining whether the seller has nexus with this state for any tax at any time.

New Sec. 26. (a) Subject to the limitations in this section: (1) Amnesty is granted for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the agreement, provided that the seller was not so registered in this state in the

twelve-month period preceding the effective date of this state's participation in the agreement;

(2) the amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in this state, provided registration occurs within 12 months of the effective date of this state's participation in the agreement; and

(3) amnesty similarly shall be provided if this state joins the agreement after the seller has registered.

(b) The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

(c) The amnesty is not available for sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(d) The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability during this thirty-six month period is tolled.

(e) The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

(f) This provision shall become effective as of the date that this state joins and becomes a member state of the agreement.

New Sec. 27. When registering under the agreement, the seller may select one of the following methods of remittances or other method allowed by K.S.A. 79-3607 and amendments thereto to remit the taxes collected: (a) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(b) model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; or

(c) model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system.

New Sec. 28. The provisions of this act shall be known and may be cited as the streamlined sales and use tax agreement conformity act.

New Sec. 29. (a) Sections 29 through 38, and amendments thereto, shall be known and may be cited as the local sales tax transportation development district act.

(b) The powers conferred by this act are for public uses, economic development purposes and purposes for which public money may be expended.

New Sec. 30. As used in sections 29 through 38, and amendments thereto: (a) "Acquire" means the acquisition of property or interests in property by purchase, gift, condemnation or other lawful means and may include the acquisition of existing property and projects already owned by a municipality.

(b) "Act" means the provisions of sections 29 through 38, and amendments thereto.

(c) "Bonds" means special obligation bonds or special obligation notes payable solely from the sources described in section 36, and amendments thereto, issued by a municipality in accordance with the provisions of this act.

(d) "Consultant" means engineers, architects, planners, attorneys and other persons deemed competent to advise and assist the governing body in planning and making of projects.

(e) "Cost" means: (1) All costs necessarily incurred for the preparation of preliminary reports, the preparation of plans and specifications, the preparation and publication of notices of hearings, resolutions, ordinances and other proceedings, necessary fees and expenses of consultants and interest accrued on borrowed money during the period of construction together with the cost of land, materials, labor and other lawful expenses incurred in planning and doing any project and may include a charge of not to exceed 5% of the total cost of a project or the cost of work done by the municipality to reimburse the municipality for the services rendered by the municipality in the administration and supervision of such project by its general officers; and (2) in the case of property and projects already owned

by the municipality and previously financed by the issuance of revenue bonds, cost means the principal amount of such outstanding revenue bonds plus the amount of matured interest, interest maturing within 90 days, plus the amount of any call premium or purchase premium required.

- (f) "District" means a transportation development district created pursuant to this act.
- (g) "Governing body" means the governing body of a city or the board of county commissioners of a county.
- (h) "Municipality" means any city or county.
- (i) "Newspaper" means the official newspaper of the municipality.
- (j) "Project" means any project or undertaking to improve any bridge, street, road, highway access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail or other mass transit facility or any other transportation related project or infrastructure.
- (k) "Local sales transportation district tax" means the tax authorized by section 34, and amendments thereto.
- (l) "To improve" means to construct, reconstruct, maintain, restore, replace, renew, repair, install, furnish, equip or extend any project.

New Sec. 31. (a) In addition to any other power provided by law and as a complete alternative to all other methods provided by law, the governing body of any municipality may create a transportation development district as provided by this act for the purpose of financing projects. A municipality may create a district upon receipt of a petition signed by the owners of record, whether resident or not, of all of the land area within the proposed district. The petition shall contain: (1) The general nature of the proposed project;

- (2) the estimated cost of the project;
- (3) the proposed method of financing the district;
- (4) the proposed method of assessment;
- (5) the proposed amount of any sales tax; and
- (6) a map or boundary description of the proposed district.

(b) Names may not be withdrawn from the petitions by the signers thereof after the governing body commences consideration of the petitions or later than seven days after such filing, whichever occurs first, and the petitions shall contain a notice that the names of the signers may not be withdrawn after such a period of time.

(c) Upon filing of the petition for a district financed only by assessments, the governing body may proceed without notice or a hearing to make findings by resolution or ordinance as to the nature, advisability and estimated cost of the project, the boundaries of the district and method of assessment, if any. Upon making such findings the governing body may authorize the project in accordance with such findings as to the advisability of the project. The resolution or ordinance shall be effective upon publication once in a newspaper.

(d) The district boundaries and the method of financing for the project shall not require that all property that is benefited by the project be included in the district or be subject to an assessment or the local sales transportation district tax.

New Sec. 32. In addition to any other power provided by law and as a complete alternative to all other methods provided by law, the governing body may make, or cause to be made, projects which confer a special benefit upon property within the district and may levy and collect special assessments upon property in the district and provide for the payment of all or any part of the cost of the project out of the proceeds of such special assessments. If special assessments will be levied to finance all or a portion of the cost of a project, the municipality shall follow the assessment procedures in K.S.A. 12-6a01 *et seq.*, and amendments thereto, except that no project costs may be apportioned against the municipality at large and no full faith and credit notes or bonds may be issued by the municipality to finance a project under this act.

New Sec. 33. (a) Upon filing a petition for a district financed in whole or in part by a proposed local sales transportation district tax authorized by section 34 and amendments thereto, the municipality shall adopt a resolution stating its intention to levy such sales tax, and give notice of the public hearing on the advisability of creating the district and financing of the project. Such notice shall be published at least once each week for two consecutive

weeks in the newspaper and shall be sent by certified mail to all property owners within the proposed district. The notice shall be published at least seven days prior to the date of hearing and the certified mailed notice shall be sent at least 10 days prior to the date of hearing. Such notice shall contain the following information:

- (1) Time and place of hearing;
- (2) general nature of the proposed project;
- (3) the estimated cost of the project;
- (4) the proposed method of financing of the project;
- (5) the proposed amount of the local sales transportation district tax; and
- (6) a map or boundary description of the proposed district.

(b) The hearing on the advisability of the creating of the district and the financing of the project may be adjourned from time to time. Following the hearing or any continuation thereof, the governing body may create the district, authorize the project and approve the estimated cost of the project, the boundaries of the district and the method of financing by adoption of the appropriate ordinance or resolution. Such ordinance or resolution shall become effective upon publication once in the newspaper, unless, within 30 days after the commencement of the hearing, a petition signed by at least 5% of the owners of record within the district is submitted to the clerk of the municipality requesting an election upon such question. An election of the owners of record whether resident or not, shall then be called and held thereon, in accordance with subsection (b) of section 34 and amendments thereto.

New Sec. 34. (a) In addition and notwithstanding any limitations on the aggregate amount of the retailers' sales tax contained in K.S.A. 12-187 through 12-197, and amendments thereto, any municipality may impose a local sales transportation district tax on the selling of tangible personal property at retail or rendering or furnishing services within a transportation development district for purposes of financing a project in such district in any increment of .10% or .25% not to exceed 1% and pledging the revenue received therefrom to pay the bonds issued for the project. Any local sales transportation district tax imposed pursuant to this section shall expire no later than the date the bonds issued to finance such project or refunding bonds issued therefore shall mature.

(b) Any municipality proposing to impose a local sales transportation district tax authorized by this section shall adopt a resolution stating its intention to levy such tax. Such notice shall be published at least once each week for two consecutive weeks in the newspaper. If within 30 days after the last publication of the notice a petition signed by at least 5% of the owners of record within the transportation development district is submitted to the clerk of the municipality requesting an election upon such question, an election of the owners of record, whether resident or not, shall be called and held thereon. Such notice and protest may run simultaneously with the public hearing notice in section 33 and amendments thereto. Such election shall be called and held in the manner provided by K.S.A. 25-431 *et seq.*, and amendments thereto. If no protest or no sufficient protest is filed or if an election is held and the proposition carries by a majority of the owners of record within the district voting thereon, the governing body, by resolution or ordinance, may levy such tax. Except as provided in this act, the tax authorized by this section shall be administered, collected and subject to provisions of K.S.A. 12-187 to 12-197, inclusive, and amendments thereto.

(c) Upon receipt of a certified copy of the resolution or ordinance authorizing the levy of the local sales transportation district tax pursuant to this section, the state director of taxation shall cause such tax to be collected in the district at the same time and in the same manner provided for the collection of the state retailers' sales tax. All of the taxes collected under the provisions of this act shall be remitted by the secretary of revenue 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, and the state treasurer shall credit 2% of all taxes so collected to the state general fund to defray the expenses of the department in administration and enforcement of the collection thereof. The remainder of such taxes shall be credited to the local sales transportation district tax fund, which fund is hereby established. All moneys in the local sales transportation district tax fund shall be remitted at least quarterly by the state

treasurer, on instruction from the secretary of revenue, to the treasurers of those municipalities which are qualified to receive disbursements from such fund the amount collected within such municipality. Any refund due on any local sales transportation district tax collected pursuant to this section shall be paid out of the local sales transportation development district tax refund fund which is hereby established in the state treasury and reimbursed by the director of taxation from collections of the sales tax authorized by this section. All local sales tax revenue collected pursuant to this section shall be remitted at least quarterly by the state treasurer, on instruction from the director of taxation, to the treasurer of such municipality. Upon receipt thereof, the treasurer of the municipality shall deposit such revenue in the transportation district fund created pursuant to section 37, and amendments thereto.

New Sec. 35. No suit to set aside the assessments, the local sales transportation district tax or otherwise question the validity of the proceedings for the creation of the district or the authorization of the project shall be brought after the expiration of 30 days from the publication of the ordinance or resolution creating the district or the publication of the ordinance or resolution imposing the local sales transportation district tax.

New Sec. 36. The total cost of any project authorized pursuant to this act shall be paid from all or any of the following sources: (a) Special assessments imposed in the district pursuant to this act which have been paid in full prior to the date set by the governing body as provided in K.S.A. 12-6a10, and amendments thereto, shall be paid from assessments so collected;

(b) special assessments imposed in the district pursuant to this act, to be paid in installments;

(c) a pledge of all of the revenue received from the local sales transportation district tax authorized by section 34, and amendments thereto; and

(d) any other funds appropriated by the municipality.

New Sec. 37. A separate fund shall be created for each district and each project and such fund shall be identified by a suitable title. The proceeds from the sale of bonds and any other moneys appropriated by the governing body for such purpose shall be credited to such fund. Such fund shall be used solely to pay the costs of the project.

New Sec. 38. (a) Any municipality may issue bonds in one or more series to finance the undertaking of any project in accordance with the provisions of this act. Such bonds shall be made payable, both as to principal and interest solely from a pledge of the sources of funds described in section 36, and amendments thereto. The municipality may pledge such revenue to the repayment of such bonds prior to, simultaneously with or subsequent to the issuance of such bonds, except for any revenues received under the provisions of subsection (d) of section 36 and amendments thereto, which revenues are subject to annual appropriation.

(b) Bonds issued pursuant to subsection (a) shall not be general obligations of the municipality, give rise to a charge against its general credit or taxing powers, or be payable out of any funds or properties other than any of those set forth in subsection (a) and such bonds shall so state on their face.

(c) Bonds issued pursuant to subsection (a) shall be special obligations of the municipality and are declared to be negotiable instruments. Such bonds shall be executed by the authorized representatives of the municipality and sealed with the corporate seal of the municipality. All details pertaining to the issuance of the bonds and terms and conditions thereof shall be determined by ordinance or resolution of the municipality. The provisions of K.S.A. 10-106, and amendments thereto, requiring a public sale of bonds shall not apply to bonds issued under this act. All bonds issued pursuant to this act and all income or interest therefrom shall be exempt from all state taxes except inheritance taxes. Such bonds shall contain none of the recitals set forth in K.S.A. 10-112, and amendments thereto. Such bonds shall contain the following recitals: The authority under which such bonds are issued; that such bonds are in conformity with the provisions, restrictions and limitations thereof; and that such bonds and the interest thereon are to be paid from the money and revenue received as provided in subsection (a) such bonds shall mature in no more than 22 years.

(d) Any municipality issuing bonds under the provisions of this act may refund all or part of such issue pursuant to the provisions of K.S.A. 10-116a, and amendments thereto.

(e) Bonds issued under the provisions of this act shall be in addition to and not subject to any statutory limitation of bonded indebtedness imposed on such municipality.

Sec. 39. K.S.A. 2002 Supp. 12-194 is hereby amended to read as follows: 12-194. No city or county shall levy or impose an excise tax or a tax in the nature of an excise, other than a retailers' sales tax and a compensating use tax, upon the sale or transfer of personal or real property, or the use thereof, or the rendering of a service, but the provisions of this section shall not be construed as prohibiting any city from (a) contracting with a utility for a fixed charge based upon a percentage of gross receipts derived from the service permitted by grant, right, privilege or franchise to such utility; (b) imposing an occupation tax or license fee for the privilege of engaging in any business, trade, occupation or profession, or rendering or furnishing any service, but the determination of any such license fee shall not be based upon any amount the licensee has received from the sale or transfer of personal or real property, or for the rendering or furnishing of a service, or on the income of the licensee; or (c) levying any occupation tax or license fee imposed by such city prior to the effective date of this act; or (d) levying a tax for the purpose of financing a transportation development district, created under K.S.A. 2002 Supp. 12-17,130 through 12-17,139, and amendments thereto. No license fee described in subsection (b) of this section shall be imposed upon any utility contracting with and subject to a charge, described in subsection (a) of this section, by such city.

Sec. 40. K.S.A. 2002 Supp. 25-432 is hereby amended to read as follows: 25-432. An election shall not be conducted under this act unless:

(a) Conducted on a date, mutually agreed upon by the governing body of the political or taxing subdivision and the county election officer, not later than 120 days following the date the request is submitted by the political or taxing subdivision; and

(b) the secretary of state approves a written plan for conduct of the election, which shall include a written timetable for the conduct of the election, submitted by the county election officer; and

(c) the election is nonpartisan; and

(d) the election is not one at which any candidate is elected, retained or recalled; and

(e) the election is not held on the same date as another election in which the qualified electors of that subdivision of government are eligible to cast ballots; and

(f) the election is a question submitted election at which all of the qualified electors of one of the following subdivisions of government are the only electors eligible to vote:

(1) Counties;

(2) cities;

(3) school districts, except in an election held pursuant to K.S.A. 72-7302 *et seq.*, and amendments thereto;

(4) townships;

(5) benefit districts organized under K.S.A. 31-301, and amendments thereto;

(6) cemetery districts organized under K.S.A. 15-1013 or 17-1330, and amendments thereto;

(7) combined sewer districts organized under K.S.A. 19-27,169, and amendments thereto;

(8) community college districts organized under K.S.A. 71-1101 *et seq.*, and amendments thereto;

(9) fire districts organized under K.S.A. 19-3601 or 80-1512, and amendments thereto;

(10) hospital districts;

(11) improvement districts organized under K.S.A. 19-2753, and amendments thereto;

(12) Johnson county park and recreation district organized under K.S.A. 19-2859, and amendments thereto;

(13) sewage disposal districts organized under K.S.A. 19-27,140, and amendments thereto;

(14) water districts organized under K.S.A. 19-3501 *et seq.*, and amendments thereto;

or

(15) transportation development districts created pursuant to ~~K.S.A. 2002 Supp. 12-17,130~~ section 29 *et seq.*, and amendments thereto.

New Sec. 41. The secretary of revenue in connection with a redevelopment project area for which sales, use and transient guest tax revenues are pledged or otherwise intended to be used in whole or in part for the payment of bonds issued to finance redevelopment project costs in such redevelopment project area or a transportation development district for which a local sales transportation tax has been imposed, shall provide reports identifying each retailer having a place of business in such redevelopment district or transportation development district setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month and identifying each business location maintained by the retailer within such city or county. Such report shall be made available to the bond trustee, escrow agent or paying agent for such bonds within a reasonable time after it has been requested from the director of taxation. The bond trustee, escrow agent or paying agent shall keep such retailers' sales, use and transient guest tax returns and the information contained therein confidential, but may use such information for purposes of allocating and depositing such sales, use and transient guest tax revenues in connection with the bonds used to finance redevelopment project costs in such redevelopment project area or used to finance the costs of a project in a transportation development district. Except as otherwise provided, the sales, use and transient guest tax returns received by the bond trustee, escrow agent or paying agent shall be subject to the provisions of K.S.A. 79-3614 and amendments thereto.

New Sec. 42. The provisions of sections 29 through 38 and 41, and amendments thereto, and K.S.A. 12-194 and 25-432, as amended pursuant to this act, shall apply to all transportation development districts, whether created before or after July 1, 2003.

Sec. 43. K.S.A. 12-189a is hereby amended to read as follows: 12-189a. The following sales shall be subject to the taxes levied and collected by all cities and counties under the provisions of K.S.A. 12-187 *et seq.* and amendments thereto:

(a) All sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises and all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agricultural use, *except that effective January 1, 2006, the provisions of this subsection shall expire for sales of water pursuant to this subsection;*

(b) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises; *and*

(c) all sales of intrastate telephone and telegraph services for noncommercial use.”;

And by renumbering sections accordingly;

On page 2, in line 11, after “Sec. 2.” by inserting “K.S.A. 12-189a, 12-191, 12-191a, 12-198, 75-5151, 79-3607, 79-3608 and 79-3651 and”; also in line 11, after “Supp.” by inserting “12-194, 12-17,130, 12-17,131, 12-17,132, 12-17,133, 12-17,134, 12-17,135, 12-17,136, 12-17,137, 12-17,138, 12-17,139, 25-432,”; also in line 11, by striking “is” and inserting “, 79-3602, 79-3603, 79-3606, 79-3650 and 79-3703 are”;

On page 1, in the title, in line 12, by striking “income”; also in line 12, after “to” by inserting “streamlined sales and use tax agreement conformity; local sales tax transportation development districts;”; in line 13, after “amending” by inserting “K.S.A. 12-189a, 12-191, 12-198, 75-5151, 79-3607, 79-3608 and 79-3651 and”; in line 14, after “Supp.” by inserting “12-194, 25-432,”; also in line 14, after “79-32,206” by inserting “, 79-3602, 79-3603, 79-3606, 79-3650 and 79-3703”; also in line 14, by striking “section” and inserting “sections; also repealing K.S.A. 12-191a and K.S.A. 2002 Supp. 12-17,130, 12-17,131, 12-17,132, 12-17,133, 12-17,134, 12-17,135, 12-17,136, 12-17,137, 12-17,138 and 12-17,139”

Senator Steineger further amended **HB 2005** as amended by Senate Committee, on page 2, following line 10, by inserting the following:

“Sec. 2. K.S.A. 12-188 is hereby amended to read as follows: 12-188. The following classes of cities are hereby established for the purpose of imposing limitations and prohibitions upon the levying of sales and excise taxes or taxes in the nature of an excise upon sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services by cities as authorized and provided by article 12, section 5, of the constitution of the state of Kansas:

Class A cities. All cities in the state of Kansas which have the authority to levy and collect excise taxes or taxes in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services by cities.

Class B cities. All cities in the state of Kansas which have the authority to levy and collect excise taxes or taxes in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services for the purpose of financing the provision of health care services.

Class C cities. All cities in the state of Kansas having a population of more than 290,000 located in a county having a population of more than 350,000 which has the authority to levy and collect excise taxes or taxes in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services.

Class D cities. All cities in the state of Kansas located in Cowley, Ellis, Ellsworth, Finney, Harper, Johnson, Labette, Lyon, Montgomery, Osage, Reno ~~or~~, Woodson *or Wyandotte* county or in both Riley and Pottawatomie counties which have the authority to levy and collect excise taxes or taxes in the nature of an excise upon the sales or transfers of personal or real property or the use thereof, or the rendering or furnishing of services.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 11, following “K.S.A.” by inserting “12-188 and K.S.A.”; also in line 11, by striking “is” and inserting “are”;

On page 1, in the title, in line 12, by striking “income”; in line 13, following the semicolon, by inserting “relating to classification of cities for purposes of levying sales and excise taxes;”; in line 14, following “K.S.A.” by inserting “12-188 and K.S.A.”; also in line 14, by striking “section” and inserting “sections”, and **HB 2005** be passed over.

**HB 2271** be amended by adoption of the committee amendments, be further amended by motion of Senator Schmidt as amended by Senate Committee, on page 4, following line 33 by inserting the following:

“Sec. 3. K.S.A. 21-3608 is hereby amended to read as follows: 21-3608. (a) Endangering a child is:

(1) Intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child’s life, body or health may be injured or endangered; or

(2) *knowingly and intentionally causing or permitting a child under the age of 18 years to be present where:*

(A) *A person is selling, offering for sale or having in such person’s possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense; compound; unlawfully manufacturing; or attempt to unlawfully manufacture any methamphetamine as defined by subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or*

(B) *drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of unlawfully manufacturing or attempting to unlawfully manufacture any methamphetamine as defined by subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.*

(b) Nothing in this section shall be construed to mean a child is endangered for the sole reason the child’s parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(c) Endangering a child ~~is a class A person misdemeanor~~ *is a severity level 9, person felony.*

(d) *As used in this section: “Manufacture” shall have the meaning ascribed to that term in K.S.A. 65-4101, and amendments thereto, and “drug paraphernalia” shall have the meaning ascribed to that term in K.S.A. 65-4150, and amendments thereto.”;*

And by renumbering the remaining sections accordingly;

Also on page 4, in line 34, after the first “K.S.A.” by inserting “21-3608 and”;

On page 1, in the title, in line 13, after the semicolon by inserting “relating to crimes against children;”; also in line 13, after the first “K.S.A.” by inserting “21-3608 and”, and **HB 2271** be passed over.

**S Sub for Sub HB 2219** be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator Tyson on page 3, in line 30,

by striking "recreation" and inserting "contact recreational"; in line 33, by striking "recreation" and inserting "contact recreational"; in line 36, by striking "recreation" and inserting "recreational"; in line 38, by striking "recreation" and inserting "recreational"

On page 4, in line 3, by striking "recreation" and inserting "contact recreational"; in line 7, by striking "recreation" and inserting "contact recreational"; in line 9, by striking "recreation" and inserting "recreational"; in line 11, by striking "recreation" and inserting "recreational"; in line 21, by striking "recreation" and inserting "contact recreational"; in line 24, by striking "recreation" and inserting "contact recreational"; in line 26, by striking "recreation" and inserting "recreational"; in line 29, by striking "recreation" and inserting "recreational";

On page 5, in line 2, by striking "recreation" and inserting "contact recreational"; in line 5, by striking "recreation" and inserting "contact recreational"; in line 15, by striking "recreation" and inserting "contact recreational"; in line 19, by striking "recreation" and inserting "contact recreational"

Senator Adkins amended **S Sub for Sub HB 2219** on page 3, in line 16, by striking "May 1" and inserting "April 1"; in line 25, by striking "May 1" and inserting "April 1"; in line 37, by striking "April 30" and inserting "March 31"; in line 41, by striking "May 1" and inserting "April 1";

On page 4, in line 10, by striking "April 30" and inserting "March 31"; in line 14, by striking "May 1" and inserting "April 1"; in line 27, by striking "April 30" and inserting "March 31", and **S Sub for Sub HB 2219** be passed as amended.

The Committee rose and reported progress (see Committee of the Whole, afternoon session)

On motion of Senator Oleen, the Senate recessed until 1:30 p.m.

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### AFTERNOON SESSION

The Senate met pursuant to recess with President Kerr in the chair.

#### CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

On motion of Senator Umbarger the Senate nonconcurred in the House amendments to **SB 7** and requested a conference committee be appointed.

The President appointed Senators Umbarger, Vratil and Downey as a conference committee on the part of the Senate.

On motion of Senator Vratil the Senate nonconcurred in the House amendments to **SB 14** and requested a conference committee be appointed.

The President appointed Senators Vratil, Schmidt and Goodwin as a conference committee on the part of the Senate.

On motion of Senator Harrington the Senate nonconcurred in the House amendments to **SB 33** and requested a conference committee be appointed.

The President appointed Senators Harrington, Barnett and Gooch as a conference committee on the part of the Senate.

On motion of Senator Vratil the Senate nonconcurred in the House amendments to **SB 67** and requested a conference committee be appointed.

The President appointed Senators Vratil, Allen and Goodwin as a conference committee on the part of the Senate.

On motion of Senator Clark the Senate nonconcurred in the House amendments to **Sub SB 104** and requested a conference committee be appointed.

The President appointed Senators Clark, Emler and Barone as a conference committee on the part of the Senate.

On motion of Senator Vratil the Senate nonconcurred in the House amendments to **SB 110** and requested a conference committee be appointed.

The President appointed Senators Vratil, Pugh and Goodwin as a conference committee on the part of the Senate.

On motion of Senator Vratil the Senate nonconcurred in the House amendments to **SB 123** and requested a conference committee be appointed.

The President appointed Senators Vratil, Allen and Goodwin as a conference committee on the part of the Senate.

On motion of Senator Schmidt the Senate nonconcurred in the House amendments to **H Sub for SB 145** and requested a conference committee be appointed.

The President appointed Senators Schmidt, Huelskamp and Downey as a conference committee on the part of the Senate.

On motion of Senator Wagle the Senate nonconcurred in the House amendments to **SB 225** and requested a conference committee be appointed.

The President appointed Senators Wagle, Barnett and Haley as a conference committee on the part of the Senate.

On motion of Senator Brownlee the Senate nonconcurred in the House amendments to **SB 235** and requested a conference committee be appointed.

The President appointed Senators Brownlee, Jordan and Barone as a conference committee on the part of the Senate.

On motion of Senator Brownlee the Senate nonconcurred in the House amendments to **SB 237** and requested a conference committee be appointed.

The President appointed Senators Brownlee, Jordan and Barone as a conference committee on the part of the Senate.

#### COMMITTEE OF THE WHOLE

The Senate returned to Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Schodorf in the chair.

On motion of Senator Schodorf the report for the morning and the following afternoon report was adopted:

Recommended **HB 2138; Sub HB 2294; HB 2329** be passed.

On emergency motion of Senator Oleen **HB 2071, HB 2160; S Sub for HB 2208; HB 2297** were advanced on the calendar under the heading of General Orders.

**HB 2160, HB 2297** be amended by adoption of the committee amendments, and the bills be passed as amended.

**SB 49** be amended by motion of Senator Bunten on page 1, in line 19, by striking "sub-"; in line 20, by striking "stantially", and **SB 49** be passed as amended.

**SB 222** be amended by adoption of the committee amendments, be further amended by motion of Senator Brownlee as amended by Senate Committee, on page 14, following line 17, by inserting the following:

"New Sec. 7. Prior to July 1, 2003, the secretary shall prepare and submit proposed rules and regulations to the joint committee on administrative rules and regulations setting forth and objective scoring matrix for the purpose of allocating housing tax credits pursuant to this act. The secretary shall use and apply such objective scoring matrix in the allocation of such housing tax credits. The provisions of this section shall be part of and supplemental to the Kansas private activity bond allocation act, K.S.A. 74-5058 *et seq.*, and amendments thereto.";

And by renumbering the remaining sections accordingly

Senator Oleen amended the bill as amended by Senate Committee, on page 12, following line 32, by inserting the following:

"(b) The provisions of the Kansas governmental operations accountability law apply to the Kansas development finance authority and the authority is subject to audit, review and evaluation under such law.";

And by relettering the remaining subsections accordingly;

On page 14, following line 17, by inserting the following:

"New Sec. 7. The Kansas development finance authority, created by K.S.A. 74-8903, and amendments thereto, shall be audited under the Kansas governmental operations accountability law, and shall be reviewed and evaluated during the 2004 regular session of the legislature, or such other regular session of the legislature designated by the legislative post

audit committee in accordance with the provisions of subsection (c) of K.S.A. 74-7285, and amendments thereto.”, and **SB 222** be passed as further amended.

**SB 254** be amended by adoption of the committee amendments, be further amended by motion of Senator Barnett as amended by Senate Committee, on page 4, following line 13, by inserting:

“(e) Nothing in this section shall be construed as limiting the powers of cities and counties to regulate or restrict the use of pyrotechnics, pyrotechnic devices or pyrotechnic materials.”, and **SB 254** be passed as further amended.

**HB 2005** be further amended by motion of Senator Goodwin as amended by Senate Committee, on page 2, after line 10, by inserting the following:

“Sec. 2. 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.

(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.

(2) The board of county commissioners of Anderson, Atchison, Barton, Butler, Cowley, Cherokee, Crawford, Ford, Jefferson, Lyon, Montgomery, Neosho, Osage, Ottawa, Riley, Saline, Seward, *Sumner*, 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, *Sumner* 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 sections accordingly;

Also on page 2, in line 11, after “Supp.” by inserting “12-187 and”; also in line 11, by striking “is” and inserting “are”;

On page 1, in the title, in line 12, by striking “income”; in line 13, before “amending” by inserting “local retailers' sales tax authority.”; in line 14, after “Supp.” by inserting “12-187 and”; also in line 14, by striking “section” and inserting “sections”, and **HB 2005** be passed as further amended.

**HB 2071** be amended by adoption of the committee amendments, be further amended by motion of Senator Teichman as further amended by Senate Committee, on page 12, after line 10, by inserting:

“New Sec. 2. Sections 2 through 15, and amendments thereto, shall be known as the Kansas insurance score act.

New Sec. 3. (a) This act shall apply only to personal insurance and not to commercial insurance. A personal insurance policy must be individually underwritten for personal, family or household use. No other type of insurance shall be included as personal insurance for the purpose of this act.

(b) This act shall apply to all personal insurance policies either written to be effective or renewed on or after January 1, 2004.

New Sec. 4. As used in this act:

(a) “Adverse action” means any of the following in connection with the underwriting of personal insurance:

- (1) A denial or cancellation of coverage;
- (2) anything other than the best possible rate; or
- (3) a reduction or other adverse or unfavorable change in the terms of coverage of any insurance regardless of whether such insurance is in existence or has been applied for.

(b) “Affiliate” means any company that controls, is controlled by, or is under common control with another company.

(c) “Agent” shall have the meaning ascribed to it in subsection (k) of K.S.A. 2002 Supp. 40-4902, and amendments thereto, unless the context requires otherwise.

(d) “Applicant” means an individual who has applied to an insurer to be covered by a personal insurance policy.

(e) “Commissioner” means the commissioner of insurance and any authorized designee of the commissioner.

(f) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy. "Consumer" also includes an applicant for a personal insurance policy.

(g) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(h) "Credit information" means any credit related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Credit information shall not include any information which is not credit related, regardless of whether such information is contained in a credit report or in an application or is used to calculate an insurance score.

(i) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(j) "Department" means the insurance department established by K.S.A. 40-102 and amendments thereto.

(k) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based, in whole or in part, on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

(l) "Personal insurance" means private passenger automobile, homeowners, motorcycle, mobile homeowners and non-commercial dwelling fire insurance policies and boat, personal water craft, snowmobile and recreational vehicle policies. For the strict purposes of this act, personal insurance shall also include individually underwritten policies of farmowners.

New Sec. 5. No insurer authorized to do business in the state of Kansas which uses credit information to underwrite or rate risks, shall:

(a) Use an insurance score that is calculated using income, address, zip code, race, religion, color, sex, disability, national origin, ancestry or marital status of the consumer as a factor.

(b) Without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (a), refuse to quote, deny, cancel or refuse to renew any policy of personal insurance solely on the basis of credit information.

(c) Without consideration of any other applicable factor independent of credit information, base an insured's renewal rates for personal insurance solely upon credit information.

(d) Without consideration of any other applicable factor independent of credit information, take an adverse action against a consumer solely because such consumer does not have a credit card account.

(e) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

(1) Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or

(2) exclude the use of credit information as a factor and use only other underwriting criteria.

(f) Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date the personal insurance policy is first written or notice of renewal is issued.

(g) (1) Except as provided in paragraphs (2) and (3), use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report.

(2) The insurer shall:

(A) Re-underwrite and re-rate the consumer's personal insurance policy, at the annual renewal of such policy, based upon a current credit report or insurance score for such consumer, if requested by the consumer. Such consumer's current credit report or insurance score shall be used if the result of the re-underwrite and re-rate reduces the consumer's rate. Such consumer's current credit report or insurance score shall not be used to increase the consumer's rate. The insurer shall not be found to be in violation of rate filings by adjusting an insured's rate in accordance with this subparagraph. Nothing in this subparagraph shall require an insurer to recalculate a consumer's insurance score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period.

(B) Have the discretion to obtain current credit information upon any renewal before the 36 months, if consistent with such insurer's underwriting guidelines.

(3) No insurer shall be required to obtain current credit information for an insured, if:

(A) The insured is in the most favorably-priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to order such report, if consistent with such insurer's underwriting guidelines;

(B) credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal, if consistent with such insurer's underwriting guidelines; or

(C) The insurer re-evaluates the insured beginning no later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

(h) Use any of the following as a negative factor against a consumer in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

(1) Any credit inquiry not initiated by the consumer or any inquiry requested by the consumer for such consumer's own credit information;

(2) any inquiry relating to insurance coverage, if so identified on a consumer's credit report;

(3) any collection account with a medical industry code, if so identified on the consumer's credit report; or

(4) any additional lender inquiry beyond the first such inquiry related to the same loan purpose, if coded by the consumer reporting agency on the consumer's credit report as being from the given loan industry and made within 30 days of one another.

New Sec. 6. (a) If it is determined through the dispute resolution process set forth in the federal fair credit reporting act, 15 USC 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with such insurer's underwriting and rating guidelines.

(b) If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

New Sec. 7. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose that it may obtain credit information in connection with such application. The insurer shall further notify such consumer that an internal appeal process exists as provided by paragraph (b) of section 8 and amendments thereto. The disclosure shall be made either on the insurance application or at the time the insurance application is taken. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.

New Sec. 8. (a) If an insurer takes an adverse action based upon credit information, the insurer shall provide written notification to the consumer a notice that:

(1) An adverse action has been taken, in accordance with the requirements of the federal fair credit reporting act as set forth in, 15 USC 1681m(a); and

(2) explains the reason for such adverse action.

(b) Each reason must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take such adverse action. An insurer shall provide a procedure whereby a consumer may review an adverse action based on credit information. Such procedure shall be consistent with the provisions of K.S.A. 40-2,112 and amendments thereto. The insurer and the insurer's agent shall be immune from any action arising from information provided to the insured through such process. The insurer shall not be found in violation of rate filings by adjusting an insured's rate in such a manner.

(c) The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" shall be deemed not to comply with requirements of this section.

New Sec. 9. (a) Each insurer that uses insurance scores to underwrite and rate risks shall file the procedure required by paragraph (b) of section 8, and amendments thereto, and such insurer's insurance scoring models or other insurance scoring processes with the insurance department. A third party may file with the insurance department such third party's scoring models or other scoring processes used on behalf of an insurer. Any filing that includes insurance scoring may include loss experience justifying the use of credit information.

(b) Except for the procedure required by paragraph (b) of section 8, and amendments thereto, any filing relating to insurance scoring models or other insurance scoring processes shall be considered to be a trade secret and confidential under the open records act.

New Sec. 10. (a) The commissioner of insurance shall gather data, hold public hearings, make inquiries and publish studies relating to the purpose of this act.

(b) The commissioner shall report to the president and minority leader of the senate and the speaker and minority leader of the house of representatives by January 26, 2005, on issues relating to the use of credit history in the underwriting and rating of personal insurance and the implementation of this act.

New Sec. 11. (a) An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses credit information or insurance scores, or both, for an insurer.

(b) The provisions of subsection (a) shall not be available whenever the agent fails to:

(1) Follow the instructions of or procedures established by the insurer; and

(2) comply with any applicable law or regulation.

(c) Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

New Sec. 12. (a) No consumer reporting agency shall provide or sell data or lists that include any information, in whole or in part, which was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes, but is not limited to:

(1) The expiration date of an insurance policy or any other information that may identify any time period during which a consumer's insurance may expire; and

(2) the terms and conditions of the consumer's insurance coverage.

(b) The restrictions provided in subsection (a) of this section do not apply to:

(1) Any data or list the consumer reporting agency supplies to the insurance agent from whom information was received;

(2) the insurer for whom such agent acted; or

(3) such insurer's affiliates or holding companies.

(c) Nothing in this section shall be construed to prohibit or restrict any insurer from obtaining a claims history report or a motor vehicle report.

New Sec. 13. Whenever an insurer is found to be in violation of any provision of this act, the commissioner shall proceed under K.S.A. 40-2,125 and amendments thereto.

New Sec. 14. The commissioner of insurance is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act.

New Sec. 15. (a) If any provision of this act is declared invalid due to an interpretation of or a future change in the federal fair credit reporting act, the remaining portions of the act shall be deemed to be severable and shall remain in full force and effect.

(b) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.”;

By renumbering the remaining sections accordingly;

In the title, in line 15, following the semicolon, by inserting “relating to the use of credit scores in issuing certain policies;”, and **HB 2071** be passed as further amended.

**S Sub for HB 2208** be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator Brownlee on page 14, in line 43, by striking “statute book” and inserting “Kansas register”, and **S Sub for HB 2208** be passed as amended.

**HB 2271** be further amended by motion of Senator Schmidt as amended by Senate Committee, on page 4, following line 33, by inserting the following:

Sec. 3. K.S.A. 2002 Supp. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

**SENTENCING RANGE - NONDRUG OFFENSES**

Category	A	B	C	D	E	F	G	H	I
Severity Level 9	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

<b>LEGEND</b>
Presumptive Probation
Border Box
Presumptive Imprisonment

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer or K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer and amendments thereto which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered a departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567 and, subsection (b)(3) of K.S.A. 21-3412a, and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as provided by the specific mandatory sentencing require-

ments of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments thereto shall not be served in a state facility in the custody of the secretary of corrections.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who: ~~(1)~~ (A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and ~~(2)~~ (ii) at the time of the conviction under ~~subsection (1)~~ paragraph (A) (i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government; or (B) (i) has been convicted of rape, K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the conviction under paragraph (B) (i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in paragraph (2) (B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) The sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.";

And by renumbering the remaining sections accordingly;

Also on page 4, in line 35, before "are" by inserting "and 21-4704";

On page 1, in the title, in line 12, by striking "and" and inserting a comma; also in line 12, before the semicolon by inserting "and criminal procedure"; also in line 12, by striking "relating to crimes against"; in line 13, by striking "property"; in line 14, before "and" by inserting "and 21-4704"; and **HB 2271** be passed over.

**SB 269** be passed over and retain a place on the calendar.

#### FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a  $\frac{2}{3}$  constitutional majority, and **SB 49**, **SB 222**, **SB 254**; **HB 2005**, **HB 2035**, **HB 2071**, **HB 2138**, **HB 2160**; **S Sub**

**HB 2208; S Sub for Sub HB 2219; HB 2254; Sub HB 2294; HB 2297, HB 2339** were advanced to Final Action and roll call.

**SB 49**, An act establishing a state employee fiscal bonus program; authorizing certain bonus payments for officers and employees of certain state agencies; prescribing guidelines and powers, duties and functions for the state finance council.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**SB 222**, An act concerning housing; relating to the Kansas development finance authority; authorizing the issuance of mortgage revenue bonds; amending K.S.A. 74-8902, 74-8903, 74-8904, 74-8905 and 74-8912 and repealing the existing sections.

On roll call, the vote was: Yeas 32, Nays 7, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Clark, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Bunten, Corbin, Huelskamp, Lyon, Pugh, Salmans, Schmidt.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**SB 254**, An act concerning the use of pyrotechnics, pyrotechnic devices and pyrotechnic materials; concerning penalties for the unlawful use thereof; concerning the powers and duties of the state fire marshal; amending K.S.A. 22-3902, 22-3904, 31-133 and 41-2611 and K.S.A. 2002 Supp. 22-3901 and 41-2708 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2005**, An act concerning taxation; relating to streamlined sales and use tax agreement conformity; local sales tax transportation development districts; credits for property taxes paid upon certain railroad machinery and equipment; relating to classification of cities for purposes of levying sales and excise taxes; local retailers' sales tax authority; amending K.S.A. 12-189a, 12-191, 12-198, 75-5151, 79-3607, 79-3608 and 79-3651 and K.S.A. 12-188 and K.S.A. 2002 Supp. 12-194, 25-432, 12-187 and 79-32,206, 79-3602, 79-3603, 79-3606, 79-3650 and 79-3703 and repealing the existing sections; also repealing K.S.A. 12-191a and K.S.A. 2002 Supp. 12-17,130, 12-17,131, 12-17,132, 12-17,133, 12-17,134, 12-17,135, 12-17,136, 12-17,137, 12-17,138 and 12-17,139.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Huelskamp.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2035.** An act concerning children in need of care; relating to the right to counsel; amending K.S.A. 2002 Supp. 38-1505 and repealing the existing section.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2071.** An act concerning insurance; relating to group health policies; relating to the use of credit scores in issuing certain policies; amending K.S.A. 2002 Supp. 40-2258 and repealing the existing section.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Corbin.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2138.** An act concerning criminal procedure; relating to forensic examinations; certification procedures; amending K.S.A. 2002 Supp. 22-3437 and repealing the existing section.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Pugh.

Absent or Not Voting: Feleciano.

The bill passed.

**HB 2160.** An act relating to the state corporation commission; concerning motor carriers and railroads; relating to certain fees; amending K.S.A. 8-142, 8-2107, 32-1009, 44-503c, 60-305a, 65-1626, 65-4101, 65-4116, 65-7004, 66-1,105, 66-1,108, 66-1,109, 66-1,111, 66-1,112, 66-1,112h, 66-1,114, 66-1,114b, 66-1,115, 66-1,115a, 66-1,116, 66-1,119, 66-1,126, 66-1,128, 66-1,129, 66-1,129a, 66-1,130, 66-1,139, 66-1,140, 66-1a01, 66-1313a, 79-6a01, 79-6a02 and 79-6a03 and K.S.A. 2002 Supp. 8-2,127 and repealing the existing sections; also repealing K.S.A. 66-1,112a, 66-1,112b, 66-1,112c, 66-1,112d, 66-1,112e and 66-1,112f.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**S Sub for HB 2208.** An act concerning tax increment financing and sales tax revenue bonds; relating to redevelopment of certain property located throughout the state; amending K.S.A. 12-1770a, 12-1774 and 74-8017 and K.S.A. 2002 Supp. 79-3620 and 79-3710 and repealing the existing sections.

On roll call, the vote was: Yeas 27, Nays 12, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Harrington, Jackson, Jordan, Kerr, Morris, O'Connor, Oleen, Schmidt, Schodorf, Steineger, Teichman, Umbarger, Wagle.

Nays: Clark, Corbin, Haley, Hensley, Huelskamp, Lee, Lyon, Pugh, Salmans, Taddiken, Tyson, Vratil.

Absent or Not Voting: Feleciano.

The substitute bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "No" on **S Sub HB 2208**. Voting with my fellow rural legislators; at least those savvy enough to realize that the net effect of lengthy SZAR bonds...as is currently the plight of Wyandotte Co. taxpayers "basking in the glow" of the 30 year NASCAR; while racetrack development "frying in the heat" of our ever escalating property taxes...is often to sap *existing* sales revenue streams from established retail; usually for the benefit of a newcomer.—DAVID HALEY

**S Sub for HB 2219**, An act concerning classified stream segments; relating to recreational use; amending K.S.A. 2002 Supp. 82a-2001 and repealing the existing section.

On roll call, the vote was: Yeas 35, Nays 4, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Taddiken, Teichman, Tyson, Umbarger, Wagle.

Nays: Allen, Schodorf, Steineger, Vratil.

Absent or Not Voting: Feleciano.

The substitute bill passed, as amended.

**HB 2254**, An act concerning dependent persons; relating to the reporting of abuse, neglect or exploitation of such persons; amending K.S.A. 39-1401, 39-1403, 39-1404, 39-1405, 39-1406, 39-1407, 39-1408, 39-1409, 39-1430, 39-1432, 39-1433, 39-1436 and 39-1437 and K.S.A. 2002 Supp. 39-1402 and 39-1431 and repealing the existing sections.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Huelskamp, Lyon, Pugh.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**Sub HB 2294**, An act concerning civil procedure; relating to the filing of lawsuits concerning construction defects.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Pugh.

Absent or Not Voting: Feleciano.

The substitute bill passed.

**HB 2297**, An act concerning civil procedure; relating to garnishment; amending K.S.A. 2002 Supp. 60-739 and 61-3512 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley,

Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed, as amended.

**HB 2329**, An act concerning the Kansas wage payment act; definitions; amending K.S.A. 44-313 and 44-323 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Feleciano.

The bill passed.

#### **CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR**

On motion of Senator Vratil the Senate nonconcurred in the House amendments to **SB 36** and requested a conference committee be appointed.

The President appointed Senators Vratil, Schmidt and Goodwin as a conference committee on the part of the Senate.

On motion of Senator Jordan the Senate nonconcurred in the House amendments to **SB 223** and requested a conference committee be appointed.

The President appointed Senators Brownlee, Jordan and Barone as a conference committee on the part of the Senate.

#### **ORIGINAL MOTION**

On motion of Senator Allen, the Senate acceded to the request of the House for a conference on **HB 2003**.

The President appointed Senators Allen, O'Connor and Gilstrap as conferees on the part of the Senate.

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **HB 2032**.

The President appointed Senators Vratil, Schmidt and Goodwin as conferees on the part of the Senate.

On motion of Senator Schmidt, the Senate acceded to the request of the House for a conference on **HB 2038**.

The President appointed Senators Schmidt, Huelskamp and Downey as conferees on the part of the Senate.

On motion of Senator Allen, the Senate acceded to the request of the House for a conference on **HB 2122**.

The President appointed Senators Allen, O'Connor and Gilstrap as conferees on the part of the Senate.

On motion of Senator Clark, the Senate acceded to the request of the House for a conference on **HB 2131**.

The President appointed Senators Clark, Emler and Barone as conferees on the part of the Senate.

On motion of Senator Donovan, the Senate acceded to the request of the House for a conference on **HB 2135**.

The President appointed Senators Donovan, Salmans and Gooch as conferees on the part of the Senate.

On motion of Senator Teichman, the Senate acceded to the request of the House for a conference on **HB 2233**.

The President appointed Senators Teichman, Barnett and Feleciano as conferees on the part of the Senate.

#### **INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was introduced and read by title:

**SB 279**, An act concerning taxation; relating to time for payment; amending K.S.A. 79-3607, 79-4220 and 79-4221 and K.S.A. 2002 Supp. 79-3298 and repealing the existing sections, by Committee on Ways and Means.

#### MESSAGE FROM THE HOUSE

Announcing, the House nonconcur in Senate amendments to **HB 2009**, requests a conference and has appointed Representatives Sloan, Horst and Storm as conferees on the part of the House.

The House nonconcur in Senate amendments to **Substitute HB 2036**, requests a conference and has appointed Representatives D. Johnson, Powell and Gatewood as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2078**, requests a conference and has appointed Representatives Hutchins, Hayzlett and Thull as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2121**, requests a conference and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2130**, requests a conference and has appointed Representatives Holmes, Krehbiel and Kuether as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2288**, requests a conference and has appointed Representatives Myers, Powers and Wilson as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2234**, requests a conference and has appointed Representatives Jim Morrison, P. Long and Kirk as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2247**, requests a conference and has appointed Representatives Freeborn, Tafanelli and Flora as conferees on the part of the House.

The House nonconcur in Senate amendments to **Senate Substitute for HB 2308**, requests a conference and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2332**, requests a conference and has appointed Representatives Dahl, Novascone and Ruff as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2369**, requests a conference and has appointed Representatives Neufeld, Pottorff and Nichols as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2374**, requests a conference and has appointed Representatives Holmes, Krehbiel and Kuether as conferees on the part of the House.

The House announces the appointment of Representative Wilson to replace Representative Sawyer as a conferee on **SB 102**.

The House accedes to the request of the Senate for a conference on **SB 7** and has appointed Representatives Sloan, Horst and Storm as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 14** and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 33** and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 67** and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **Substitute SB 104** and has appointed Representatives Holmes, Krehbiel and Kuether as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 110** and has appointed Representatives O'Neal, Patterson and Pauls as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 123** and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **House Substitute for SB 145** and has appointed Representatives D. Johnson, Powell and Feuerborn as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 225** and has appointed Representatives J. Morrison, P. Long and Kirk as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 235** and has appointed Representatives Wilk, Gordon and Burroughs as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 237** and has appointed Representatives Vickrey, Ostmeyer and Toelkes as conferees on the part of the House.

#### COMMITTEE OF THE WHOLE

On motion of Senator Oleen, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Schodorf in the chair.

On motion of Senator Schodorf the following report was adopted:

Recommended **SB 261**; **HB 2448** be passed.

The committee report on **SB 170** recommending a **Sub for SB 170** be adopted, and the substitute bill be passed.

The committee report on **SB 244** recommending a **Sub for SB 244** be adopted, and the substitute bill be passed.

**SB 12**, **SB 13**, **SB 265** be amended by adoption of the committee amendments, and the bills be passed as amended.

**SB 268** be amended by motion of Senator Barnett on page 3, after line 37, by inserting the following:

“Sec. 3. (a) As used in sections 3 through 8, and amendments thereto:

(1) “Department” means the department of health and environment.

(2) “Freestanding birthing center” means any facility which is not licensed by the state and in which child birth deliveries routinely occur.

(3) “Hospital” means a hospital classified under K.S.A. 65-425, and amendments thereto, as a general hospital.

(4) “Local health department” means any county, city-county or multi-county health department created under the laws of this state.

(5) “Physician” means a person licensed to practice medicine and surgery.

(6) “Secretary” means the secretary of health and environment.

(b) The secretary of health and environment shall establish and, if funds for this purpose are available, implement a statewide or pilot birth defects information system for the collection of information concerning congenital anomalies, stillbirths and abnormal conditions of newborns.

(c) If the system is implemented under subsection (b) of this section, all of the following apply:

(1) The secretary may require each physician, hospital and freestanding birthing center to report to the system information concerning all patients under five years of age with a primary diagnosis of a congenital anomaly or abnormal condition. The secretary shall not require a hospital, freestanding birthing center or physician to report to the system any information that is reported to the secretary or department of health and environment under another provision of law.

(2) On request, each physician, hospital and freestanding birthing center shall give the secretary or authorized employees of the department of health and environment access to the medical records of any patient described in subsection (c)(1) of this section. The department shall pay the costs of copying any medical records pursuant to this act.

(3) The secretary may review vital statistics records and shall consider expanding the list of congenital anomalies and abnormal conditions of newborns reported on birth certificates.

(d) A physician, hospital or freestanding birthing center that provides information to the system under subsection (c) shall not be subject to criminal or civil liability for providing the information.

Sec. 4. The birth defects information system may be used for all of the following purposes:

(1) To identify and describe congenital anomalies, stillbirths and abnormal conditions of newborns;

(2) to detect trends and epidemics in congenital anomalies, stillbirths and abnormal conditions of newborns;

(3) to quantify morbidity and mortality of congenital anomalies and abnormal conditions of newborns;

(4) to stimulate epidemiological research regarding congenital anomalies, stillbirths and abnormal conditions of newborns;

(5) to identify risk factors for congenital anomalies, stillbirths and abnormal conditions of newborns;

(6) to facilitate intervention in and prevention of congenital anomalies, stillbirths and abnormal conditions of newborns;

(7) to facilitate access to treatment for congenital anomalies and abnormal conditions of newborns;

(8) to inform and educate the public about congenital anomalies, stillbirths and abnormal conditions of newborns.

Sec. 5. (a) Except as provided in this section, records received and information assembled by the birth defects information system pursuant to section 3, and amendments thereto, are confidential medical records.

(b) The secretary may use information assembled by the system to notify parents, guardians and custodians of children with congenital anomalies or abnormal conditions of medical care and other services available for the child and family.

(c) The secretary may disclose information assembled by the system in summary, statistical or other form that does not identify particular individuals or individual sources of information.

Sec. 6. A child's parent or legal guardian who wants information concerning the child removed from the birth defects information system shall request from the local health department or the child's physician a form prepared by the secretary. On request, a local health department or physician shall provide the form to the child's parent or legal guardian. The individual providing the form shall discuss with the child's parent or legal guardian the information contained in the system. If the child's parent or legal guardian signs the form, the local health department or physician shall forward it to the secretary. On receipt of the signed form, the secretary shall remove from the system any information that identifies the child.

Sec. 7. Not later than 180 days after the effective date of this section, the secretary of health and environment shall adopt rules and regulations in accordance with the provisions of this act to do all of the following subject to available funding:

(a) Implement the birth defects information system;

(b) specify the types of congenital anomalies and abnormal conditions of newborns to be reported to the system under section 3, and amendments thereto;

(c) establish reporting requirements for information concerning diagnosed congenital anomalies and abnormal conditions of newborns;

(d) establish a form for use by parents or legal guardians who seek to have information regarding their children removed from the system and a method of distributing the form to local health departments and to physicians. The method of distribution must include making the form available on the internet.

Sec. 8. Three years after the date a birth defects information system is implemented pursuant to section 3, and amendments thereto, and annually thereafter, the secretary shall prepare a report regarding the birth defects information system. The department shall file

the report with the governor, the president and minority leader of the senate, the speaker and minority leader of the house of representative, the departments of social and rehabilitation services, education and human resources.”;

And by renumbering sections accordingly;

On page 1, in the title, in line 12, after the semicolon, by inserting: “establishing a birth defects information system; providing for administration by the secretary of health and environment and for collection of data;”, and **SB 268** be passed as amended.

**HB 2027** be amended by adoption of the committee amendments, be further amended by motion of Senator Huelskamp as amended by Senate Committee, on page 4, following line 28, by inserting the following:

“New Sec. 6. No state agency shall have the authority to petition to have any animal placed on the federal list of endangered species.”;

And by renumbering the remaining sections accordingly;

On page 1, in the title, in line 14, by striking “prairie dogs” and inserting “animals”; also in line 14, by striking “thereof” and inserting “of prairie dogs”, and **HB 2027** be passed as further amended.

**HB 2426** be amended by motion of Senator Morris as amended by House Committee, on page 1, after line 16, by inserting the following:

“Section 1. (a) For the fiscal years ending June 30, 2004, and June 30, 2005, appropriations are hereby made, restrictions and limitations are hereby imposed, and transfers, capital improvement projects, fees, receipts, disbursements and acts incidental to the foregoing are hereby directed or authorized as provided in this act.

(b) The agencies named in this act are hereby authorized to initiate and complete the capital improvement projects specified and authorized by this act or for which appropriations are made by this act, subject to the restrictions and limitations imposed by this act.

Sec. 2.

STATE FAIR BOARD

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, 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:

State fair capital improvements fund ..... No limit

(b) On or before the 10th of each month during the fiscal year ending June 30, 2004, the director of accounts and reports shall transfer from the state general fund to the state fair capital improvements fund interest earnings based on: (1) The average daily balance of moneys in the state fair capital improvements fund for the preceding month; and (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

Sec. 3.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

(a) There is appropriated for the above agency from the state institutions building fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Rehabilitation and repair projects..... \$4,055,886

*Provided*, That the secretary of social and rehabilitation services is hereby authorized to transfer moneys during fiscal year 2004 from the rehabilitation and repair projects account to a rehabilitation and repair account for any institution, as defined by K.S.A. 76-12a01 or 76-12a18 and amendments thereto, for projects approved by the secretary of social and rehabilitation services: *Provided further*, That expenditures also may be made from this account during fiscal year 2004 for the purposes of rehabilitation and repair for facilities of the department of social and rehabilitation services other than any institution, as defined by K.S.A. 76-12a01 or 76-12a18 and amendments thereto.

Debt service — new state security hospital ..... \$3,506,316

(b) In addition to the purposes for which expenditures may be made by the above agency from the other state fees fund for fiscal year 2004, expenditures may be made by the above agency from the other state fees fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Area office rehabilitation and repair ..... \$300,000  
*Provided*, That expenditures from the area office rehabilitation and repair account shall be in addition to any expenditure limitation imposed on the other state fees fund for fiscal year 2004.

(c) In addition to the other purposes for which expenditures may be made by the department of social and rehabilitation services from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 as authorized by this or other appropriation act of the 2003 regular session of the legislature, expenditures shall be made by the department of social and rehabilitation services from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for a capital improvement project or projects for state hospital renovation and repair: *Provided*, That the capital improvement project or projects for state hospital renovation and repair are hereby approved for the department of social and rehabilitation services for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That the department of social and rehabilitation services may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement project or projects: *Provided, however*, That expenditures from the moneys received from the issuance of any such bonds for such capital improvement project or projects shall not exceed \$49,163,883, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project or projects during the construction of such project or projects and any required reserves for the payment of principal and interest on the bonds: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the state institutions building fund or any other appropriate special revenue fund or funds.

Sec. 4.

#### KANSAS STATE SCHOOL FOR THE BLIND

(a) There is appropriated for the above agency from the state institutions building fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Rehabilitation and repair projects ..... \$123,241

Sec. 5.

#### KANSAS STATE SCHOOL FOR THE DEAF

(a) There is appropriated for the above agency from the state institutions building fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified, the following:

Rehabilitation and repair projects ..... \$170,000  
 Roth roof replacement ..... \$40,600  
 Dorm renovation ..... \$352,323

Sec. 6.

#### DEPARTMENT OF CORRECTIONS

(a) There is appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Debt service payment for the revenue refunding bond issues ..... \$5,034,113  
 Debt service payment for the Wichita work release facility bond issue... \$161,000  
 Debt service payment for the Ellsworth correctional facility at Ellsworth,  
 Kansas ..... \$1,622,000  
 Debt service payment for the reception and diagnostic unit relocation  
 bond issue ..... \$1,330,000  
 Debt service payment for the Topeka and Lansing correctional facility  
 bond issue ..... \$1,015,000

(b) There is appropriated for the above agency from the correctional institutions building

fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Debt service payment for the revenue refunding bond issues.....	\$1,689,697
Capital improvements — rehabilitation, remodeling, renovation and repair of correctional institutions.....	\$3,310,303

*Provided*, That the secretary of corrections is hereby authorized to transfer moneys during fiscal year 2004 from the capital improvements — rehabilitation, remodeling, renovation and repair of correctional institutions account of the correctional institutions building fund to an account or accounts of the correctional institutions building fund of any institution or facility under the jurisdiction of the secretary of corrections to be expended during fiscal year 2004 by the institution or facility for capital improvement projects.

(c) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, 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:

Lease revenue bond issue — principal and interest fund — H bonds....	No limit
Lease revenue bond issue — principal and interest fund — J bonds.....	No limit
Lease revenue bond issue — principal and interest fund — R bonds ...	No limit
Reception and diagnostic unit replacement project revenue fund .....	No limit
Refunding revenue bond issue — principal and interest fund — Q bonds .....	No limit

Sec. 7.

STATE HISTORICAL SOCIETY

(a) There is appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2004, the following:

Rehabilitation and repair projects.....	\$46,550
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*Provided*, That any unencumbered balance in the rehabilitation and repair projects account in excess of \$100 as of June 30, 2003, is hereby reappropriated for fiscal year 2004.

(b) There is hereby appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Historical society capital improvements fund .....	No limit
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Sec. 8.

INSURANCE DEPARTMENT

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Insurance building principal and interest payment fund.....	No limit
Insurance department rehabilitation and repair fund.....	No limit

Sec. 9.

DEPARTMENT OF ADMINISTRATION

(a) There is appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified, the following:

Judicial center improvements — debt service.....	\$97,085
Statehouse improvements — debt service.....	\$4,424,652
Energy conservation improvements — debt service .....	\$1,964,829

Any unencumbered balance in excess of \$100 as of June 30, 2003, in each of the following capital improvement accounts is hereby reappropriated for fiscal year 2004: Judicial center renovation planning; rehabilitation and repair for state facilities; judicial center rehabilitation and repair; judicial center improvements.

(b) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Veterans memorial fund .....	No limit
State facilities gift fund .....	No limit
Master lease program fund .....	No limit
State buildings depreciation fund .....	\$0
Executive mansion gifts fund .....	No limit
Topeka state hospital cemetery memorial gift fund .....	No limit

(c) In addition to the other purposes for which expenditures may be made from the state budget stabilization fund for fiscal year 2004, expenditures may be made by the above agency from the state budget stabilization fund for fiscal year 2004 from any unencumbered balance as of June 30, 2003, in each of the following capital improvement accounts of the state budget stabilization fund: Judicial center improvements; rehabilitation and repair for state facilities; judicial center rehabilitation and repair: *Provided*, That the expenditures for fiscal year 2004 from the unencumbered balance of any such account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from the state budget stabilization fund for the fiscal year 2004 from the unencumbered balance in any such account shall be in addition to any expenditure limitation imposed on the state budget stabilization fund for the fiscal year 2004.

(d) In addition to the other purposes for which expenditures may be made by the above agency from the building and ground fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the building and ground fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Paint and grounds shop — debt service .....	No limit
Parking improvements and repair .....	\$95,000

(e) In addition to the other purposes for which expenditures may be made from the building and ground fund for fiscal year 2004, expenditures may be made by the above agency from the building and ground fund for fiscal year 2004 from any unencumbered balance as of June 30, 2003, in each of the following capital improvement accounts of the building and ground fund: Docking 9th street right-of-way; parking improvements and repair: *Provided*, That the expenditures for fiscal year 2004 from the unencumbered balance of any such account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from the building and ground fund for the fiscal year 2004 from the unencumbered balance in any such account shall be in addition to any expenditure limitation imposed on the building and ground fund for the fiscal year 2004.

(f) In addition to the other purposes for which expenditures may be made by the above agency from the state buildings depreciation fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the state buildings depreciation fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Rehabilitation and repair .....	\$200,000
Landon electrical controls upgrade .....	\$40,000
Landon fire pump replacement .....	\$75,000
Docking lighting control system upgrade .....	\$110,000
Capitol complex study .....	\$400,000
Landon roof repairs .....	\$86,000
Capitol complex refrigerant code study .....	\$80,000
Docking penthouse roof replacement .....	\$91,000

*Provided*, That all expenditures from each such capital improvement account shall be in addition to any expenditure limitation imposed on the state buildings depreciation fund for fiscal year 2004.

(g) In addition to the other purposes for which expenditures may be made by the above agency from the state buildings depreciation fund for fiscal year 2004, expenditures may be made by the above agency from the state buildings depreciation fund for fiscal year 2004 from the unencumbered balance as of June 30, 2003, in each capital improvement account of the state buildings depreciation fund for one or more projects approved for prior fiscal years: *Provided*, That expenditures from the unencumbered balance in any such account

shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from any such account shall be in addition to any expenditure limitation imposed on the state buildings depreciation fund for fiscal year 2004.

(h) In addition to the other purposes for which expenditures may be made by the above agency from the state buildings operating fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the state buildings operating fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Landon state office building — debt service .....	No limit
Memorial hall — debt service.....	No limit
State of Kansas facilities projects — debt service .....	No limit
Docking cooling towers replacement — debt service .....	No limit

(i) In addition to the other purposes for which expenditures may be made by the above agency from the motor pool service fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the motor pool service fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Motor pool shop — debt service.....	No limit
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(j) In addition to the other purposes for which expenditures may be made from the intragovernmental printing service fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the intragovernmental printing service fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Printing plant — debt service .....	No limit
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(k) On July 1, 2003, the director of accounts and reports shall transfer all moneys in the state capitol dome sculpture fund to the state general fund. On July 1, 2003, all liabilities of the state capitol dome sculpture fund are hereby transferred to and imposed upon the state general fund and the state capitol dome sculpture fund is hereby abolished.

Sec. 10.

FORT HAYS STATE UNIVERSITY

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Lewis field renovation — bond and interest sinking fund .....	No limit
Lewis field renovation — revenue fund .....	No limit
Residential facilities renovation — bond and interest sinking fund .....	No limit
Residential facilities renovation — revenue fund .....	No limit

Sec. 11.

KANSAS STATE UNIVERSITY

(a) There is appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Lease payment — Salina aeronautical center (including aeronautical laboratory center) .....	\$189,446
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(b) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Salina housing system refunding bond fund, KDFA 2001 .....	No limit
Recreation complex refunding bond fund, KDFA 2001 .....	No limit
Federal construction funds fund .....	No limit
Bond construction funds fund.....	No limit
Coliseum repair, equipment and improvement fund.....	No limit
Housing system refunding revenue bond fund, KDFA F bonds, 1999 fund.....	No limit

Parking system refunding revenue bond fund, KDFA G bonds, 1995.....	No limit
Farrell library renovation/expansion-gifts/donations fund.....	No limit
Farrell library expansion revenue bond fund, KDFA K bonds, 1995.....	No limit
Plant science building phase II — special revenue fund.....	No limit
Site improvements fund.....	No limit
College center construction fund.....	No limit
Engineering complex phase II private gift fund.....	No limit
Student recreation building repair, equipment & improvement fund.....	No limit
Coliseum/stadium parking repair & improvement fund.....	No limit
Energy conservation projects fund.....	No limit
Student union renovation and expansion revenue bond fund, KDFA B bonds, 1998.....	No limit
Ackert hall addition — federal fund.....	No limit
Ackert hall addition — gifts and grants fund.....	No limit
Ackert hall project revenue bond fund, KDFA series 2000 D.....	No limit
Football stadium expansion — special revenue fund.....	No limit
Residence hall renovation fund.....	No limit

(c) In addition to the other purposes for which expenditures may be made by the above agency from the restricted fees fund for the fiscal year ending June 30, 2004, expenditures may be made by the above agency from the appropriate account or accounts of the restricted fees fund during fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Biological and agricultural engineering research storage building.....	No limit
Konza prairie preserve storage building.....	No limit
Improvements to grain science value added laboratory.....	No limit
Construct a materials acoustics laboratory.....	No limit

(d) In addition to the other purposes for which expenditures may be made by the above agency from the student union renovation and expansion fund for fiscal year 2004, expenditures may be made by the above agency from the student union renovation and expansion fund for fiscal year 2004 for costs associated with roof repair on an existing portion of the student union building.

(e) In addition to the other purposes for which expenditures may be made by the above agency from the sponsored research overhead fund for fiscal year 2004, expenditures may be made by the above agency from the sponsored research overhead fund for the fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Accelerated testing laboratory garage addition.....	No limit
Accelerated testing laboratory storage/equipment shed.....	No limit
Salina national gas machinery laboratory.....	No limit

(f) During the fiscal year ending June 30, 2004, Kansas state university is hereby authorized to make expenditures to raze Dennison hall, to raze portions of building no. 025 (Seaton hall) and to raze Salina campus building no. 701.

(g) In addition to the other purposes for which expenditures may be made by Kansas state university from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 as authorized by this or other appropriation act of the 2003 regular session of the legislature, expenditures shall be made by Kansas state university from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905

and amendments thereto for a capital improvement project for residence hall renovation: *Provided*, That the capital improvement project for residence hall renovation is hereby approved for Kansas state university for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That Kansas state university may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement project: *Provided, however*, That expenditures from the moneys received from the issuance of any such bonds for such capital improvement

project shall not exceed \$4,700,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project during the construction of such project and any required reserves for the payment of principal and interest on the bonds: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the Kansas educational building fund or any other appropriate funds.

Sec. 12.

KANSAS STATE UNIVERSITY EXTENSION SYSTEMS AND AGRICULTURE RESEARCH PROGRAMS

(a) In addition to the other purposes for which expenditures may be made by the above agency from the restricted fees fund for the fiscal year ending June 30, 2004, expenditures may be made by the above agency from the appropriate account or accounts of the restricted fees fund during fiscal year 2004 for the following capital improvement project or projects:

Validation/fresh meats processing laboratory .....	No limit
Renovate laboratories in Throckmorton hall .....	No limit
Warehouse expansion — department of agronomy building .....	No limit
Scandia experiment field office facility .....	No limit
Equipment/pesticide storage buildings .....	No limit
Southwest research extension center office/administrative facility .....	No limit
Equine education and research center .....	No limit
Southeast agriculture research center buildings .....	No limit
South central agronomy experiment field office and storage building ....	No limit
Grain science center .....	No limit
Agricultural shop buildings — east central Kansas experiment field .....	No limit
Animal science swine facility .....	No limit
Construct east Kansas horticulture research center .....	No limit

(b) In addition to the other purposes for which expenditures may be made by the above agency from the sponsored overhead research fund for fiscal year 2004, expenditures may be made by the above agency from the sponsored research overhead fund for the fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Southeast agriculture research center buildings .....	No limit
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(c) During the fiscal years ending June 30, 2004, and June 30, 2005, upon approval of the state board of regents, the president of Kansas state university may request and the pooled money investment board is hereby authorized and directed to provide loans to Kansas state university for the grain science center biological and industrial value-added program in accordance with this subsection. The pooled money investment board is authorized and directed to use any moneys in the operating accounts, investment accounts or other investments of the state of Kansas to provide the funds for such loans. As requested by the president of Kansas state university, the loan amounts shall be provided in multiple disbursements during fiscal year 2004 and fiscal year 2005 and each such amount shall bear interest from the date of disbursement based on the net earnings rate for the pooled money investment portfolio for the prior fiscal year. Interest-only payments shall be made on or before August 1, 2003, and on or before each August 1 thereafter until the principal amounts have been repaid. Loan principal amounts may be repaid at any time and all outstanding principal amounts shall be repaid in full on or before August 1, 2007. The aggregate of such loan amounts shall not exceed \$4,000,000.

(d) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Greenhouse laboratory construction fund .....	No limit
Horticulture research/education center construction fund .....	No limit

(e) In addition to the other purposes for which expenditures may be made by Kansas

state university extension systems and agriculture research programs from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 as authorized by this or other appropriation act of the 2003 regular session of the legislature, expenditures shall be made by Kansas state university extension systems and agriculture research programs from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for a capital improvement project for greenhouse laboratory construction: *Provided*, That the capital improvement project for greenhouse laboratory construction is hereby approved for Kansas state university extension systems and agriculture research programs for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That Kansas state university extension systems and agriculture research programs may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement project: *Provided, however*, That expenditures from the moneys received from the issuance of any such bonds for such capital improvement project shall not exceed \$1,700,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project during the construction of such project and any required reserves for the payment of principal and interest on the bonds: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the Kansas educational building fund or any other appropriate funds.

(f) In addition to the other purposes for which expenditures may be made by Kansas state university extension systems and agriculture research programs from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 as authorized by this or other appropriation act of the 2003 regular session of the legislature, expenditures shall be made by Kansas state university extension systems and agriculture research programs from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for a capital improvement project for horticulture research/education center construction: *Provided*, That the capital improvement project for horticulture research/education center construction is hereby approved for Kansas state university extension systems and agriculture research programs for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That Kansas state university extension systems and agriculture research programs may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement project: *Provided, however*, That expenditures from the moneys received from the issuance of any such bonds for such capital improvement project shall not exceed \$1,500,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project during the construction of such project and any required reserves for the payment of principal and interest on the bonds: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the Kansas educational building fund or any other appropriate funds.

Sec. 13.

EMPORIA STATE UNIVERSITY

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Student union refurbishing fund.....	No limit
Bond construction funds fund.....	No limit

Twin towers project revenue fund .....	No limit
Twin towers bond and interest sinking fund.....	No limit
Twin towers maintenance and equipment reserve fund .....	No limit

(b) On July 1, 2003, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$51,233 from the student union account of the restricted fees fund of Emporia state university to the state general fund for the purpose of repaying the state general fund for debt service payments for energy conservation capital improvements for Emporia state university.

(c) On July 1, 2003, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$2,451 from the housing systems operations fund of Emporia state university to the state general fund for the purpose of repaying the state general fund for debt service payments for energy conservation capital improvements for Emporia state university.

Sec. 14.

PITTSBURG STATE UNIVERSITY

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Kansas polymer research center fund — private gifts .....	No limit
Suspense fund.....	No limit
Energy conservation projects fund.....	No limit
Overman student center construction fund.....	No limit

Sec. 15.

UNIVERSITY OF KANSAS

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Student union renovation revenue fund .....	No limit
Student health facility maintenance, repair, and equipment fee fund.....	No limit
Parking facilities surplus fund — K DFA G bonds, 1993 .....	No limit

*Provided*, That the university of Kansas may make expenditures from the parking facilities surplus fund — K DFA G bonds, 1993 for capital improvements to parking lots in addition to the expenditure of other moneys appropriated therefor.

Regents center revenue fund — K DFA D bonds, 1990 .....	No limit
Regents center surplus fund.....	No limit
Regents center rebate fund.....	No limit

Regents center revenue refund project principal and interest — K DFA C bonds, 1997.....	No limit
Student union addition — special revenue fund .....	No limit

Bioscience research center rebate fund — K DFA series Q bonds, 1992.....	No limit
Bioscience research center principal and interest payment account — K DFA A bonds, 1994 fund.....	No limit

Bioscience research center reserve account — K DFA A bonds, 1994 fund.....	No limit
Bioscience research center rebate account — K DFA A bonds, 1994 fund.....	No limit

Parking facilities refunding bonds principal and interest fund — K DFA G bonds, 1993 .....	No limit
Parking facilities refunding bonds reserve fund — K DFA G bonds, 1993.....	No limit

Student health facility addition revenue fund .....	No limit
Biosciences research center — special revenue fund.....	No limit

*Provided*, That all gifts and grants received for the capital improvement project to construct and equip a biosciences research center, other than those received from the federal gov-

ernment for such capital improvement project, shall be deposited in the state treasury to the credit of the biosciences research center — special revenue fund: *Provided further*, That the above agency may transfer moneys during fiscal year 2004 from the sponsored research overhead fund and from appropriate accounts of the restricted fees fund to this fund for such capital improvement project or for debt service for such capital improvement project: *And provided further*, That all transfers of moneys for fiscal year 2004 from the sponsored research overhead fund to this fund shall be in addition to any expenditure limitation imposed on the sponsored research overhead fund for fiscal year 2004.

Law enforcement training center improvements special revenue fund ... No limit  
*Provided*, That the university of Kansas may make expenditures from the law enforcement training center improvements special revenue fund for a capital improvement project for parking lot improvements at the law enforcement training center: *Provided, however*, That expenditures from this fund for such capital improvement project shall not exceed \$450,000: *Provided further*, That the above agency may transfer moneys for fiscal year 2004 from the law enforcement training center fund to this fund for such capital improvement project.

Lewis hall renovation rebate fund K DFA D bonds, 1998 fund ..... No limit  
 Lewis hall renovation bond reserve fund K DFA D bonds, 1998 fund.... No limit

Continuing education revenue bonds principal and interest K DFA H bonds, 1998 fund..... No limit  
 Continuing education revenue bonds reserve fund K DFA H bonds, 1998 fund..... No limit

Continuing education revenue bonds surplus account K DFA H bonds, 1998 fund..... No limit

Athletic facilities enhancements special revenue fund K DFA A university proceeds ..... No limit

Renovate Ellsworth hall — special revenue fund ..... No limit

*Provided*, That the university of Kansas may transfer moneys for fiscal year 2004 from appropriate accounts of the house system repairs, equipment and improvement fund to the renovate Ellsworth hall — special revenue fund for the capital improvement project to renovate Ellsworth hall.

Templin hall renovation principal and interest payment account K DFA E bonds, 1996 fund..... No limit

Templin hall renovation bond reserve K DFA E bonds, 1996 fund ..... No limit

Parking garage no. 2 construction project principal and interest account K DFA D bonds, 1999 fund ..... No limit

Parking garage no. 2 construction project bond reserve fund — K DFA D bonds 1999 ..... No limit

Lewis hall renovation principal and interest account K DFA D bonds 1998 fund..... No limit

Edwards campus facility expansion — special revenue fund ..... No limit

*Provided*, That all gifts and grants received for the capital improvement project to expand facilities on the Edwards campus, other than those received from the federal government for such capital improvement project, shall be deposited in the state treasury to the credit of the Edwards campus facility expansion — special revenue fund.

Child care facility principal and interest fund ..... No limit

Child care facility bond reserve fund ..... No limit

Child care facility surplus fund..... No limit

Child care facility operations account..... No limit

Child care facility student fee account..... No limit

Continuing education program building acquisition — special revenue fund..... No limit

Dole institute gift or grant fund..... No limit

Construct student recreation & fitness center — special revenue fund... No limit

*Provided*, That the university of Kansas may transfer moneys for fiscal year 2004 from appropriate accounts of the restricted fees fund to the construct student recreation and fitness center — special revenue fund for the capital improvement project to construct student recreation and fitness center.

Student recreation and fitness center fund — reserve account K DFA 2000Q .....	No limit
Rehabilitation and repair projects for institutions of higher education fund.....	No limit
Rehabilitation and repair projects for disability act, etc fund.....	No limit
Templin hall rebate fund .....	No limit
Student union addition — bond proceeds account K DFA T2 2001 fund.....	No limit
Student union addition — university proceeds account K DFA T2 2001 fund.....	No limit
Student union addition — bond reserve account K DFA T2 2001 fund ..	No limit
Student union addition — principal and interest account K DFA T2 2001 fund.....	No limit
Student union addition — surplus account K DFA T2 2001 fund.....	No limit
Bioscience research center refunding bonds — principal and interest account K DFA G5 2001 fund .....	No limit
Bioscience research center refunding bonds — reserve account K DFA G5 2001 fund .....	No limit
Bioscience research center refunding bonds — rebate account K DFA G5 2001 fund.....	No limit
Parking facilities refunding bonds — principal and interest account K DFA G4 2001 fund .....	No limit
Parking facilities refunding bonds — reserve account K DFA G4 2001 fund.....	No limit
Parking facilities refunding bonds — rebate account K DFA G4 2001 fund.....	No limit
Edwards campus facility expansion bond proceeds account K DFA K 2002 fund.....	No limit
Edwards campus facility expansion — university proceeds account K DFA K 2002 fund.....	No limit
Edwards campus facility expansion — bond reserve account K DFA K 2002.....	No limit
Edwards campus facility expansion — Principal and interest account K DFA K 2002 fund.....	No limit

(b) During the fiscal year ending June 30, 2004, the university of Kansas is hereby authorized to make expenditures to raze building no. 27 — facilities operations storage facility.

(c) During the fiscal year ending June 30, 2004, upon request of the chancellor of the university of Kansas, the director of accounts and reports shall transfer all moneys in the law enforcement training center improvements special revenue fund to the law enforcement training center fund. On the date of such request of the chancellor of the university of Kansas, all liabilities of the law enforcement training center improvements special revenue fund are hereby transferred to and imposed upon the law enforcement training center fund and the law enforcement training center improvements special revenue fund is hereby abolished.

Sec. 16.

UNIVERSITY OF KANSAS MEDICAL CENTER

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Wahl hall renovation fund.....	No limit
Construct and equip nursing education facility — gift and grant fund....	No limit
Parking facility K DFA principal and interest fund 1988.....	No limit
Parking facility K DFA bond reserve fund 1988 .....	No limit
Parking facility K DFA surplus fund 1988 .....	No limit
Parking facility revenue fund.....	No limit
Parking facility rebate fund — K DFA F bonds — 1988.....	No limit

Rehabilitation and repair projects for institutions of higher education fund.....	No limit
Construct and equip research building fund .....	No limit
Construct and equip center for health in aging fund .....	No limit
Construct and equip center for health in aging principal and interest — K DFA B bonds, 1999.....	No limit
Construct and equip center for health in aging bond reserve fund — K DFA B bonds, 1999.....	No limit
Construct and equip center for health in aging bond reserve fund .....	No limit
Construct and equip center for health in aging — gift and grant fund ...	No limit
Construct and equip research support facility fund.....	No limit
Construct and equip addition to research support facility — gift and grant fund.....	No limit
Construct parking facility #3 fund.....	No limit

*Provided*, That the university of Kansas medical center may transfer moneys during fiscal year 2004 from appropriate accounts of the parking surplus fund to the construct parking facility #3 fund for such capital improvement project.

(b) During the fiscal year ending June 30, 2004, the director of accounts and reports shall transfer amounts certified by the chancellor of the university of Kansas from the sponsored research overhead fund to the construct and equip center for health in aging bond reserve fund.

(c) In addition to the other purposes for which expenditures may be made by the university of Kansas medical center from the moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 as authorized by this or other appropriation act of the 2003 regular session of the legislature, expenditures shall be made by the university of Kansas medical center from moneys appropriated from the state general fund or from any special revenue fund for fiscal year 2004 to provide for the issuance of bonds by the Kansas development finance authority in accordance with K.S.A. 74-8905 and amendments thereto for a capital improvement project to construct parking facility #3: *Provided*, That the capital improvement project to construct parking facility #3 is hereby approved for the university of Kansas medical center for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *Provided further*, That the university of Kansas medical center may make expenditures from the moneys received from the issuance of any such bonds for such capital improvement project: *Provided, however*, That expenditures from the moneys received from the issuance of any such bonds for such capital improvement project shall not exceed \$14,500,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project during the construction of such project and any required reserves for the payment of principal and interest on the bonds: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants: *And provided further*, That debt service for any such bonds for such capital improvement projects shall be financed by appropriations from the parking surplus fund or any other appropriate funds.

Sec. 17.

WICHITA STATE UNIVERSITY

(a) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Parking system project — maintenance fund, K DFA revenue bonds.....	No limit
On-campus parking project fund K DFA bonds .....	No limit
Rehabilitation and repair projects/disability act/fire compliance/improvements to classroom projects fund .....	No limit
Parking system project revenue fund — K DFA bonds .....	No limit
On campus parking principal and interest account — K DFA bonds, 2000 fund.....	No limit

On campus parking bond reserve account — K DFA bonds, 2000 fund ..	No limit
WSU housing system surplus fund.....	No limit
Bond reserve fund — K DFA — WSU housing system renovation .....	No limit
Regents rehabilitation and repair phase II — K DFA G bonds, 1997 fund.....	No limit

Sec. 18.

DEPARTMENT OF HUMAN RESOURCES

(a) In addition to the other purposes for which expenditures may be made by the above agency from the employment security administration fund for fiscal year 2004, expenditures may be made by the above agency from the employment security administration fund for fiscal year 2004 for capital improvement purposes or projects: *Provided*, That expenditures from this fund for fiscal year 2004 for such capital improvement purposes or projects shall not exceed \$40,000; *And provided further*, That all expenditures from this fund for any such capital improvement purposes or projects shall be in addition to any expenditure limitation imposed on the employment security administration fund for fiscal year 2004.

(b) In addition to the other purposes for which expenditures may be made by the above agency from the employment security administration fund for fiscal year 2004, expenditures may be made by the above agency from the employment security administration fund for fiscal year 2004 from moneys made available to the state under section 903 of the federal social security act, as amended: *Provided*, That expenditures from this fund during fiscal year 2004 of moneys made available to the state under section 903 of the federal social security act, as amended, may be made for the following capital improvement purposes: (1) For major maintenance of existing buildings used by the department of human resources for employment security purposes; (2) for paving, landscaping and acquiring fixed equipment as may be required for the use and operation of such buildings; or (3) for any combination of these purposes: *Provided further*, That expenditures from this fund for fiscal year 2004 of moneys made available to the state under section 903 of the federal social security act, as amended, for such capital improvement purposes shall not exceed \$143,550 plus the amounts of unencumbered balances as of June 30, 2003, for capital improvement projects approved for fiscal years prior to fiscal year 2004; *And provided further*, That all expenditures from this fund for any such capital improvement purposes or projects shall be in addition to any expenditure limitation imposed on the employment security administration fund for fiscal year 2004.

(c) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Complete remodeling of agency headquarters fund .....	No limit
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*Provided*, That the department of human resources may make expenditures from the complete remodeling of agency headquarters fund for the capital improvement project to remodel the agency headquarters: *Provided, however*, That expenditures from this fund for such capital improvement project including necessary furniture and equipment shall not exceed \$3,800,000, plus all amounts required for cost of bond issuance, cost of interest on the bonds issued for such capital improvement project and any required reserves for the payment of principal and interest on the bonds: *Provided further*, That such capital improvement project is hereby approved for the department of human resources for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited in the state treasury to the credit of this fund.

Sec. 19.

KANSAS COMMISSION ON VETERANS AFFAIRS

(a) There is appropriated for the above agency from the state institutions building fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Soldiers' home repair and rehabilitation projects .....	\$100,000
Veterans' home repair and rehabilitation projects.....	\$150,000

(b) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Winfield veterans home acquisition and construction.....	No limit
Veterans' home federal construction grant fund .....	No limit
<i>Provided</i> , That all moneys received by the above agency as federal grants for the purposes of construction and remodeling at the Kansas veterans' home, which grants are hereby authorized to be applied for and received by the above agency, shall be deposited in the state treasury to the credit of the Veterans' home federal construction grant fund.	
Veterans' cemeteries federal construction grant fund.....	No limit
Federal home construction grant fund.....	No limit

Sec. 20.

#### ATTORNEY GENERAL — KANSAS BUREAU OF INVESTIGATION

(a) There is hereby appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Debt service — headquarters building .....	\$305,680
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Sec. 21.

#### KANSAS HIGHWAY PATROL

(a) In addition to the other purposes for which expenditures may be made from the highway patrol training center fund for fiscal year 2004, expenditures may be made by the above agency from the highway patrol training center fund for fiscal year 2004 to make debt service payments for the Kansas highway patrol training center at Salina for the bonds issued for such project pursuant to subsection (b) of section 6 of chapter 326 of the 1992 Session Laws of Kansas.

(b) In addition to the other purposes for which expenditures may be made from the highway patrol training center fund for fiscal year 2004, expenditures may be made by the above agency from the highway patrol training center fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitation prescribed therefor:

Training center — remodeling, rehabilitation and repair projects .....	\$50,000
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*Provided*, That all expenditures from each such capital improvement account shall be in addition to any expenditure limitation imposed on the highway patrol training center fund for fiscal year 2004.

(c) In addition to the other purposes for which expenditures may be made from the motor carrier inspection fund for the fiscal year 2004, expenditures may be made by the above agency from the motor carrier inspection fund for the fiscal year 2004 to make debt service payments for the Topeka fleet operations center for the bonds issued for such project pursuant to subsection (c) of section 49 of chapter 216 of the 2001 Session Laws of Kansas.

(d) In addition to the other purposes for which expenditures may be made from the motor carrier inspection fund for the fiscal year 2004, expenditures may be made by the above agency from the motor carrier inspection fund for the fiscal year 2004 to make debt service payments for the project to modernize port weigh stations on interstate 70 and interstate 35 highways for the bonds issued for such project pursuant to subsection (d) of section 154 of chapter 204 of the 2002 Session Laws of Kansas.

Sec. 22.

#### ADJUTANT GENERAL

(a) There is hereby appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Debt service — rehabilitation and repair of the statewide armories .....	\$382,829
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Sec. 23.

#### DEPARTMENT OF WILDLIFE AND PARKS

(a) There is appropriated for the above agency from the state general fund for the fiscal

year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Any unencumbered balance in excess of \$100 as of June 30, 2003, in each of the following capital improvement accounts of the state general fund is hereby reappropriated for fiscal year 2004: Rehabilitation and repair; Crawford state fishing lake sewer repair.

(b) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2004, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Department access road fund .....	No limit
Bridge maintenance fund .....	No limit

(c) On July 1, 2004, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$1,500,000 from the state highway fund of the department of transportation to the department access road fund of the department of wildlife and parks.

(d) On July 1, 2004, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$200,000 from the state highway fund of the department of transportation to the bridge maintenance fund of the department of wildlife and parks.

(e) In addition to the other purposes for which expenditures may be made by the above agency from the migratory waterfowl propagation and protection fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the migratory waterfowl propagation and protection fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Migratory waterfowl propagation and protection fund — wetlands acquisition/ development .....	\$100,000
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*Provided*, That all expenditures from each such capital improvement account of the migratory waterfowl propagation and protection fund shall be in addition to any expenditure limitation imposed on the migratory waterfowl propagation and protection fund for fiscal year 2004.

(f) In addition to the other purposes for which expenditures may be made by the above agency from the migratory waterfowl propagation and protection fund for fiscal year 2004, expenditures may be made by the above agency from the migratory waterfowl propagation and protection fund for fiscal year 2004 from the unencumbered balance as of June 30, 2003, in each existing capital improvement account of the migratory waterfowl propagation and protection fund: *Provided*, That all expenditures from the unencumbered balance of any such account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from the unencumbered balance of any such account shall be in addition to any expenditure limitation imposed on the migratory waterfowl propagation and protection fund for fiscal year 2004.

(g) In addition to the other purposes for which expenditures may be made by the above agency from the boating fee fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the boating fee fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Boating fee fund — motorboat access .....	\$260,000
Boating fee fund — river access .....	\$220,000

(h) In addition to the other purposes for which expenditures may be made by the above agency from the boating fee fund for fiscal year 2004, expenditures may be made by the above agency from the boating fee fund for fiscal year 2004 from the unencumbered balance as of June 30, 2003, in each existing capital improvement account of the boating fee fund: *Provided*, That expenditures from the unencumbered balance of any such existing capital improvement account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from the unencumbered balance of any such account shall be in addition to any expenditure limitation imposed on the boating fee fund for fiscal year 2004 and shall be in addition to any other expenditure limitation imposed on any such account of the boating fee fund for fiscal year 2004.

(i) In addition to the other purposes for which expenditures may be made by the above agency from the wildlife fee fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the wildlife fee fund during fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Wildlife fee fund federally mandated boating access .....	\$562,000
Wildlife fee fund rehabilitation and repair .....	\$235,000

*Provided*, That all expenditures from each such capital improvement account shall be in addition to any expenditure limitation imposed on the wildlife fee fund for fiscal year 2004.

(j) In addition to the other purposes for which expenditures may be made by the above agency from the wildlife fee fund for fiscal year 2004, expenditures may be made by the above agency from the wildlife fee fund for fiscal year 2004 from the unencumbered balance as of June 30, 2003, in each existing capital improvement account of the wildlife fee fund:

*Provided*, That expenditures from the unencumbered balance of any such existing capital improvement account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from the unencumbered balance of any such account shall be in addition to any expenditure limitation imposed on the wildlife fee fund for fiscal year 2004.

(k) In addition to the other purposes for which expenditures may be made by the above agency from the wildlife conservation fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the wildlife conservation fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Wildlife conservation fund — wetlands acquisition/development .....	\$350,000
Wildlife conservation fund — land acquisition .....	\$500,000
Wildlife conservation fund — Milford fish hatchery water line .....	\$1,282,110

(l) In addition to the other purposes for which expenditures may be made by the above agency from the wildlife conservation fund for fiscal year 2004, expenditures may be made by the above agency from the wildlife conservation fund for fiscal year 2004 from the unencumbered balance as of June 30, 2003, in each existing capital improvement account of the wildlife conservation fund: *Provided*, That expenditures from the unencumbered balance of any such existing capital improvement account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from the unencumbered balance of any such account shall be in addition to any expenditure limitation imposed on the wildlife conservation fund for fiscal year 2004 and shall be in addition to any other expenditure limitation imposed on any such account of the wildlife conservation fund for fiscal year 2004.

(m) In addition to the other purposes for which expenditures may be made by the above agency from the parks fee fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the parks fee fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Parks fee fund — rehabilitation and repair .....	\$176,100
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(n) In addition to the other purposes for which expenditures may be made by the above agency from the parks fee fund for fiscal year 2004, expenditures may be made by the above agency from the parks fee fund for fiscal year 2004 from the unencumbered balance as of June 30, 2003, in each existing capital improvement account of the parks fee fund: *Provided*, That expenditures from the unencumbered balance of any such existing capital improvement account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: *Provided further*, That all expenditures from the unencumbered balance of any such account shall be in addition to any expenditure limitation imposed on the parks fee fund for fiscal year 2004.

(o) In addition to the other purposes for which expenditures may be made by the above agency from the land and water conservation fund for fiscal year 2004, expenditures may be made by the above agency from the following capital improvement account or accounts of the land and water conservation fund for fiscal year 2004 for the following capital improvement project or projects, subject to the expenditure limitations prescribed therefor:

Land and water conservation fund — rehabilitation and repair ..... \$1,169,500

Provided, That all expenditures from each such capital improvement account of the land and water conservation fund shall be in addition to any expenditure limitation imposed on the land and water conservation fund for fiscal year 2004.

(p) In addition to the other purposes for which expenditures may be made by the above agency from the land and water conservation fund for fiscal year 2004 from the unencumbered balance as of June 30, 2003, in each existing capital improvement account of the land and water conservation fund: Provided, That expenditures from the unencumbered balance of any such existing capital improvement account shall not exceed the amount of the unencumbered balance in such account on June 30, 2003: Provided further, That all expenditures from the unencumbered balance of any such account shall be in addition to any expenditure limitation imposed on the nongame wildlife improvement fund for fiscal year 2004 and shall be in addition to any other expenditure limitation imposed on any such account of the land and water conservation fund for the fiscal year 2004.

Sec. 24.

STATE BOARD OF REGENTS

(a) There is appropriated for the above agency from the Kansas educational building fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Rehabilitation and repair projects, Americans with disabilities act compliance projects, state fire marshal code compliance projects, and improvements to classroom projects for institutions of higher education ..... \$13,000,000

Provided, That the state board of regents is hereby authorized to transfer moneys from the rehabilitation and repair projects, Americans with disabilities act compliance projects, state fire marshal code compliance projects, and improvements to classroom projects for institutions of higher education account to an account or accounts of the Kansas educational building fund of any institution under the control and supervision of the state board of regents to be expended by the institution for projects approved by the state board of regents:

Provided, however, That no expenditures shall be made from any such account until the proposed projects have been reviewed by the joint committee on state building construction. Debt service — revenue bonds issued for major remodeling and new construction projects at state educational institutions ..... \$15,000,000

(b) There is appropriated for the above agency from the Kansas educational building fund for the fiscal year ending June 30, 2005, for the capital improvement project or projects specified as follows:

Rehabilitation and repair projects, Americans with disabilities act compliance projects, state fire marshal code compliance projects, and improvements to classroom projects for institutions of higher education ..... \$13,000,000

Provided, That the state board of regents is hereby authorized to transfer moneys from the rehabilitation and repair projects, Americans with disabilities act compliance projects, state fire marshal code compliance projects, and improvements to classroom projects for institutions of higher education account to an account or accounts of the Kansas educational building fund of any institution under the control and supervision of the state board of regents to be expended by the institution for projects approved by the state board of regents:

Provided, however, That no expenditures shall be made from any such account until the proposed projects have been reviewed by the joint committee on state building construction.

Sec. 25.

JUVENILE JUSTICE AUTHORITY

(a) There is appropriated for the above agency from the state institutions building fund for the fiscal year ending June 30, 2004, for the capital improvement project or projects specified as follows:

Capital improvements — rehabilitation, remodeling, renovation and repair of juvenile correctional facilities ..... \$970,000

Provided, That the commissioner of juvenile justice is hereby authorized to transfer moneys from the capital improvements — rehabilitation, remodeling, renovation and repair of ju-

venile correctional facilities account of the state institutions building fund to an account or accounts of the state institutions building fund of any institution or facility under the jurisdiction of the commissioner of juvenile justice to be expended during fiscal year 2004 by the institution or facility for capital improvement projects approved by the commissioner of juvenile justice.

Debt service — Topeka complex and Larned juvenile correctional facility..... \$3,249,995

(b) During the fiscal year ending June 30, 2004, the juvenile justice authority is authorized to make expenditures to raze building no. 14 at the Beloit juvenile correctional facility.

Sec. 26. *Appeals to exceed expenditure limitations.* Upon written application to the governor and approval of the state finance council, expenditures from special revenue funds may exceed the amounts specified in this act.

Sec. 27. *Savings.* (a) Any unencumbered balance as of June 30, 2003, in any special revenue fund, or account thereof, of any state agency named in this act which is not otherwise specifically appropriated or limited by this or other appropriation act of the 2003 regular session of the legislature, is hereby appropriated for the fiscal year ending June 30, 2004, for the same use and purpose as the same was heretofore appropriated.

(b) This section shall not apply to the state economic development initiatives fund, the children's initiatives fund or state water plan fund or to any account of such funds.

Sec. 28. During the fiscal year ending June 30, 2004, all moneys which are lawfully credited to and available in any bond special revenue fund, which are not otherwise specifically appropriated or limited by this or other appropriation act of the 2003 regular session of the legislature, are hereby appropriated for the fiscal year ending June 30, 2004, for the state agency for which the bond special revenue fund was established for the purposes authorized by law for expenditures from such bond special revenue fund. As used in this subsection, "bond special revenue fund" means any special revenue fund or account thereof established in the state treasury prior to or on or after the effective date of this act for the deposit of the proceeds of bonds issued by the Kansas development finance authority, for the payment of debt service for bonds issued by the Kansas development finance authority, or for any related purpose in accordance with applicable bond covenants.

Sec. 29. Any correctional institutions building fund appropriation heretofore appropriated to any state agency named in this or other appropriation act of the 2003 regular session of the legislature, and having an unencumbered balance as of June 30, 2003, in excess of \$100 is hereby reappropriated for the fiscal year ending June 30, 2004, for the same uses and purposes as originally appropriated unless specific provision is made for lapsing such appropriation.

Sec. 30. Any Kansas educational building fund appropriation heretofore appropriated to any institution named in this or other appropriation act of the 2003 regular session of the legislature and having an unencumbered balance as of June 30, 2003, in excess of \$100 is hereby reappropriated for the fiscal year ending June 30, 2004, for the same use and purpose as originally appropriated, unless specific provision is made for lapsing such appropriation.

Sec. 31. Any state institutions building fund appropriation heretofore appropriated to any state agency named in this or other appropriation act of the 2003 regular session of the legislature and having an unencumbered balance as of June 30, 2003, in excess of \$100 is hereby reappropriated for the fiscal year ending June 30, 2004, for the same use and purpose as originally appropriated, unless specific provision is made for lapsing such appropriation.

Sec. 32. K.S.A. 2002 Supp. 76-6b05 is hereby amended to read as follows: 76-6b05. (a) All moneys received by the state treasurer under K.S.A. 76-6b04, and amendments thereto, shall be credited to the state institutions building fund, which is hereby created in the state treasury, to be used for the construction, reconstruction, equipment and repair of buildings and grounds at institutions specified in K.S.A. 76-6b04, and amendments thereto, and for payment of debt service on revenue bonds issued to finance such projects, all subject to appropriation by the legislature.

(b) Subject to any restrictions imposed by appropriation acts, the juvenile justice authority is authorized to pledge funds appropriated to it from the state institutions building fund or from any other source and transferred to a special revenue fund of the juvenile justice authority specified by statute for the payment of debt service on revenue bonds issued for

the purposes set forth in subsection (a). Subject to any restrictions imposed by appropriation acts, the juvenile justice authority is also authorized to pledge any funds appropriated to it from the state institutions building fund or from any other source and transferred to a special revenue fund of the juvenile justice authority specified by statute as a priority for the payment of debt service on such revenue bonds. Neither the state or the juvenile justice authority shall have the power to pledge the faith and credit or taxing power of the state of Kansas for such purposes and any payment by the juvenile justice authority for such purposes shall be subject to and dependent on appropriations being made from time to time by the legislature. Any obligation of the juvenile justice authority for payment of debt service on revenue bonds and any such revenue bonds issued for the purposes set forth in subsection (a) shall not be considered a debt or obligation of the state for the purpose of section 6 of article 11 of the constitution of the state of Kansas.

(c) Subject to any restrictions imposed by appropriation acts, the department of social and rehabilitation services is authorized to pledge funds appropriated to it from the state institutions building fund or from any other source and transferred to a special revenue fund of the department of social and rehabilitation services specified by statute for the payment of debt service on revenue bonds issued for a new state security hospital on the Larned state hospital grounds or any other capital improvement projects at any other institution or facility of the department of social and rehabilitation services. Subject to any restrictions imposed by appropriation acts, the department of social and rehabilitation services is also authorized to pledge any funds appropriated to it from the state institutions building fund or from any other source and transferred to a special revenue fund of the department of social and rehabilitation services specified by statute as a priority for the payment of debt service on such revenue bonds. Neither the state or the department of social and rehabilitation services shall have the power to pledge the faith and credit or taxing power of the state of Kansas for such purposes and any payment by the department of social and rehabilitation services for such purposes shall be subject to and dependent on appropriations being made from time to time by the legislature. Any obligation of the department of social and rehabilitation services for payment of debt service on revenue bonds and any such revenue bonds issued for a new state security hospital on the Larned state hospital grounds or any other capital improvement projects at any other institution or facility of the department of social and rehabilitation services shall not be considered a debt or obligation of the state for the purpose of section 6 of article 11 of the constitution of the state of Kansas.

(d) Subject to any restrictions imposed by appropriation acts, the Kansas commission on veterans affairs is authorized to pledge funds appropriated to it from the state institutions building fund or from any other source and transferred to a special revenue fund of the Kansas commission on veterans affairs specified by statute for the payment of debt service on revenue bonds issued for veterans' home HVAC system replacement. Subject to any restrictions imposed by appropriation acts, the Kansas commission on veterans affairs is also authorized to pledge any funds appropriated to it from the state institutions building fund or from any other source and transferred to a special revenue fund of the Kansas commission on veterans affairs specified by statute as a priority for the payment of debt service on such revenue bonds. Neither the state or the Kansas commission on veterans affairs shall have the power to pledge the faith and credit or taxing power of the state of Kansas for such purposes and any payment by the Kansas commission on veterans affairs for such purposes shall be subject to and dependent on appropriations being made from time to time by the legislature. Any obligation of the Kansas commission on veterans affairs for payment of debt service on revenue bonds and any such revenue bonds issued for veterans' home HVAC system replacement shall not be considered a debt or obligation of the state for the purpose of section 6 of article 11 of the constitution of the state of Kansas.

Sec. 33. K.S.A. 2002 Supp. 76-6b05 is hereby repealed.

Sec. 34. This act shall take effect and be in force from and after July 1, 2003, or the date upon which the omnibus reconciliation spending limit bill of 2003 becomes effective, whichever is later, and its publication in the statute book.”;

Also on page 1, by striking all of lines 17 through 43;

By striking all of pages 2 through 30;

On page 1, in the title, in line 10, by striking all after "ACT"; by striking all in lines 11 through 14 and inserting in lieu thereof the following: concerning capital improvements for state agencies; making and concerning appropriations for the fiscal years ending June 30, 2004, and June 30, 2005, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2002 Supp. 76-6b05 and repealing the existing section.", and **HB 2426** be passed as amended.

**HB 2037** be amended by adoption of the committee amendments, be further amended by motion of Senator Jordan as amended by Senate Committee, on page 3, following line 19, by inserting the following:

"Sec. 3. K.S.A. 12-5301 is hereby amended to read as follows: 12-5301. As used in this act, unless the context otherwise requires:

(a) "Emergency telephone service" means a telephone system utilizing a single three digit number "911" for reporting police, fire, medical or other emergency situations;

(b) "emergency telephone tax" means a tax to finance the operation of emergency telephone service;

(c) "exchange access facilities" means all facilities provided by the service supplier for the facility which provides local telephone exchange access to a service user;

(d) "tariff rate" means the rate or rates billed by a service supplier and as stated in the service supplier's tariffs, approved by the state corporation commission which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges whatsoever;

(e) "public agency" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides or has authority to provide fire fighting, law enforcement, ambulance, emergency medical or other emergency services;

(f) "governing body" means the board of county commissioners of a county or the governing body of a city;

(g) "person" means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other service user;

(h) "service supplier" means any person providing exchange telephone services or wireless service to any service user in this state;

(i) "service user" means any person who is provided exchange telephone service or wireless service in this state;

(j) "wireless carrier" means any common, private or other radio carrier licensed by the federal communications commission to provide two-way voice or text radio service in this state which provides interconnection to the public switched telephone network and access to a 24-hour answering point;

(k) "wireless service" means a two-way voice or text radio service provided by a wireless carrier; and

(l) "PSAP" means public safety answering point.

(m) "Fund" means the public safety grant fund established by this act.

(n) "Municipality" means: (1) Any political or taxing subdivision authorized by law to construct, operate and maintain a public safety answering point system; and (2) two or more such subdivisions jointly constructing, operating and maintaining a public safety answering point system.

(o) "Project" means the development and acquisition of the necessary improvements in order to facilitate the establishment of enhanced wireless emergency telephone services.

(p) "Project costs" means all costs or expenses which are necessary or incident to a project and which are directly attributable thereto.

(q) "Administrator" means the Kansas department of administration.

(r) "Enhanced 911 service" means an emergency telephone service that generally may provide, but is not limited to, selective routing, automatic number identification and automatic location identification features.

(s) "Enhanced wireless 911 service" means a communication service by which wireless telecommunication carriers can provide automatic number identification, pseudo-automatic number identification or wireless automatic location identification information to a requesting public safety answering point as defined in FCC docket 94-102 which is capable of receiving and utilizing the data elements associated with enhanced wireless 911 service.

New Sec. 4. (a) There is hereby established in the state treasury the public safety grant fund.

(b) Moneys from the following sources shall be credited to the fund:

(1) Amounts received by the state from the federal government for the purposes of the fund;

(2) amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(3) amounts received by the state pursuant to section 5 and amendments thereto;

(4) interest attributable to investment of moneys in the fund; and

(5) amounts received from any public or private entity for the purposes of the fund.

(c) Subject to the conditions and in accordance with requirements of this act, moneys credited to the fund shall be used only for:

(1) Necessary and reasonable costs incurred or to be incurred by public safety answering points to implement enhanced wireless 911 service; (2) purchases of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced wireless 911 service; (3) maintenance costs and license fees for such equipment and the training of personnel to operate such equipment including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities; (4) actual and necessary expenses incurred by members of the advisory board while performing duties required by this act; and (5) such costs shall not include expenditures for new or expanded buildings or similar facilities or to construct other capital improvements not expressly authorized by this act.

(d) Administrative expenses shall not exceed 5% of revenue in the fund.

(e) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the public safety grant fund interest earnings based on:

(1) The average daily balance of moneys in the public safety grant fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(f) All payments and disbursements from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or by a person or persons designated by the administrator. All payments and disbursements from the fund, and beginning and ending balances thereof, shall be subject each year to post audit in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 5. (a) There is hereby established a public safety fee in the amount of \$.25 per month on each wireless service user.

(b) It shall be the duty of each wireless service provider to collect and remit such fee to the administrator quarterly.

New Sec. 6. The administrator shall administer the provision of this act and shall be responsible for administration and management of the fund. The administrator is hereby authorized to:

(a) Enter into binding commitments for the provision of grants in accordance with the provisions of this act;

(b) review applications of municipalities for grants and select the projects for which grants will be made available;

(c) provide the governor and the legislature with an annual report prepared in accordance with section 10, and amendments thereto, and with copies of the audit required under section 12, and amendments thereto; and

(d) adopt rules and regulations necessary for effectuation of the provisions of this act.

New Sec. 7. There is hereby established the public safety grant fund advisory committee. Such committee shall be comprised of nine individuals familiar with development and implementation of enhanced 911 service appointed by the governor satisfying the following constituent groups:

- (1) One individual recommended by the Kansas association of counties;
- (2) one individual recommended by the league of Kansas municipalities;
- (3) one individual representing the wireless carriers industry;
- (4) one individual representing local exchange service providers;
- (5) one individual representing local law enforcement;
- (6) one individual representing local fire/emergency medical services; and
- (7) one individual representing local PSAP operators;
- (8) one representative of the Kansas highway patrol;
- (9) one member shall be a person with a communication disability recommended by the Kansas commission for the deaf and hard of hearing.

New Sec. 8. After providing for public comment and review each year, the administrator, in conjunction with the advisory council, shall prepare a plan identifying the intended uses of the moneys available in the fund. The intended use plan shall include, but not be limited to:

- (a) The project priority list;
- (b) a description of the short- and long-term goals and objectives of the fund;
- (c) information on the projects to be financed, including a description thereof, the terms of grants to be provided and the municipalities receiving the grants; and
- (d) the criteria and method established for the provision of grants to be made from the fund.

New Sec. 9. (a) Municipalities which desire the provision of a grant under this act shall submit an application therefor to the administrator. Applications shall be in such form and shall include such information as the administrator shall require and shall be submitted in a manner and at a time to be determined by the administrator.

(b) The administrator may enter into agreements with any municipality for the provision of a grant thereto for payment of all or a part of project costs and any municipality may enter into such an agreement and may accept such grant when so authorized by the municipal governing body. The purposes of the grant to be provided, a time frame for implementation, and the amount thereof, which may vary among municipalities, shall be included in the agreements. All such agreements shall include provisions for repayment of grant if implementation is not completed in accordance with the terms of the agreement.

(c) If a municipality to which a grant is made available under this act fails to enter into an agreement with the administrator for the provision of such grant in accordance with the requirements of this act, the administrator may make the amount of the grant available for one or more other projects on the priority list.

(d) The administrator shall provide any municipality, upon request, with technical advice and assistance regarding a project or an application for a grant for the payment of all or part of project costs.

New Sec. 10. The administrator shall prepare an annual report describing how the state has met the goals and objectives for the previous year as identified in the intended use plan prepared pursuant to section 8, and amendments thereto.

New Sec. 11. The provisions of sections 4 through 10, and amendments thereto, shall expire effective July 1, 2006.

New Sec. 12. (a) On and after July 1, 2003, pursuant to FCC rules and orders, each wireless carrier who has a subscriber with primary place of use as defined in the mobile telecommunications sourcing act in the state of Kansas shall collect from each subscriber a surcharge not to exceed \$.25 per month per subscriber telephone number in the state. The wireless carrier shall add and may state separately the surcharge on each subscriber's bill.

(b) The surcharge hereunder shall ensure, over a reasonable period of time the full recovery by wireless carriers of necessary and reasonable costs associated with developing and maintaining an emergency telecommunications service on a technologically and competitively neutral basis. Such costs shall include, but not be limited to, the portion of the costs for equipment used for providing enhanced wireless 911 service, costs to lease another vendor's equipment or services to provided enhanced wireless 911 service, costs to create or maintain any database or database elements used solely for enhanced wireless 911 service and other costs of establishing enhanced 911 wireless service. Only the portion of the costs of equipment or services used in the wireless carrier's main infrastructure necessary to implement enhanced 911 service of enhanced wireless 911 service shall be eligible for funding.

Sec. 13. K.S.A. 12-5302 is hereby amended to read as follows: 12-5302. (a) In addition to other powers for the protection of the public health and welfare, a governing body may provide for the operation of an emergency telephone service and may pay for it by imposing an emergency telephone tax for such service in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The governing body may do such other acts as are expedient for the protection and preservation of the public health and welfare and are necessary for the operation of the emergency telephone system. The governing body is hereby authorized by ordinance in the case of cities and by resolution in the case of counties to impose such tax in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The amount of such tax shall not exceed \$.75 per month per exchange access line or its equivalent.

(b) Within 60 days of the publication of a resolution by a county adopted pursuant to subsection (a) there may be filed with the county election officer of the county a petition signed by not less than 5% of the registered voters of the county, and within 60 days of publication of an ordinance adopted pursuant to subsection (a) there may be filed with the county election officer of the county in which the city is located a petition signed by not less than 5% of the registered voters of the city, in either such case requesting that the question of the installation and operation of emergency telephone service and imposition of tax therefor be submitted to the qualified voters of the county. Upon determination of the sufficiency of such petition and certification thereof by the county election officer, the proposition shall be submitted to the qualified voters of the county or city as the case may be at the next primary or general election of county officers following by not less than 60 days the certification of such petition. If a majority of the votes cast at such election are for the installation and operation of emergency telephone service and imposition of tax therefor, or if no protest petition is filed within the time hereinbefore prescribed, the governing body may provide for the installation and operation of such service and impose such tax. If a tax is imposed on the effective date of this act or thereafter, any proposed increase in the amount of the tax shall be subject to the protest petition provided in this subsection. The proceeds of the tax shall be utilized to pay for the operation of emergency telephone service as set forth in subsection (b) of K.S.A. 12-5304, and amendments thereto, and may be imposed at any time subsequent to execution of a contract with the provider of such service at the discretion of the governing body. The collection of such tax may begin at the time determined to be necessary to generate revenue in an amount necessary to pay the nonrecurring expenses of establishing the emergency telephone service. Any interest earned on revenue derived from such tax shall be used to pay the expenses authorized by K.S.A. 12-5304, and amendments thereto. Such tax shall not be imposed until after the expiration of the protest period or until after approved at an election if a sufficient protest petition is filed.

(c) As an alternative to the procedure provided in subsection (b), the governing body may submit, on its own initiative, the proposal to establish an emergency telephone service to the qualified voters of the city or county for approval. Any such election shall be called and held in the manner provided by the general bond law.

(d) Such tax shall be imposed only upon exchange access lines or their equivalent. No such tax shall be imposed upon more than 100 exchange access facilities or their equivalent per person per location.

(e) Every billed service user shall be liable for any tax imposed under this act until it has been paid to the service supplier. ~~Wireless service users shall be exempt from the~~

~~emergency telephone tax~~ *Wireless service users shall be taxed pursuant to section 14, and amendments thereto.*

(f) The duty to collect any tax imposed under authority of this act from a service user shall commence at such time as specified by the governing body. Taxes imposed under authority of this act and required by it to be collected by the service supplier shall be added to and may be stated separately in the billings to the service user.

(g) The service supplier shall have no obligation to take any legal action to enforce the collection of any tax imposed under authority of this act. The service supplier shall provide annually the governing body with a list of amounts uncollected along with the names and addresses of those service users which carry a balance that can be determined by the service supplier to be nonpayment of any tax imposed under authority of this act.

(h) Any tax imposed under authority of this act shall be collected insofar as practicable at the same time as, and along with, the charges for the tariff rate in accordance with the regular billing practice of the service supplier.

New Sec. 14. (a) The governing body is hereby authorized by ordinance in the case of cities and by resolution in the case of counties to impose a wireless emergency telephone tax in those portions of the governing body's jurisdiction for which such wireless emergency telephone service has been contracted. The amount of such tax shall be \$.25 per month per wireless service user within such governing body jurisdiction.

(b) The proceeds of the tax shall be utilized to pay for the operation of emergency telephone service as set forth in subsection (b) of K.S.A. 12-5304, and amendments thereto, and may be imposed at any time subsequent to execution of a contract with the provider of such service at the discretion of the governing body. In addition to allowable expenditures under 12-5304 and amendments thereto, the proceeds of such tax may be used to implement enhanced wireless 911 services including but not limited to: (1) Necessary and reasonable costs incurred or to be incurred by public safety answering points to implement enhanced wireless 911 service; (2) purchases of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced wireless 911 service; (3) maintenance costs and license fees for such equipment and the training of personnel to operate such equipment including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures for new or expanded buildings or similar facilities or to construct other capital improvements not expressly authorized by this act. Any interest earned on revenue derived from such tax shall be used to pay the expenses authorized by K.S.A. 12-5304, and amendments thereto.

(c) Every billed service user shall be liable for any tax imposed under this act until it has been paid to the service supplier.

(d) The duty to collect any tax imposed under authority of this act from a service user shall commence at such time as specified by the governing body. Taxes imposed under authority of this act and required by it to be collected by the service supplier shall be added to and may be stated separately in the billings to the service user.

(e) The wireless service supplier shall have no obligation to take any legal action to enforce the collection of any tax imposed under authority of this act. The wireless service supplier shall provide annually the governing body with a list of amounts uncollected along with the names and addresses of those service users which carry a balance that can be determined by the service supplier to be nonpayment of any tax imposed under authority of this act.

(f) Any tax imposed under authority of this act shall be collected insofar as practicable at the same time as regular billing practice of the wireless service supplier.

(h) Any tax imposed under authority of this act and the amounts required to be collected are due quarterly. The amount of tax collected in one calendar quarter by the service supplier shall be remitted to the governing body no later than sixty days after the close of a calendar quarter. On or before the sixtieth day of each calendar quarter following, a return for the preceding quarter shall be filed with the governing body in such form as the governing body and service supplier shall agree. The service supplier required to file the return shall deliver the return together with a remittance of the amount of the tax payable to the office of the governing body. The service supplier shall maintain records of the amount of any tax col-

lected pursuant to action in accord with this act. Such records shall be maintained for a period of three years from the time the tax is collected.

New Sec. 15. The administrator may require an audit of any wireless carrier's books and records concerning the collection and remittance of the surcharge pursuant to this act. Any such audit shall be conducted at the administrator's expense. Information provided by wireless carriers to the advisory board or to the administrator pursuant to this act will be treated as proprietary records which will be withheld from the public upon request of the party submitting such records.

New Sec. 16. The enhanced wireless 911 service described in this act is within the governmental power and authority of the administrator, governing bodies and public safety agencies. Except as provided by the Kansas tort claims act, in contracting for such service and in providing such service, and except for failure to use ordinary care, or for intentional acts, the administrator, each governing body, each public agency, each wireless carrier and their employees and agents shall not be liable for the payment of damages resulting from the performance of installing, maintaining or providing enhanced wireless 911 service.

New Sec. 17. (a) During calendar year 2005, in accordance with a scope statement authorized and approved by the legislative post audit committee, the division of post audit shall conduct an audit of the books, records, files, documents and correspondence, confidential or otherwise, of each wireless carrier, and each local PSAP relating to all payments, disbursements and uses of the funds authorized by this act. This audit shall be conducted in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto.

(b) The audit authorized in subsection (a) shall include but not be limited to an audit of: (1) The appropriate uses of funds; (2) sufficiency of funds collected; (3) status of wireless enhanced 911 implementation; and (4) the need and level of continued funding.

(c) Based upon the findings of such audit, the legislature may impose a moratorium on or reduce the funding source for the collection of such fee, surcharge or tax, or authorize a reduction in such fee, surcharge or tax.

(d) Any such information provided to the division of post audit shall be treated as proprietary records which will be withheld from the public upon the request of the party submitting such records.”;

And by renumbering the remaining sections accordingly;

Also on page 3, in line 20, following “K.S.A.” by inserting “12-5301, 12-5302 and”; also in line 20, by striking “is” and inserting “are”;

On page 1, in the title, in line 15, by striking “concerning”; also in line 15, following the semicolon, by inserting “concerning enhanced wireless 911 service; public safety grant fund.”; also in line 15, following “K.S.A.” by inserting “12-5301, 12-5302 and”; in line 16, by striking “section” and inserting “sections”

A ruling of the chair was requested as to the germaneness of the amendment to the bill.

The Chair ruled the amendment to be germane; the ruling of the Chair was challenged and was sustained; and **HB 2037** be passed as further amended.

**HB 2150** be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil as amended by Senate Committee, on page 1, in line 29, preceding “Shawnee” by inserting “Johnson, Riley.”;

On page 2, in line 19, preceding “Shawnee” by inserting “Johnson, Riley.”

Senator Jackson further amended the bill as amended by Senate Committee, on page 2, in line 13, by striking all after the period; by striking all of lines 14 through 18, and **HB 2150** be passed as further amended.

**HB 2179** be amended by adoption of the committee report in Committee of the Whole, March 27, 2003, be further amended by motion of Senator Bunten as amended by Senate Committee, on page 1, by striking all in lines 19 through 43;

By striking all on pages 2 through 5;

On page 6, by striking all in lines 1 through 5; following line 5, by inserting:

“Section 1. K.S.A. 25-1904 is hereby repealed.”;

By renumbering section 10 as “Sec. 2.”;

In the title, by striking all in lines 12 through 15; following line 15, by inserting:

“AN ACT repealing K.S.A. 25-1904, relating to members of the state board of education.”, and **HB 2179** be passed as further amended.

**HB 2201** be amended by adoption of the committee amendments, be further amended by motion of Senator Morris as amended by Senate Committee, on page 1, after line 16, by inserting the following:

“New Section 1. On January 1, 2004, the state fire marshal and the office of the state fire marshal are hereby transferred to the board of fire services established pursuant to section 8, and amendments thereto.

New Sec. 2. (a) On and after January 1, 2004, whenever the office of state fire marshal or words of like effect are referred to or designated by a statute, contract or other document, which pertain to the performance of the powers, duties and functions transferred to the board pursuant to section 9, and amendments thereto, such reference or designation shall be deemed to apply to the board of fire services established by section 8, and amendments thereto.

(b) On and after January 1, 2004, all orders and directives of the office of state fire marshal which relate to fire services in existence immediately prior to the effective date of this act shall continue to be effective and shall be deemed to be the orders or directives of the board of fire services, until revised, amended, repealed or nullified pursuant to law.

New Sec. 3. (a) On and after January 1, 2004, the board of fire services shall succeed to all records which were used for or pertain to the performance of the powers, duties and functions transferred to the board pursuant to section 9, and amendments thereto. Any conflict as to the proper disposition of records arising under this section shall be resolved by the governor, whose decision shall be final.

(b) On and after January 1, 2004, the balance of all funds or accounts thereof appropriated or reappropriated for the office of state fire marshal relating to the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the office of state fire marshal within the board of fire services and shall be used only for the purpose for which the appropriations were originally made. Any conflict as to the proper disposition of such money shall be resolved by the governor, whose decision shall be final.

New Sec. 4. (a) On and after January 1, 2004, all officers and employees who were engaged immediately prior to the effective date of this act in the performance of powers, duties and functions, which are transferred pursuant to the provisions of this act, and who, in the opinion of the board of fire services, are necessary to perform the powers, duties and functions of the board shall become officers and employees of the board. On and after January 1, 2004, all officers and employees of the office of state fire marshal within the board of fire services who, immediately prior to the effective date of this act, are engaged in the exercise and performance of the powers, duties and functions transferred by this act are hereby transferred to and become employees of the board of fire services. All classified employees so transferred shall retain their status as classified employees. Thereafter, the board of fire services may convert vacant classified positions to positions that are not classified.

(b) Officers and employees of the office of state fire marshal transferred by this act shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs and abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Every act performed in the exercise of such powers, duties and functions by or under the authority of the office of state fire marshal or the state fire marshal established by this act shall be deemed to have the same force and effect as if performed by the office of state fire marshal or the state fire marshal in which such powers, duties and functions were vested prior to the effective date of this act.

New Sec. 5. On and after January 1, 2004, whenever any conflict arises as to the disposition of any power, duty or function as a result of any abolishment or transfer made by this act, such conflict shall be resolved by the governor, and the decision of the governor shall be final.

New Sec. 6. On and after January 1, 2004, the board of fire services shall succeed to all property and records which were used for, or pertain to, the performance of the powers, duties and functions transferred to the board pursuant to section 9, and amendments thereto. On and after January 1, 2004, the unexpended balances of any appropriations for the office of state fire marshal, which is transferred by this act, shall be transferred to the board of fire services to be used by the board to carry out the powers, duties and functions transferred by this act. Any conflict as to the proper disposition of property or records or the unexpended balance of any appropriation arising under this section shall be determined by the governor, and the decision of the governor shall be final.

New Sec. 7. No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against the office of state fire marshal transferred by this act, or by or against any officer or employee of such bureau in the official capacity of such officer or employee or in relation to the discharge of official duties of such officer or employee, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of such state agency or any officer or employee affected.

New Sec. 8. (a) On October 1, 2003, there is hereby established the state board of fire services. The office of the board of fire services shall be located in Topeka, Kansas.

(b) The board of fire services shall be composed of 13 members to be appointed as follows:

(1) The nine members shall be appointed by the governor. Of such members:

(A) One shall be a volunteer fire chief and shall not be employed as a full-time paid fire chief or firefighter;

(B) one shall be a full-time paid fire chief;

(C) one shall be a volunteer firefighter and shall not be employed as a full-time paid fire chief or firefighter;

(D) one shall be a full-time paid firefighter;

(E) one shall be a licensed architect;

(F) one shall be a full-time fire codes official;

(G) one shall be a member representing the emergency medical services board who is actively involved in fire services;

(H) one shall be a member of the state board of regents, or a person designated by the chairperson of such board; and

(I) one shall be a member representing emergency managers.

(c) All members of the board shall be residents of the state of Kansas. Appointments to the board shall be made with due consideration that representation of the various geographical areas of the state is ensured. The governor may seek the assistance of state fire service organizations in recommending qualified persons to fill board positions. The governor may remove any member of the board upon recommendation of the board. Any person appointed to a position on the board shall forfeit such position upon vacating the office or position which qualified such person to be appointed as a member of the board.

(d) Of the members first appointed to the board, three shall be appointed for terms of two years, three for terms of three years and three for terms of four years. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and qualified. In the case of a vacancy in the membership of the board, the vacancy shall be filled for the unexpired term.

(e) The board shall meet at least six times annually and at least once each quarter and at the call of the chairperson or at the request of the chairperson of the board of fire service or of any six members of the board. The board shall meet as necessary prior to January 1, 2004, to provide for transition planning to carry out the powers, duties and functions transferred to the board under this act.

(f) At the first meeting of the board in 2003, at the first meeting of the board after January 1, 2005, and at the first meeting of the board in January thereafter, the members shall elect a chairperson and a vice-chairperson who shall serve for a term of one year. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson. If a vacancy occurs in the office of the chairperson or vice-chairperson, the

board shall fill such vacancy by election of one of its members to serve the unexpired term of such office.

(g) Members of the board attending meetings of the board or attending a subcommittee meeting thereof authorized by the board shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(h) Except as otherwise provided by law, all vouchers for expenditures and all payrolls of the board of fire services shall be approved by the state fire marshal, or a person designated by the board, upon authorization by the board.

New Sec. 9. On and after January 1, 2004, the board of fire services shall:

- (a) Adopt any rules and regulations necessary to carry out the provisions of this act;
- (b) review and make recommendations concerning the allocation and expenditure of moneys appropriated for the programs and services administered by the state fire marshal's office;
- (c) prepare and submit a budget estimate to the division of the budget in accordance with K.S.A. 75-3717 and amendments thereto;
- (d) enter into contracts as may be necessary to carry out the duties and functions of the board under this act;
- (e) appoint committees as necessary to assist in the coordination and oversight of the divisions and special projects offered by the state fire marshal's office;
- (f) appoint a state fire marshal. Any person appointed state fire marshal on and after January 1, 2004, shall serve at the pleasure of the board of fire services; and
- (g) approve all licensing and certification procedures administered by the office of the state fire marshal.

Sec. 10. On January 1, 2004, K.S.A. 31-136 is hereby amended to read as follows: 31-136. The state fire marshal shall have the power to grant exemptions from the application of specific requirements of regulations promulgated pursuant to this act. Any such exemption shall be granted only upon written request which clearly demonstrates that the enforcement of a specific requirement of a rule or regulation will cause unnecessary hardship to the petitioner, or that such exemption is necessary for the petitioner to take advantage of new methods or equipment of recognized adequacy which conforms to fundamental safety standards. The particulars of any exemption so granted shall be set forth in writing, and a copy thereof shall be retained in the office of the ~~state fire marshal~~ *board of fire services*.

Sec. 11. On January 1, 2004, K.S.A. 40-252 is hereby amended to read as follows: 40-252. Every insurance company or fraternal benefit society organized under the laws of this state or doing business in this state shall pay to the commissioner of insurance fees and taxes specified in the following schedule:

A

*Insurance companies organized under the laws of this state:*

1. Capital stock insurance companies and mutual legal reserve life insurance companies:	
Filing application for sale of stock or certificates of indebtedness .....	\$25
Admission fees:	
Examination of charter and other documents .....	500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10
2. Mutual life, accident and health associations:	
Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

3. Mutual fire, hail, casualty and multiple line insurers and reciprocal or interinsurance exchanges:

Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority provided in this code, all such companies shall pay a fee of \$2 for each agent certified by the company and shall also pay a tax annually upon all premiums received on risk located in this state at the rate of 1% for tax year 1997, and 2% for all tax years thereafter per annum less (1) for tax years prior to 1984, any taxes paid on business in this state pursuant to the provisions of K.S.A. 40-1701 to 40-1707, inclusive, and 75-1508 and amendments thereto and (2) for tax years 1984 and thereafter, any taxes paid on business in this state pursuant to the provisions of K.S.A. 75-1508 and amendments thereto and the amount of the firefighters relief tax credit determined by the commissioner of insurance. The amount of the firefighters relief tax credit for a company for the current tax year shall be determined by the commissioner of insurance by dividing (A) the total amount of credits against the tax imposed by this section for taxes paid by all such companies on business in this state under K.S.A. 40-1701 to 40-1707, inclusive, and amendments thereto for tax year 1983, by (B) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1703 and amendments thereto for the tax year immediately preceding the current tax year, and by multiplying the result so obtained by (C) the amount of taxes paid by the company on business in this state under K.S.A. 40-1703 and amendments thereto for the current tax year.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, all premiums received for reinsurance from any other company authorized to do business in this state, dividends returned to policyholders and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

B

*Fraternal benefit societies organized under the laws of this state:*

Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

C

*Mutual nonprofit hospital service corporations, nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations organized under the laws of this state:*

1. Mutual nonprofit hospital service corporations:

Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100

Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10
2. Nonprofit medical service corporations:	
Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10
3. Nonprofit dental service corporations:	
Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10
4. Nonprofit optometric service corporations:	
Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10
5. Nonprofit pharmacy service corporations:	
Admission fees:	
Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority, provided in this code, every corporation or association shall pay annually to the commissioner of insurance a tax in an amount equal to 1% for tax year 1997, and 2% for all tax years thereafter per annum of the total of all premiums, subscription charges, or any other term which may be used to describe the charges made by such corporation or association to subscribers for hospital, medical or other health services or indemnity received during the preceding year. In such computations all such corporations or associations shall be entitled to deduct any premiums or subscription charges returned on account of cancellations and dividends returned to members or subscribers.

D

*Insurance companies organized under the  
laws of any other state, territory or country:*

1. Capital stock insurance companies and mutual legal reserve life insurance companies:	
Filing application for sale of stock or certificates of indebtedness .....	\$25
Admission fees:	
Examination of charter and other documents .....	500
Filing annual statement .....	100
Certificate of authority .....	10
Annual fees:	
Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees all such companies shall pay \$5 for each agent certified by the company, except as otherwise provided by law.

As a condition precedent to the continuation of the certificate of authority, provided in this code, every company organized under the laws of any other state of the United States or of any foreign country shall pay a tax upon all premiums received during the preceding year at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

2. Mutual life, accident and health associations:

Admission fees:

Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority.....	10

Annual fees:

Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees, every such company organized under the laws of any other state of the United States shall pay \$5 for each agent certified by the company, and shall pay a tax annually upon all premiums received at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

3. Mutual fire, casualty and multiple line insurers and reciprocal or interinsurance exchanges:

Admission fees:

Examination of charter and other documents and issuance of certificate of authority.....	\$500
Filing annual statement .....	100
Certificate of authority.....	10

Annual fees:

Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees, every such company or association organized under the laws of any other state of the United States shall pay a fee of \$5 for each agent certified by the company and shall also pay a tax annually upon all premiums received at the rate of 2% per annum.

For tax years 1998 and thereafter, the annual tax shall be reduced by the "applicable percentage" of (1) any taxes paid on business in this state pursuant to the provisions of K.S.A. 75-1508 and amendments thereto and (2) the amount of the firefighters relief tax credit determined by the commissioner of insurance. The amount of the firefighters relief

tax credit for a company taxable under this subsection for the current tax year shall be determined by the commissioner of insurance by dividing (A) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1701 to 40-1707 and amendments thereto for tax year 1983 as then in effect, by (B) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1703 and amendments thereto for the tax year immediately preceding the current tax year, and by multiplying the result so obtained by (C) the amount of taxes paid by the company on business in this state under K.S.A. 40-1703 and amendments thereto for the current tax year. The "applicable percentage" shall be as follows:

Tax Year	Applicable Percentage
1998	10%
1999	20%
2000	30%
2001	40%
2002	50%
2003	60%
2004	70%
2005	80%
2006	90%
2007 and thereafter	100%

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, all premiums received for reinsurance from any other company authorized to do business in this state, and dividends returned to policyholders.

E

*Fraternal benefit societies organized under the laws of any other state, territory or country:*

Admission fees:

Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10

Annual fees:

Filing annual statement .....	100
Continuation of certificate of authority .....	10

F

*Mutual nonprofit hospital service corporations, nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations organized under the laws of any other state, territory or country:*

1. Mutual nonprofit hospital service corporations:
 

Admission fees:

Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10

Annual fees:

Filing annual statement .....	100
Continuation of certificate of authority .....	10
2. Nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations:
 

Admission fees:

Examination of charter and other documents .....	\$500
Filing annual statement .....	100
Certificate of authority .....	10

Annual fees:

Filing annual statement .....	100
Continuation of certificate of authority .....	10

In addition to the above fees and as a condition precedent to the continuation of the

certificate of authority, provided in this code, every corporation or association shall pay annually to the commissioner of insurance a tax in an amount equal to 2% per annum of the total of all premiums, subscription charges, or any other term which may be used to describe the charges made by such corporation or association to subscribers in this state for hospital, medical or other health services or indemnity received during the preceding year. In such computations all such corporations or associations shall be entitled to deduct any premiums or subscription charges returned on account of cancellations and dividends returned to members or subscribers.

## G

*Payment of Taxes.*

For the purpose of insuring the collection of the tax upon premiums, assessments and charges as set out in subsection A, C, D or F, every insurance company, corporation or association shall at the time it files its annual statement, as required by the provisions of K.S.A. 40-225, and amendments thereto, make a return, verified by affidavits of its president and secretary or other chief officers, to the commissioner of insurance, stating the amount of all premiums, assessments and charges received by the companies or corporations in this state, whether in cash or notes, during the year ending on the December 31 next preceding.

Commencing in 1985 and annually thereafter the estimated taxes shall be paid as follows: On or before June 15 and December 15 of such year an amount equal to 50% of the full amount of the prior year's taxes as reported by the company shall be remitted to the commissioner of insurance. As used in this paragraph, "prior year's taxes" includes (1) taxes assessed pursuant to this section for the prior calendar year, (2) fees and taxes assessed pursuant to K.S.A. 40-253, and amendments thereto, for the prior calendar year, and (3) taxes paid for maintenance of the ~~department~~ office of the state fire marshal *within the board of fire services* pursuant to K.S.A. 75-1508, and amendments thereto, for the prior calendar year.

Upon the receipt of such returns the commissioner of insurance shall verify the same and assess the taxes upon such companies, corporations or associations on the basis and at the rate provided herein and the balance of such taxes shall thereupon become due and payable giving credit for amounts paid pursuant to the preceding paragraph, or the commissioner shall make a refund if the taxes paid in the prior June and December are in excess of the taxes assessed.

## H

The fee prescribed for the examination of charters and other documents shall apply to each company's initial application for admission and shall not be refundable for any reason.

Sec. 12. On January 1, 2004, K.S.A. 65-506 is hereby amended to read as follows: 65-506. The secretary of health and environment shall serve notice of the issuance, suspension or revocation of a license to conduct a maternity center or child care facility or the issuance, suspension or revocation of a certificate of registration for a family day care home to the secretary of social and rehabilitation services, juvenile justice authority, department of education, office of the state fire marshal *within the board fire services*, county, city-county or multi-county department of health, and to any licensed child placement agency or licensed child care resource and referral agency serving the area where the center or facility is located. A maternity center or child care facility that has had a license suspended, revoked or denied by the secretary of health and environment or a family day care home that has had a certificate of registration suspended, revoked or denied by the secretary of health and environment shall notify in writing the parents or guardians of the enrollees of the suspension, revocation or denial. Neither the secretary of social and rehabilitation services nor any other person shall place or cause to be placed any maternity patient or child under 16 years of age in any maternity center or child care facility not licensed by the secretary of health and environment or family day care home not holding a certificate of registration from the secretary of health and environment.

Sec. 13. On January 1, 2004, K.S.A. 75-1506 is hereby amended to read as follows: 75-1506. The state fire marshal shall devote his or her entire time to the duties of his or her office, and the state fire marshal or his or her chief deputy, except when engaged elsewhere in the performance of their duties, shall be at all reasonable times at the office of the state fire marshal *within the board of fire services*, ready for such duties.

Sec. 14. On January 1, 2004, K.S.A. 75-1510 is hereby amended to read as follows: 75-1510. There is hereby established the office of state fire marshal *within the board of fire service*. The state fire marshal shall be appointed ~~by the governor and shall serve at the pleasure of the governor. Any person appointed state fire marshal on or after July 1, 1982, shall be appointed subject to confirmation by the senate as provided in K.S.A. 75-4315b~~ pursuant to subsection (f) of section 9, and amendments thereto. Any person appointed as state fire marshal shall have a knowledge of building construction and, at the time of appointment, shall have had not less than five years' experience in fire safety inspection and investigation. The state fire marshal shall maintain an office in the city of Topeka.

Sec. 15. On January 1, 2004, K.S.A. 75-1515 is hereby amended to read as follows: 75-1515. The attorney general shall appoint, with the approval of the state fire marshal, an assistant attorney general who shall be the attorney for the state fire marshal and the office of the state fire marshal *within the board of fire services*. Such attorney shall receive an annual salary fixed by the attorney general with the approval of the state fire marshal. Such salary shall be paid from moneys appropriated for the state fire marshal.

Sec. 16. On January 1, 2004, K.S.A. 75-1516 is hereby amended to read as follows: 75-1516. The assistant attorney general appointed under K.S.A. 75-1515 shall be the legal advisor for the office of the state fire marshal *within the board of fire services*. The assistant attorney general appointed under K.S.A. 75-1515 shall appear for and on behalf of the state fire marshal, or any of the deputies of the state fire marshal, in any litigation that may arise in the discharge of the duties of the office of the state fire marshal.”;

And by renumbering sections accordingly;

On page 2, by striking line 5 and inserting in lieu thereof the following:

“Sec. 17. On July 1, 2003, K.S.A. 31-137 is hereby repealed.

Sec. 18. On January 1, 2004, K.S.A. 31-136, 40-252, 65-506, 75-1506, 75-1510, 75-1515 and 75-1516 are hereby repealed.”;

And by renumbering the remaining section accordingly;

On page 1, in the title, in line 13, after the semicolon, by inserting “transferring the functions of the office of state fire marshal to the board of fire services;”; also in line 13, by striking all after “K.S.A.”; in line 14, by striking all before the period and inserting “31-136, 31-137, 40-252, 65-506, 75-1506, 75-1510, 75-1515 and 75-1516 and repealing the existing sections”

Senator Barnett further amended **HB 2201** as amended by Senate Committee, on page 1, following line 16, by inserting:

“Section 1. K.S.A. 41-2611 is hereby amended to read as follows: 41-2611. The director may revoke or suspend any license issued pursuant to the club and drinking establishment act for any one or more of the following reasons:

(a) The licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon.

(b) The licensee has violated any of the provisions of this act or any rules or regulations adopted hereunder.

(c) The licensee has become ineligible to obtain a license or permit under this act.

(d) The licensee's manager or employee has been intoxicated while on duty.

(e) The licensee, or its manager or employee, has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee.

(f) There has been a violation of a provision of the laws of this state, or of the United States, pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge, on premises where alcoholic liquor is sold by such licensee.

(g) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal wagering occupational stamp issued by the United States treasury department.

(h) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin operated gambling device stamp for the premises issued by the United States treasury department.

(i) The licensee holds a license as a class B club, drinking establishment or caterer and has been found guilty of a violation of article 10 of chapter 44 of the Kansas Statutes

Annotated under a decision or order of the Kansas human rights commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003, and amendments thereto.

(j) *There has been a violation of K.S.A. 21-4106 or 21-4107, and amendments thereto, on premises where alcoholic liquor is sold by such licensee.*

Sec. 2. K.S.A. 2002 Supp. 41-2708 is hereby amended to read as follows: 41-2708. (a) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a license, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefor;

(2) the licensee has violated any of the provisions of K.S.A. 41-2701 et seq., and amendments thereto, or any rules or regulations made by the board or the city, as the case may be;

(3) the licensee has become ineligible to obtain a license under this act;

(4) drunkenness of the licensee or permitting any intoxicated person to remain in *or upon* the licensee's place of business;

(5) the sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage;

(6) the nonpayment of any license fees;

(7) permitting any gambling in or upon the licensee's place of business;

(8) permitting any person to mix drinks with materials purchased in *or upon* the place of business or brought in for that purpose;

(9) the employment of persons under 18 years of age in dispensing or selling cereal malt beverages;

(10) the employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the intoxicating liquor laws of this state, another state or the United States;

(11) the sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor as defined by K.S.A. 41-102, and amendments thereto;

**or**

(12) the licensee has been convicted of a violation of the beer and cereal malt beverage keg registration act; *or*

(13) *there has been a violation of K.S.A. 21-4106 or 21-4107, and amendments thereto, in or upon the licensee's place of business.*

(b) The provisions of subsections (a)(8) and (11) shall not apply if the place of business or premises ~~are~~ also *are* currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(c) Within 20 days after the order of the board revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to the former licensee, or to any person acting for or on the former licensee's behalf, for a period of six months thereafter.

New Sec. 3. (a) As used in this section:

(1) "Place of public assembly" means a building or structure with an occupancy capacity of 50 or more.

(2) "Pyrotechnics" mean any controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, dispersion of aerosols, emission of visible electromagnetic radiation or a combination of these effects to provide the maximum effect from the least volume for entertainment purposes.

(3) "Pyrotechnic device" means any device which contains pyrotechnic material and which is capable of producing a visual or audible effect for entertainment purposes.

(4) "Pyrotechnic material" means a chemical mixture used to produce visible or audible effects by combustion for entertainment purposes.

(b) (1) Except as provided by this section, the use of any pyrotechnics, pyrotechnic device or pyrotechnic material is prohibited in any building which is a place of public assembly.

(2) The use of pyrotechnics, pyrotechnic devices or pyrotechnic materials in violation of this section or any rules and regulations adopted pursuant to this section or any ordinance or resolution prohibiting or restricting such use shall constitute a common nuisance.

(c) The provisions of subsection (b) shall not apply to:

(1) Any building in which there has been installed an automatic sprinkler system which is adequate for suppression of a fire in the building or structure and such system is functioning properly;

(2) any building in which the interior and exterior walls and ceilings are constructed with or consist of fire-restrictive materials;

(3) religious ceremonies;

(4) candles that are securely supported on noncombustible bases and if the candle flame is protected;

(5) any other building, structure or use exempted by rules and regulations adopted by the state fire marshal.

(d) The state fire marshal shall adopt any rules and regulations necessary to implement the provisions of this section.

Sec. 4. K.S.A. 2002 Supp. 22-3901 is hereby amended to read as follows: 22-3901. The following unlawful activities and the use of real ~~and~~ or personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

(a) Commercial gambling;

(b) dealing in gambling devices;

(c) possession of gambling devices;

(d) promoting obscenity;

(e) promoting prostitution;

(f) habitually promoting prostitution;

(g) violations of any law regulating controlled substances;

(h) habitual violations of any law regulating the sale or exchange of alcoholic liquor or cereal malt beverages, by any person not licensed pursuant to chapter 41 of the Kansas Statutes Annotated;

(i) habitual violations of any law regulating the sale or exchange of cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated; ~~or~~

(j) any felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, or any substantially similar offense from another jurisdiction; *or*

(k) *use of pyrotechnics, pyrotechnic devices or pyrotechnic materials in violation of section 3, and amendments thereto.*

Any real property used as a place where any such activities are carried on or permitted to be carried on and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises in connection with such unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.

Sec. 5. K.S.A. 22-3902 is hereby amended to read as follows: 22-3902. (1) Unless otherwise provided by law, proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be governed by the provisions of the Kansas code of civil procedure relating to the abatement of common nuisances.

(2) (A) In addition to the procedure established by this section, if a person is arrested for an unlawful act listed in K.S.A. 22-3901, and amendments thereto, the attorney general, city, county or district attorney may petition the court for a hearing to determine whether an unlawful activity is or has been occurring on such owner's property. The owner of the property on which such person is or was committing an unlawful activity may be given notice of such hearing. *Except as provided by paragraph (B)*, a hearing shall be held before the court within 30 days of the notification. If the court determines by a preponderance of the evidence that an unlawful act occurred, such act shall render void any lease under which a tenant holds possession, and shall cause the right of possession to revert to the owner who may evict the tenant. If the owner does not commence eviction proceedings against the tenant within 30 days of the court determination, the attorney general or the city, county or district attorney may proceed to file a petition pursuant to subsection (3). The provisions of this subsection are in addition to any remedy provided pursuant to the residential landlord and tenant act.

(B) *In the case of a violation of subsection (k) of K.S.A. 22-3901, and amendments thereto, a hearing shall be held before the court within five days of the notification.*

(3) Proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be instituted only in the name of the state of Kansas upon the petition of the attorney general or the city, county or district attorney to enjoin a nuisance within the city, county or district.

(4) The petition shall describe any real estate alleged to be used or to have been used as a place where such common nuisance is or was maintained or permitted and shall identify the owner or person in charge of such real estate. It shall describe any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used in such unlawful activity. It shall pray for the particular relief sought with respect to such property.

(5) The petition for injunction may include or be accompanied by an application for an order for the seizure of the effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property described in the petition. If the court finds that there is probable cause to believe that the personal property described is or has been used for any of the unlawful purposes set forth in K.S.A. 22-3901 and amendments thereto, the court may order the sheriff or other law enforcement officer to seize such personalty and to hold it in custody pending further order of the court. An order for seizure shall particularly describe the personal property to be seized.

(6) An order for seizure of materials alleged to be obscene shall not be issued until after a hearing at which evidence in support of the application for such order has been heard. At least three days notice of such hearing shall be given to the owner or person in possession of such material. Pending such hearing, the court may make an order prohibiting the owner or person in possession from removing such material from the jurisdiction of the court.

(7) No bond or other security shall be required for any restraining order, order for seizure or injunction issued under K.S.A. 22-3901 through 22-3904, and amendments thereto, in an action brought by the attorney general or city, county or district attorney.

(8) The provisions of K.S.A. 22-3901 through 22-3904, and amendments thereto, shall not limit nor otherwise affect proceedings under K.S.A. 60-908 and amendments thereto, but shall be supplemental and in addition to, and not in lieu of, the remedy provided by that statute.

(9) The attorney general or the city, county or district attorney shall give notice of proceedings under K.S.A. 22-3901 through 22-3904 and amendments thereto by sending a copy of the petition to enjoin a nuisance by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if: (a) The property is of a type for which title, registration or deed is required by law; (b) the owner of the property is known in fact at the time of seizure; or (c) the property is subject to a security interest perfected in accordance with the uniform commercial code. The attorney general or the city, county or district attorney shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, the attorney general or city, county or district attorney is unable to ascertain the owner, the requirement of actual

notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

Sec. 6. K.S.A. 22-3904 is hereby amended to read as follows: 22-3904. (1) Upon final judgment that any real property is being or has been used as a place where any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto are carried on or permitted to be carried on, the court may order that any ~~house~~, building, ~~room~~ or other structure located on such real estate be closed and padlocked for a period of not more than two years, subject to modification in the manner provided by K.S.A. 60-910 and amendments thereto, if the court finds that the owner of the property knew or should have known under the circumstances of the maintenance of a common nuisance on the property and did not make a bona fide attempt to abate such nuisance under the circumstances. The court may require, as part of the judgment, that the owner, lessee, tenant or occupant enter into a bond to the state of Kansas, in such amount and with security as the court may require, conditioned that such owner, lessee, tenant or occupant will not within a period of two years use or permit the use of such real estate in violation of law. If any condition of such bond is violated, the whole amount may be recovered as a penalty. In addition, the court may assess a civil penalty not to exceed \$25,000 against any or all defendants, based upon the severity of the nuisance and its duration. Such penalty shall be paid into the county treasury, if recovered by a county or district attorney, and into the city treasury, if recovered by a city attorney.

(2) Upon final judgment that any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property are designed for and have been used in carrying on any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto, the court may order that such effects, equipment, paraphernalia, fixtures, appliances, musical instruments and other personal property be publicly destroyed by the sheriff or other law enforcement officer or that such personal property be sold in the manner provided for sales in execution of judgment.

(3) The proceeds of any sale of personal property pursuant to subsection (2) shall be applied as follows:

- (a) First, to the fees and costs of the *abatement or removal of the nuisance and the sale*.
- (b) Second, to the costs of closing the structure and keeping it closed.
- (c) Third, to payment of the costs of the action.
- (d) Fourth, to payment of any civil penalty imposed pursuant to this section or any fine imposed for contempt in the proceedings.
- (e) Fifth, to the owner of the personal property.

(4) Subject to the provisions of subsection (3), upon final judgment for the state the court shall adjudge that any defendant who was maintaining the common nuisance pay all costs, including a reasonable fee, fixed by the court, to be paid to the prosecuting attorney. Such costs shall be a lien upon any real property against which an order of abatement is obtained, if the court finds that the owner of such property knew or should have known under the circumstances of the maintenance of the common nuisance on the property and did not make a bona fide attempt to abate such nuisance under the circumstances.

(5) For purposes of this section, evidence of a bona fide attempt to abate such nuisance by the owner of the property shall include, but not be limited to, the filing of a written report, by such owner or at such owner's direction, to the local law enforcement agency that the property is suspected by the owner of the property of being used in maintaining and carrying on any of the unlawful activities set forth in K.S.A. 22-3901 and amendments thereto.

Sec. 7. K.S.A. 31-133 is hereby amended to read as follows: 31-133. (a) The state fire marshal shall adopt reasonable rules and regulations, consistent with the provisions of this act, for the safeguarding of life and property from fire, explosion and hazardous materials. Such rules and regulations shall include, but not be limited to the following:

- (1) The keeping, storage, use, sale, handling, transportation or other disposition of highly flammable materials, including crude petroleum or any of its products, natural gas for use in motor vehicles, and of explosives, including gunpowder, dynamite, fireworks and fire-crackers; and any such rules and regulations may prescribe the materials and construction of receptacles and buildings to be used for any of such purposes;

(2) the transportation of liquid fuel over public highways in order to provide for the public safety in connection therewith;

(3) the construction, maintenance and regulation of exits and fire escapes from buildings and all other places in which people work, live or congregate from time to time for any purpose, including apartment houses, as defined by K.S.A. 31-132a, and amendments thereto. Such rules and regulations shall not apply to buildings used wholly as dwelling houses containing no more than two families;

(4) the installation and maintenance of equipment intended for fire control, detection and extinguishment in all buildings and other places in which persons work, live or congregate from time to time for any purpose, including apartment houses as defined by K.S.A. 31-132a, and amendments thereto. Such rules and regulations shall not apply to buildings used wholly as dwelling houses containing no more than two families;

(5) requiring administrators of public and private schools and educational institutions, except community colleges, colleges and universities, to conduct at least one fire drill each month at some time during school hours, aside from the regular dismissal at the close of the day's session, and prescribing the manner in which such fire drill is to be conducted;

(6) procedures for the reporting of fires and explosions occurring within the state and for the investigation thereof;

(7) procedures for reporting by health care providers of treatment of second and third degree burn wounds involving 20% or more of the victim's body and requiring hospitalization of the victim, which reporting is hereby authorized notwithstanding any provision of K.S.A. 60-427, and amendments thereto, to the contrary;

(8) requiring administrators of public and private schools and educational institutions, except community colleges, colleges and universities, to establish tornado procedures, which procedures shall provide for at least three tornado drills to be conducted each year at some time during school hours, aside from the regular dismissal at the close of the day's session, shall describe the manner in which such tornado drills are to be conducted, and shall be subject to approval by the state fire marshal;

(9) requiring administrators of community colleges, colleges and universities to establish tornado procedures, which procedures shall be subject to approval by the director of the disaster agency of the county;

(10) the development and implementation of a statewide system of hazardous materials assessment and response; ~~and~~

(11) *the use of pyrotechnics, pyrotechnic devices and pyrotechnic materials; and*

~~(11)~~ (12) other safeguards, protective measures or means adapted to render inherently safe from the hazards of fire or the loss of life by fire any building or other place in which people work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses containing no more than two families.

(b) Any rules and regulations of the state fire marshal adopted pursuant to this section may incorporate by reference specific editions, or portions thereof, of nationally recognized fire prevention codes.

(c) The rules and regulations adopted pursuant to this section shall allow facilities in service prior to the effective date of such rules and regulations, and not in strict conformity therewith, to continue in service, so long as such facilities are not determined by the state fire marshal to constitute a distinct hazard to life or property. Any such determination shall be subject to the appeal provisions contained in K.S.A. 31-140, and amendments thereto.

New Sec. 8. Notice of a conviction of a violation of K.S.A. 21-4106 or 21-4107, and amendments thereto, for maintaining or permitting a public nuisance on the premises of a club or drinking establishment licensed under the club and establishment act shall be given to the director of the division of alcoholic beverage control. In the case of a retailer licensed under K.S.A. 41-2701 *et seq.*, and amendments thereto, such notice shall be given to the governing body of the city or county which issued the license to the retailer.”;

Also on page 1, by striking “Section 1.” and inserting “Sec. 9.”;

On page 2, by striking all in lines 5, 6 and 7; following line 7, by inserting:

“Sec. 10. K.S.A. 22-3902, 22-3904, 31-133, 31-137 and 41-2611 and K.S.A. 2002 Supp. 22-3901 and 41-2708 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the Kansas register.”;

In the title, by striking all in lines 12, 13 and 14; following line 14, by inserting:

“AN ACT concerning certain crimes and unlawful activities; providing punishments and penalties therefor; amending K.S.A. 22-3902, 22-3904, 31-133, 31-137 and 41-2611 and K.S.A. 2002 Supp. 22-3901 and 41-2708 and repealing the existing sections.”

Senator O'Connor further amended **HB 2201** as amended by Senate Committee, on page 2, following line 4, by inserting new material to read as follows:

“Sec. 2. K.S.A. 2002 Supp. 21-3610 is hereby amended to read as follows: 21-3610. (a) Furnishing alcoholic liquor or cereal malt beverage to a minor is directly or indirectly, selling to, buying for, giving or furnishing any alcoholic liquor or cereal malt beverage to any minor.

(b) ~~Except as provided by subsections (d) and (e);~~ Furnishing alcoholic liquor or cereal malt beverage to a minor is a class B person misdemeanor for which the minimum fine is \$200.

(c) As used in this section, terms have the meanings provided by K.S.A. 41-102, 41-2601 and 41-2701, and amendments thereto.

(d) It shall be a defense to a prosecution under this section if: (1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; (2) the defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and (3) to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

(e) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward.

Sec. 3. K.S.A. 2002 Supp. 41-727 is hereby amended to read as follows: 41-727. (a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.

(b) Violation of this section by a person 18 or more years of age but less than 21 years of age is a class C misdemeanor for which the minimum fine is \$200.

(c) Any person less than 18 years of age who violates this section is a juvenile offender under the Kansas juvenile justice code. Upon adjudication thereof and as a condition of disposition, the court shall require the offender to pay a fine of not less than \$200 nor more than \$500.

(d) In addition to any other penalty provided for a violation of this section: (1) The court may order the offender to do either or both of the following:

(A) Perform 40 hours of public service; or

(B) attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; and

(2) *upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 30 days. ~~The court shall order that for any offender who has not been issued a driver's license by the division prior to sentencing of the offender for a violation of this section, the division shall not issue such offender a driver's license for 30 days~~ Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not that person has a driver's license.*

(3) *Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not that person has a driver's license.*

(4) *Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.*

(e) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.

(f) Any city ordinance or county resolution prohibiting the acts prohibited by this section shall provide a minimum penalty which is not less than the minimum penalty prescribed by this section.

(g) This section shall be part of and supplemental to the Kansas liquor control act.

New Sec. 4. (a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is permitting a person's premises to be used in such a manner that results in the possession or consumption therein of alcoholic liquor or cereal malt beverages by persons under the age of 21.

(b) A person is deemed to have permitted such person's premises to be used in violation of this section if such person knew that such use would occur.

(c) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a class B nonperson misdemeanor. In addition to any term of imprisonment which may be imposed, the minimum fine for such violation is \$200.

(d) As used in this section, terms have the meanings provided by K.S.A. 41-102, and amendments thereto, except for the purposes of this section, "premises" means a residence, land, building, structure or room owned, occupied or procured by such person.

(e) This section shall be a part of and supplemental to the Kansas criminal code.;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 5, by striking "is" and inserting "and K.S.A. 2002 Supp. 21-3610 and 41-727 are";

In the title, in line 12, by striking "fire and protection" and inserting "crimes and punishment"; in line 13, following the semicolon, by inserting "relating to consumption of alcoholic beverages by minors";; also in line 13, following "31-137", by inserting "and K.S.A. 2002 Supp. 21-3610 and 41-727"; in line 14, by striking "section" and inserting "sections"

Senator Schmidt further amended **HB 2201** as amended by Senate Committee, on page 2, by striking all in line 5 and inserting in lieu thereof the following:

"Sec. 2. K.S.A. 2002 Supp. 12-3915 is hereby amended to read as follows: 12-3915. The governing body of any fire district created pursuant to this act shall have the authority to:

(a) Levy taxes and special assessments as provided by law. Except as provided by K.S.A. 12-3913, and amendments thereto, the governing body shall fix the amount of the tax, not to exceed 11 mills, to be levied upon all taxable tangible property in the consolidated fire district;

(b) enter into contracts;

(c) acquire and dispose of real and personal property;

(d) acquire, construct, reconstruct, equip, operate, maintain and furnish buildings to house fire-fighting equipment;

(e) acquire, operate and maintain fire-fighting equipment;

(f) issue general obligation bonds and no-fund warrants;

(g) pay compensation and salaries to fire district employees;

(h) exercise eminent domain;

(i) pay the operation and maintenance expenses of the fire district and other expenses legally incurred by the district;

(j) select regular employees, provide for their compensation and furnish quarters for such employees if deemed desirable;

(k) provide for the organization of volunteer members who may be compensated for fighting fires, responding to emergencies or attending meetings;

(l) provide special clothing and equipment for such employees and volunteers;

(m) insure such employees and volunteers against accidental death and injury in the performance of their duties;

(n) *seek reimbursement of expenses incurred by a fire district by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto;* and

~~(m)~~ (o) do all things necessary or desirable to maintain and operate such department so as to furnish fire protection for the inhabitants of the district and otherwise effectuate the purposes of this act.

Sec. 3. K.S.A. 2002 Supp. 19-3601a is hereby amended to read as follows: 19-3601a. Upon the creation of a fire district under the provisions of K.S.A. 19-3601 *et seq.*, and amendments thereto, the governing body shall have the authority to:

- (a) Enter contracts;
- (b) acquire and dispose of real and personal property;
- (c) acquire, construct, reconstruct, equip, operate, maintain and furnish buildings to house fire fighting equipment;
- (d) acquire, operate and maintain fire fighting equipment;
- (e) issue bonds as provided in this act;
- (f) pay compensation and salaries to fire district employees;
- (g) pay compensation to volunteer members of the fire district for fighting fires, responding to emergencies or attending meetings;
- (h) exercise eminent domain;
- (i) pay the operation and maintenance expenses of the fire district and any other expenses legally incurred by the fire district; ~~and~~
- (j) *seek reimbursement of expenses incurred by a fire district by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto;* and
- (k) do all other things necessary to effectuate the purposes of this act.

Sec. 4. K.S.A. 2002 Supp. 19-3612e is hereby amended to read as follows: 19-3612e. (a) The governing body of Reno county fire district No. 2 and the governing body of Sedgwick county fire district No. 1, both created under K.S.A. 19-3601 *et seq.*, and amendments thereto, shall have the power to levy a tax in an amount to be determined by such governing body upon all taxable tangible property in the district for the purpose of ~~paying~~:

- (1) *Paying* compensation to fire district employees;
- (2) *paying* the expenses of operating and maintaining the fire district;
- (3) *paying* compensation to volunteer members of the fire district for fighting fires, responding to emergencies or attending meetings;
- (4) *seeking reimbursement of expenses incurred by a fire district by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto;* and
- ~~(4)~~ (5) *paying* other legal expenses of the fire district.

(b) Whenever the governing body of the fire district determines it is necessary to increase the amount levied in the next preceding year, the governing body shall give notice of its intent to increase such levy by adopting a resolution which states the amount currently levied and the amount proposed to be levied. The resolution shall be published once each week for two consecutive weeks in a newspaper of general circulation in the fire district. If within 30 days after the last publication, a petition signed by not less than 5% of the qualified electors in the fire district is filed in the office of the county election officer requesting an election thereon no levy in an amount in excess of the amount levied in the next preceding year shall be made unless the question of the levy shall be submitted to and approved by a majority of the voters of the fire district voting at an election called by the governing body. Such election shall be called and held in the manner provided under the provisions of K.S.A. 10-120, and amendments thereto.

Sec. 5. K.S.A. 2002 Supp. 19-3616 is hereby amended to read as follows: 19-3616. Upon the creation of a fire district pursuant to K.S.A. 19-3613, and amendments thereto, the governing body of the fire district shall have the authority to:

- (a) Enter contracts;
- (b) acquire, by lease or purchase, and dispose of real and personal property;

- (c) acquire, by lease or purchase, construct, reconstruct, equip, operate, maintain and furnish buildings to house fire-fighting equipment;
- (d) acquire, by lease or purchase, operate and maintain fire-fighting equipment;
- (e) issue bonds, if approved by the board of county commissioners, as provided in K.S.A. 19-3601b, and amendments thereto;
- (f) pay compensation and salaries to fire district employees;
- (g) pay compensation to volunteer members of the fire district for fighting fires, responding to emergencies or attending meetings;
- (h) issue no-fund warrants;
- (i) exercise eminent domain;
- (j) pay the operation and maintenance expenses of the fire district and any other expenses legally incurred by the fire district;
- (k) prepare and adopt a budget, subject to the approval of the board of county commissioners;
- (l) *seek reimbursement of expenses incurred by a fire district by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto; and*

~~(m)~~ (m) do all other things necessary to effectuate the purposes of this act.

Sec. 6. K.S.A. 2002 Supp. 19-3620 is hereby amended to read as follows: 19-3620. The governing body shall have full direction and control over the operation of such district fire department. The governing body shall have the power to:

- ~~(a)~~ (a) Select regular employees, provide for their compensation and furnish quarters for such employees if deemed desirable;
- ~~(b)~~ (b) provide for the organization of volunteer members of such department and pay compensation to such members for fighting fires, responding to emergencies or attending meetings;
- ~~(c)~~ (c) provide special clothing and equipment for such employees and volunteers;
- ~~(d)~~ (d) insure such employees and volunteers against accidental death and injury in the performance of their duties;

~~(e)~~ (e) *seek reimbursement of expenses incurred by a district fire department by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto; and*

~~(f)~~ (f) do all things necessary or desirable to maintain and operate such department so as to furnish fire protection for the inhabitants of such district.

Sec. 7. K.S.A. 2002 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

- (1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;
- (2) impose the fine applicable to the offense;
- (3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;
- (4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;
- (5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809 and amendments thereto or aggravated escape, as defined in K.S.A. 21-3810 and amendments thereto; or repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction. Such repayment of the amount of any such costs and expenses incurred by a law enforcement agency or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the law enforcement agency;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 2002 Supp. 22-4529 and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 2002 Supp. 20-369, and amendments thereto;

(11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10); or

(12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime *and expenses incurred by a fire district, fire department or fire company by responding to a fire which has been determined to be arson from the person convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto*, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 2002 Supp. 60-4301 *et seq.* and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719 and amendments thereto to collect the restitution on behalf of the victim. The administrative judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

(f) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F of the sentencing guidelines grid for drug crimes, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, or for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E, or 4-F of the sentencing guidelines grid for drug crimes; and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

Sec. 8. K.S.A. 2002 Supp. 80-1501 is hereby amended to read as follows: 80-1501. (a) Any township or county may join with a municipality in the maintenance of a fire department for the prevention and fighting of fires within their boundaries. The cost of equipment and maintenance, the payment of compensation to employees of the fire department, the rent or purchase of buildings shall be paid in such proportion as agreed upon by the parties. The supervision and control of the department shall be with the governing body of the municipality if the municipality joins with a township or county. The fire department members may be paid or may be volunteers and shall be subject to the limitations of this section and such rules and regulations as the municipalities adopt. Volunteer members may be paid compensation for fighting fires, responding to emergencies or attending meetings. Such departments, when organized, may incorporate as firefighters' relief associations, and such associations shall come within the purview and be subject to the provisions of and entitled to the rights under article 17, chapter 40, of the Kansas Statutes Annotated and amendments thereto.

(b) When a municipality and a township join, the agreements shall be entered into by the municipality by ordinance and by the township or county by resolution, and the agreement as set out in the ordinance and resolution shall be signed by the mayor of the city and attested by the city clerk and, in the case of a township shall be signed by the township trustee and attested by the township clerk and, in the case of a county shall be signed by the chairperson of the board of county commissioners and attested by the county clerk. The agreement shall state the amount each party shall contribute, the rules and regulations governing the department, and such other matter as may be necessary to specify the duties and responsibilities of the parties. The agreement may be amended or changed or added to by mutual agreement of the parties in the same manner as that in which the original contract was entered. Such agreement may be terminated if one party passes or adopts an ordinance or resolution declaring its intention to carry out the agreement no longer. When an agreement is terminated, one party may pay the other for its share of the equipment or apparatus or the apparatus may be sold. Any money in the treasury shall be divided pro rata as it was paid into the treasury. No election shall be required to authorize the township board, board of county commissioners or governing body of any municipality to enter into such agreement, but the township board, board of county commissioners or governing body of a municipality shall have the power to decide whether to enter into such contract.

(c) The governing body of any joint fire department created pursuant to this section may:

(1) Reorganize itself as a consolidated fire district in the manner provided for the consolidation of fire districts pursuant to K.S.A. 12-3910 et seq., and amendments thereto; and

(2) *seek reimbursement of expenses incurred by a joint fire department by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto.*

Sec. 9. K.S.A. 2002 Supp. 80-1514a is hereby amended to read as follows: 80-1514a. Upon the creation of a fire district under the provisions of K.S.A. 80-1512 et seq., the governing body shall have the authority to:

(a) Enter contracts;

(b) acquire and dispose of real and personal property;

(c) acquire, construct, reconstruct, equip, operate, maintain and furnish buildings to house fire fighting equipment;

(d) acquire, operate and maintain fire fighting equipment;

(e) issue bonds as provided in this act;

(f) pay compensation and salaries to fire district employees;

(g) pay compensation to volunteer members of the fire district for fighting fires, responding to emergencies or attending meetings;

(h) exercise eminent domain;

(i) pay the operation and maintenance expenses of the fire district and other expenses legally incurred by the fire district;

(j) *seek reimbursement of expenses incurred by the fire district by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto; and*

(k) do all other things necessary to effectuate the purposes of this act.

Sec. 10. K.S.A. 2002 Supp. 80-1544 is hereby amended to read as follows: 80-1544. (a) The governing body of such fire district shall have full direction and control over the operation of such fire department and may select regular employees, provide for their compensation and furnish quarters for such employees if deemed desirable. The governing body also may provide for the organization of volunteer members of such department, to be compensated at a specified rate for fighting fires, responding to emergencies or attending meetings. In addition, the governing body may provide special clothing and equipment for such employees and volunteers, may insure such employees and volunteers against accidental death and injury in the performance of their duties, and may do all other things necessary or desirable to maintain and operate such department so as to furnish fire protection for the inhabitants of such district. In addition to the powers granted by this section, the governing body shall have any powers granted to a fire district under K.S.A. 80-1514a, and amendments thereto. Each of the members of the governing body may receive as compensation for services rendered in an amount determined by the governing body as provided by K.S.A. 80-207, and amendments thereto.

(b) *The governing body of such fire district shall have the authority to seek reimbursement of expenses incurred by such fire district by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto.*

(c) The auditing board for the fire district shall meet once each month on the date designated by the board to examine and audit all claims against the fire district and shall file their annual report with the county clerk for the approval of the board of county commissioners before January 31 of the succeeding year. No claim against any township fire district shall be paid until approved by the auditing board. All claims approved by the auditing board shall be recorded by the clerk of the fire district in a book to be kept for that purpose. Any township officer serving on a fire district auditing board shall receive for such services in attending to township fire district business an amount to be fixed by the governing body of the fire district as provided by K.S.A. 80-207, and amendments thereto.

Sec. 11. K.S.A. 2002 Supp. 80-1904 is hereby amended to read as follows: 80-1904. The township board shall have full direction and control over the operation of such township fire department. The governing body shall have the power to:

~~(a)~~ (a) Select regular employees, provide for their compensation, and furnish quarters for such employees and their families if deemed desirable;

~~(b)~~ (b) provide for the organization of volunteer members of such department and pay compensation to such members for fighting fires, responding to emergencies or attending meetings;

~~(c)~~ (c) provide special clothing and equipment for such employees and volunteers;

~~(d)~~ (d) insure such employees and volunteers against accidental death and injury in the performance of their duties;

(e) *seek reimbursement of expenses incurred by such township fire department by responding to a fire which has been determined to be arson from the the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto;* and

~~(f)~~ (f) do all other things necessary or desirable to maintain and operate such department so as to furnish fire protection for the inhabitants of such township.

Sec. 12. K.S.A. 2002 Supp. 80-1913 is hereby amended to read as follows: 80-1913. The township board may organize a fire company and prescribe rules of duty and the government thereof, and make all necessary appropriations therefor and for the maintenance and operation of its equipment from the general fund of the township and to compensate employees of the fire company. The board may pay compensation to volunteer members of the fire company for fighting fires, responding to emergencies or attending meetings. *The board may seek reimbursement of expenses incurred by a fire district by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto.*

Sec. 13. K.S.A. 2002 Supp. 80-1917 is hereby amended to read as follows: 80-1917. The township board shall have full direction and control over the operation of such township fire department. The board shall have the power to:

(a) Select regular employees, provide for their compensation, and furnish quarters for such employees and their families if deemed desirable;

(b) provide for the organization of volunteer members of such department and pay compensation to such members for fighting fires, responding to emergencies or attending meetings;

(c) provide special clothing and equipment for such employees and volunteers;

(d) insure such employees and volunteers against accidental death and injury in the performance of their duties;

(e) *seek reimbursement of expenses incurred by such township fire department by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto;* and

~~(f)~~ (f) do all other things necessary or desirable to maintain and operate such department so as to furnish fire protection for the inhabitants of such township.

Sec. 14. K.S.A. 2002 Supp. 80-1921 is hereby amended to read as follows: 80-1921. (a) The township board of any such township shall have full direction and control over the operation of such township fire department. The board shall have the power to:

(1) Provide for the organization of volunteer members of such department and pay compensation to such members for fighting fires, responding to emergencies or attending meetings;

(2) provide special clothing and equipment for such volunteers;

(3) insure such volunteers against accidental death and injury in the performance of their duties;

(4) *seek reimbursement of expenses incurred by such township fire department by responding to a fire which has been determined to be arson from the person who has been convicted of such crime under K.S.A. 21-3718 and 21-3719, and amendments thereto;* and

~~(5)~~ (5) do all other things necessary or desirable to maintain and operate such department so as to furnish fire protection to the inhabitants of such township.

(b) Such township board may levy an annual tax on all the taxable tangible property in such township for the purpose of paying the expenses of equipping, operating and maintaining such fire department. Any tax levy authorized by this section shall be in addition to the tax levy made to pay for no-fund warrants issued pursuant to K.S.A. 80-1920, and amendments thereto. Except as otherwise specifically provided in this act, the provisions of

K.S.A. 80-1906 and 80-1907, and amendments thereto, shall apply to townships adopting the provisions of this act.

(c) In addition to the tax levy authorized by subsection (b), the township board of Kickapoo, Tonganoxie, Easton, Fairmount, Sherman and Delaware townships located in Leavenworth county may levy an annual tax of not to exceed two mills on all the taxable tangible property in such township for the purpose of purchasing additional equipment for such fire department. ~~If a petition in opposition to the tax levy authorized herein, signed by not less than 5% of the qualified electors of such township is filed with the township board of such township, within 40 days after July 1, 1971, the tax levy shall not be made unless first approved as a question submitted at the next general election or at a special election called for the purpose of submitting the question. If such a petition is filed, the township board may cause to be placed on the ballot at the next general election the question of whether such tax shall be levied. If a majority of the votes cast and counted at such election are in favor of the resolution, such governing body may levy the tax authorized herein.~~

Sec. 15. K.S.A. 31-137 and K.S.A. 2002 Supp. 12-3915, 19-3601a, 19-3612e, 19-3616, 19-3620, 21-4603d, 80-1501, 80-1514a, 80-1544, 80-1904, 80-1913, 80-1917 and 80-1921 are hereby repealed.”;

And by renumbering the remaining section accordingly;

On page 1, in the title, in line 13, after the semicolon, by inserting “relating to fire districts.”; also in line 13, after “31-137” by inserting: and K.S.A. 2002 Supp. 12-3915, 19-3601a, 19-3612e, 19-3616, 19-3620, 21-4603d, 80-1501, 80-1514a, 80-1544, 80-1904, 80-1913, 80-1917 and 80-1921”; in line 14, by striking “section” and inserting “sections”, and **HB 2201** be passed as further amended.

**HB 2212** be amended by adoption of the committee amendments, be further amended by motion of Senator Jordan as amended by Senate Committee, on page 2, by striking all in lines 7 through 16;

By renumbering sections accordingly;

Also on page 2, in line 21, by striking “and 12-529 are” and inserting “is”;

In the title, in line 14, by striking “and 12-529”; in line 15, by striking “sections” and inserting “section”

Senator Jackson further amended the bill as amended by Senate Committee, on page 2, in line 2, after “or” by inserting “after January 1, 1962 and on or”; also in line 2, by striking “1987” and inserting “1963”, and **HB 2212** be passed as further amended.

**HB 2271** be further amended by motion of Senator Jackson as amended by Senate Committee, on page 4, following line 33, by inserting the following:

“Section 3. K.S.A. 2002 Supp. 21-3415 is hereby amended to read as follows: 21-3415.

(a) Aggravated battery against a law enforcement officer is: (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, committed against a uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer’s duty;

(2) an aggravated battery, as defined in subsection (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against a uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer’s duty; ~~or~~

(3) intentionally causing bodily harm to a uniformed or properly identified state, county or city law enforcement officer with a motor vehicle, while the officer is engaged in the performance of the officer’s duty; *or*

(4) *an aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto, committed against a state, county or city law enforcement officer or intentionally causing bodily harm to a state, county or city law enforcement officer with a motor vehicle, and the offender has actual knowledge that such officer is a law enforcement officer.*

(b) (1) Aggravated battery against a law enforcement officer as described in subsection (a)(1) ~~or~~, (a)(3) *or* (a)(4) is a severity level 3, person felony.

(2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level 6, person felony.

(3) A person convicted of aggravated battery against a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.

And by renumbering the remaining sections accordingly;

Also on page 4, in line 34, after "Supp." by inserting "21-3415 and";

On page 1, in the title, in line 12, by striking "and" and inserting a comma; also in line 12, before the semicolon by inserting "and criminal procedure"; also in line 12, by striking "relating to crimes against"; in line 13, by striking "property;"; in line 14, after "Supp." by inserting "21-3415 and";, **HB 2271** be passed as further amended.

#### CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Hensley moved the Senate concur in house amendments to **SB 205**.

**SB 205**, An act enacting the Kansas commemorative coin design concept act.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The Senate concurred.

#### FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a  $\frac{2}{3}$  constitutional majority, and **SB 12**, **SB 13**; **Sub SB 170**; **Sub SB 244**; **SB 261**, **SB 265**, **SB 268**; **HB 2027**, **HB 2037**, **HB 2150**, **HB 2179**, **HB 2201**, **HB 2212**, **HB 2271**, **HB 2426**, **HB 2448** were advanced to Final Action and roll call.

**SB 12**, An act concerning retirement and pensions; relating to the Kansas public employees retirement system; board of trustees; appointment of officers and employees thereby; amending K.S.A. 74-4908 and repealing the existing section.

On roll call, the vote was: Yeas 37, Nays 1, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Huelskamp.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**SB 13**, An act concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; benefits; purchase of service credit; amending K.S.A. 74-4902, 74-4918, 74-4963, 74-4963a, 74-4964 and 74-4964a and K.S.A. 2002 Supp. 20-2610a and repealing the existing sections.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**Sub SB 170**, An act concerning the Kansas withholding tax act; amending K.S.A. 2002 Supp. 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b and 79-32,100c and repealing the existing sections.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp,

Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The substitute bill passed.

**Sub SB 244**, An act concerning district coroners; amending K.S.A. 2002 Supp. 22a-215 and repealing the existing section.

On roll call, the vote was: Yeas 36, Nays 2, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Haley.

Absent or Not Voting: Brownlee, Feleciano.

The substitute bill passed.

**SB 261**, An act transferring the powers and duties of the information network of Kansas, Inc., to Kansas, Inc.; amending K.S.A. 74-8001 and repealing the existing section; also repealing K.S.A. 74-9303.

On roll call, the vote was: Yeas 35, Nays 3, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Clark, Gooch, Haley.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed.

**SB 265**, An act concerning state governmental ethics; concerning contracts involving state officers and employees; exemptions; amending K.S.A. 46-233 and repealing the existing section.

On roll call, the vote was: Yeas 37, Nays 0, Present and Passing 1, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Present and Passing: Schmidt.

Absent or Not Voting: Brownlee, Feleciano.

The substitute bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: As originally introduced **SB 265** appeared to contain provisions that might financially benefit a member of my family. Therefore, I recused myself from participating in consideration of this matter in committee and on the floor. The provision that created a potential conflict of interest for me has been amended out of the bill, but I nevertheless believe it proper for me to continue my recusal throughout the process. Accordingly, I pass.—DEREK SCHMIDT

**SB 268**, An act concerning the department of health and environment; relating to financing the civil registration and health statistics functions thereof; establishing the civil registration and health statistics fee fund; prescribing certain fees; establishing a birth defects information system; providing for administration by the secretary of health and environment and for collection of data; amending K.S.A. 65-2418 and repealing the existing section; also repealing K.S.A. 65-2418b and 65-2418d.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp,

Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2027**, An act concerning animals; relating to control of prairie dogs; duties and authorities of county commissioners; assessment of costs; prohibited acts; amending K.S.A. 80-304, 80-1201 and 80-1202 and repealing the existing sections; also repealing K.S.A. 80-1203, 80-1204, 80-1205, 80-1206, 80-1207 and 80-1208.

On roll call, the vote was: Yeas 37, Nays 1, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Clark.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2037**, An act concerning public utilities; relating to recovery of certain costs; certain employee compensation; concerning enhanced wireless 911 service; public safety grant fund; amending K.S.A. 12-5301, 12-5302 and 66-1232 and repealing the existing sections.

On roll call, the vote was: Yeas 26, Nays 12, Present and Passing 0, Absent or Not Voting 2.

Yeas: Barnett, Brungardt, Buhler, Bunten, Clark, Donovan, Downey, Gilstrap, Gooch, Goodwin, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Adkins, Allen, Barone, Corbin, Emler, Haley, Harrington, Hensley, Huelskamp, Schmidt, Steineger, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2150**, An act concerning townships; relating to traffic control devices; amending K.S.A. 8-2005 and 68-526 and repealing the existing sections.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2179**, An act repealing K.S.A. 25-1904, relating to members of the state board of education.

On roll call, the vote was: Yeas 25, Nays 13, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Corbin, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Hensley, Jackson, Lee, Morris, Oleen, Salmans, Schmidt, Schodorf, Steineger, Teichman, Umbarger.

Nays: Clark, Donovan, Harrington, Huelskamp, Jordan, Kerr, Lyon, O'Connor, Pugh, Taddiken, Tyson, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2201**, An act concerning certain crimes and unlawful activities; providing punishments and penalties therefore; crimes and punishment; relating to consumption of alcoholic beverages by minors; transferring the functions of the office of state fire marshal to the board of fire services; relating to fire districts; amending K.S.A. 22-3902, 22-3904, 31-133, 31-137 and 41-2611, 31-136, 31-137, 40-252, 65-506, 75-1506, 75-1510, 75-1515 and 75-1516 and repealing the existing sections and K.S.A. 2002 Supp. 22-3901 and 41-2708 and K.S.A. 2002 Supp. 21-3610 and 41-727 and K.S.A. 2002 Supp. 12-3915, 19-3601a, 19-

3612e, 19-3616, 19-3620, 21-4603d, 80-1501, 80-1514a, 80-1544, 80-1904, 80-1913, 80-1917 and 80-1921 and repealing the existing sections.

On roll call, the vote was: Yeas 29, Nays 9, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Goodwin, Harrington, Huelskamp, Jackson, Jordan, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Gilstrap, Gooch, Haley, Hensley, Kerr, Lee, Oleen, Steineger.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

#### EXPLANATION OF VOTE

I vote "no" on **HB 2201**.

The Senate Judiciary Committee has in the past been criticized for grouping too many important issues in a single bill. The committee chair has worked to accommodate those concerns.

Now, through a series of major floor amendments, **HB 2201** has been turned into nothing other than a judiciary omnibus bill that few if any understand.—DAVE KERR

**HB 2212**, An act concerning cities; relating to annexation amending K.S.A. 12-523 and repealing the existing section.

On roll call, the vote was: Yeas 22, Nays 12, Present and Passing 4, Absent or Not Voting 2.

Yeas: Clark, Corbin, Donovan, Emler, Gooch, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Lee, Lyon, O'Connor, Pugh, Salmans, Schmidt, Schodorf, Steineger, Tyson, Umbarger, Wagle.

Nays: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Gilstrap, Goodwin, Kerr, Oleen, Teichman, Vratil.

Present and Passing: Bunten, Downey, Morris, Taddiken.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2271**, An act concerning crimes, punishment and criminal procedure; relating to crimes against children; amending K.S.A. 21-3608 and 21-3704 and K.S.A. 2002 Supp. 21-3701 and 21-4704 and repealing the existing sections.

On roll call, the vote was: Yeas 36, Nays 2, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Gooch, Haley.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2426**, An act concerning capital improvements for state agencies; making and concerning appropriations for the fiscal years ending June 30, 2004, and June 30, 2005, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2002 Supp. 76-6b05 and repealing the existing section.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed, as amended.

**HB 2448**, An act concerning certain underground storage of hydrocarbons; amending K.S.A. 2002 Supp. 55-1, 115 and repealing the existing section.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Brownlee, Feleciano.

The bill passed.

#### MESSAGE FROM THE HOUSE

Announcing, the House nonconcurrs in Senate amendments to **HB 2005**, requests a conference and has appointed Representatives Edmonds, Huff and Larkin as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2071**, requests a conference and has appointed Representatives Barbieri-Lightner, Dreher and B. Sharp as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2035**, requests a conference and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2160**, requests a conference and has appointed Representatives Hayzlett, Faber and M. Long as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **Senate Substitute for HB 2208**, requests a conference and has appointed Representatives Wilk, Gordon and Burroughs as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **Senate Substitute for HB 2219**, requests a conference and has appointed Representatives Freeborn, Tafanelli and Flora as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2254**, requests a conference and has appointed Representatives Jim Morrison, P. Long and Kirk as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2297**, requests a conference and has appointed Representatives O'Neal, Patterson and Pauls as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 36** and has appointed Representatives O'Neal, Patterson and Pauls as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 223** and has appointed Representatives Neufeld, Shultz and Nichols as conferees on the part of the House.

#### INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Kerr introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1838—

A RESOLUTION disapproving Executive Reorganization Order No. 30, relating to the division of housing of the department of commerce and housing and the Kansas development finance authority.

*Be it resolved by the Senate of the State of Kansas:* That Executive Reorganization Order No. 30 is hereby disapproved in accordance with Section 6 of Article 1 of the Constitution of Kansas.

*Be it further resolved:* That the secretary of state shall transmit a copy of this resolution to the governor.

*Be it further resolved:* That the secretary of state shall cause this resolution to be published in the session laws to show permanently the foregoing disapproval of the Senate of Executive Reorganization Order No. 30.

#### **ORIGINAL MOTION**

On motion of Senator Corbin, the Senate acceded to the request of the House for a conference on **HB 2005**.

The President appointed Senators Corbin, Donovan and Lee as conferees on the part of the Senate.

On motion of Senator Umbarger, the Senate acceded to the request of the House for a conference on **HB 2009**.

The President appointed Senators Umbarger, Vratil and Downey as conferees on the part of the Senate.

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **HB 2035**.

The President appointed Senators Vratil, Pugh and Goodwin as conferees on the part of the Senate.

On motion of Senator Schmidt, the Senate acceded to the request of the House for a conference on **Sub HB 2036**.

The President appointed Senators Schmidt, Huelskamp and Downey as conferees on the part of the Senate.

On motion of Senator Teichman, the Senate acceded to the request of the House for a conference on **HB 2071**.

The President appointed Senators Teichman, Barnett and Feleciano as conferees on the part of the Senate.

On motion of Senator Tyson, the Senate acceded to the request of the House for a conference on **HB 2078**.

The President appointed Senators Tyson, Taddiken and Lee as conferees on the part of the Senate.

On motion of Senator Morris, the Senate acceded to the request of the House for a conference on **HB 2121**.

The President appointed Senators Morris, Adkins and Feleciano as conferees on the part of the Senate.

On motion of Senator Clark, the Senate acceded to the request of the House for a conference on **HB 2130**.

The President appointed Senators Clark, Emler and Barone as conferees on the part of the Senate.

On motion of Senator Donovan, the Senate acceded to the request of the House for a conference on **HB 2160**.

The President appointed Senators Donovan, Salmans and Gooch as conferees on the part of the Senate.

On motion of Senator Jordan, the Senate acceded to the request of the House for a conference on **S Sub for HB 2208**.

The President appointed Senators Brownlee, Jordan and Barone as conferees on the part of the Senate.

On motion of Senator Tyson, the Senate acceded to the request of the House for a conference on **S Sub for HB 2219**.

The President appointed Senators Tyson, Taddiken and Lee as conferees on the part of the Senate.

On motion of Senator Wagle, the Senate acceded to the request of the House for a conference on **HB 2234**.

The President appointed Senators Wagle, Barnett and Haley as conferees on the part of the Senate.

On motion of Senator Tyson, the Senate acceded to the request of the House for a conference on **HB 2247**.

The President appointed Senators Tyson, Taddiken and Lee as conferees on the part of the Senate.

On motion of Senator Morris, the Senate acceded to the request of the House for a conference on **HB 2254**.

The President appointed Senators Morris, Adkins and Feleciano as conferees on the part of the Senate.

On motion of Senator Allen, the Senate acceded to the request of the House for a conference on **HB 2288**.

The President appointed Senators Allen, O'Connor and Hensley as conferees on the part of the Senate.

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **HB 2297**.

The President appointed Senators Vratil, Schmidt and Goodwin as conferees on the part of the Senate.

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **S Sub for HB 2308**.

The President appointed Senators Vratil, Oleen and Goodwin as conferees on the part of the Senate.

On motion of Senator Brownlee, the Senate acceded to the request of the House for a conference on **HB 2332**.

The President appointed Senators Brownlee, Jordan and Barone as conferees on the part of the Senate.

On motion of Senator Morris, the Senate acceded to the request of the House for a conference on **HB 2369**.

The President appointed Senators Morris, Adkins and Feleciano as conferees on the part of the Senate.

On motion of Senator Clark, the Senate acceded to the request of the House for a conference on **HB 2374**.

The President appointed Senators Clark, Emler and Barone as conferees on the part of the Senate.

#### **CHANGE OF CONFERENCE**

The President announced the appointment of Senator Hensley as a member of the Conference Committee on **SB 82** to replace Senator Downey.

#### **CHANGE OF REFERENCE**

The President withdrew **SB 269** from the calendar under the heading of General Orders and rereferred the bill to the Committee on Commerce.

The President withdrew **SCR 1612** from the calendar under the heading of General Orders and rereferred the bill to the Committee on Education.

The President withdrew **S Sub for HB 2023** from the calendar under the heading of General Orders and rereferred the bill to the Committee on Elections and Local Government.

#### **MESSAGE FROM THE HOUSE**

Announcing, the House nonconcur in Senate amendments to **HB 2027**, requests a conference and has appointed Representatives D. Johnson, Light and Thimesch as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2037**, requests a conference and has appointed Representatives Holmes, Krehbiel and Kuether as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2150**, requests a conference and has appointed Representatives Hayzlett, Faber and M. Long as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2179**, requests a conference and has appointed Representatives Decker, Beggs and Reardon as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2201**, requests a conference and has appointed Representatives Vickrey, Ostmeyer and Toelkes as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2212** requests a conference and has appointed Representatives Vickrey, Ostmeyer and Toelkes as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2271**, requests a conference and has appointed Representatives Loyd, Owens and Ward as conferees on the part of the House.

The House nonconcurrs in Senate amendments to **HB 2426**, requests a conference and has appointed Representatives Neufeld, Pottorff and Nichols as conferees on the part of the House.

#### **ORIGINAL MOTION**

On motion of Senator Tyson, the Senate acceded to the request of the House for a conference on **HB 2027**.

The President appointed Senators Tyson, Taddiken and Lee as conferees on the part of the Senate.

On motion of Senator Clark, the Senate acceded to the request of the House for a conference on **HB 2037**.

The President appointed Senators Clark, Brownlee and Barone as conferees on the part of the Senate.

On motion of Senator Donovan the Senate acceded to the request of the House for a conference on **HB 2150**.

The President appointed Senators Donovan, Salmans and Gooch as conferees on the part of the Senate.

On motion of Senator Umbarger the Senate acceded to the request of the House for a conference on **HB 2179**.

The President appointed Senators Umbarger, Vratil and Downey as conferees on the part of the Senate.

On motion of Senator Allen, the Senate acceded to the request of the House for a conference on **HB 2201**.

The President appointed Senators Allen, O'Connor and Gilstrap as conferees on the part of the Senate.

On motion of Senator Allen, the Senate acceded to the request of the House for a conference on **HB 2212**.

The President appointed Senators Allen, O'Connor and Hensley as conferees on the part of the Senate.

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **HB 2271**.

The President appointed Senators Vratil, Pugh and Goodwin as conferees on the part of the Senate.

On motion of Senator Morris the Senate acceded to the request of the House for a conference on **HB 2426**.

The President appointed Senators Morris, Adkins and Feleciano as conferees on the part of the Senate.

On motion of Senator Jackson the Senate adjourned until 10:00 a.m., Wednesday, April 2, 2003.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

