

Journal of the Senate

TWENTY-THIRD DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, February 12, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.
The roll was called with forty senators present.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

One hundred and ninety-five years ago Abraham Lincoln was born in poverty. Prior to his first election he experienced several deep disappointments.

His mother died when he was nine years old. He lost his first political campaign. He failed in a business venture. His fiancée died. He also experienced several tragedies after he became president.

One son died at the age of three and another at the age of eleven. He finally won an election to the Illinois General Assembly in 1834 at the age of 25.

He was always opposed to slavery. He wrote in 1864 "If slavery is not wrong, nothing is wrong." However, his piecemeal plan to free the slaves was opposed by abolitionists. And he also made some remarks about the black race in which he expressed his opinion that the white race was superior.

Like all of us, O God, Lincoln had his faults, but many believe today that if he had not been president when he was, the freeing of the slaves would have been long delayed, and the union may not have survived.

Therefore, today he is considered to be one of the greatest, if not the greatest, president in the history of the United States.

So we thank You, O God, for all Lincoln's achievements, because You have said through your apostle Paul, "...there is no authority except that which God has established. The authorities that exist have been established by God." (Romans 13:1)

I pray this in the Name of Christ,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 518, An act concerning certain contracts; relating to public construction contracts; amending K.S.A. 75-6401, 75-6402 and 75-6403 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 519, An act concerning state finance; concerning repeal of certain transfers to local units of government and ending balance requirement; amending K.S.A. 65-163j, 65-3306, 65-3327 and 68-581 and K.S.A. 2003 Supp. 75-3721, 75-6702, 79-3425, 79-34,104 and 79-34,126 and repealing the existing sections; also repealing K.S.A. 19-2694, 68-581a, 79-2960, 79-2961, 79-2962, 79-2965, 79-2966, 79-2967, 79-3425f and 79-3425g and K.S.A. 2003 Supp. 79-2959, 79-2964, 79-3425c, 79-3425i and 79-34,147, by Committee on Ways and Means.

SB 520, An act concerning the Kansas downtown redevelopment act; relating to tax benefits for improvements made to real property, by Committee on Commerce.

SB 521, An act concerning property taxation; relating to exemptions; business aircraft; amending K.S.A. 79-201k and repealing the existing section, by Committee on Assessment and Taxation.

SB 522, An act relating to natural gas public utilities; concerning transportation customers; requirements, by Committee on Utilities.

SB 523, An act concerning taxing subdivisions of the state; relating to budgets thereof; amending K.S.A. 79-2929a and repealing the existing section, by Committee on Federal and State Affairs.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Assessment and Taxation: **SB 503, SB 507, SB 514**.

Commerce: **SB 504**.

Education: **SB 512**.

Elections and Local Government: **SB 502**.

Financial Institutions & Insurance: **SB 508, SB 509; HCR 5027**.

Judiciary: **SB 505, SB 510, SB 513, SB 516, SB 517**.

Public Health and Welfare: **SB 511**.

Transportation: **SB 501, SB 506**.

Ways and Means: **SB 515**.

CHANGE OF REFERENCE

The President withdrew **SB 445, SB 517** from the Committee on Judiciary, and referred the bills to the Committee on Commerce.

COMMUNICATIONS FROM STATE OFFICERS

KANSAS DEPARTMENT ON AGING

February 9, 2004

Pamela Johnson-Betts, Secretary of Aging, submitted the SFY 2003 Annual Report for July 1, 2002 through June 30, 2003.

The 2003 Client Assessment Referral and Evaluation (CARE) Annual Report was also submitted by Pamela Johnson-Betts. The CARE Annual Report provides specific program data, not otherwise addressed in the 2003 Kansas Department on Aging's Annual Report.

The President announced the above reports are on file in the office of the Secretary of the Senate and is available for review at any time.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2136, HB 2347; Substitute HB 2493**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2136, HB 2347; Substitute HB 2493 were thereupon introduced and read by title.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Brungardt moved the Senate concur in house amendments to **SB 254**.

SB 254, An act concerning certain nuisances; restricting the use of pyrotechnics and pyrotechnic devices and materials and providing remedies for violations; 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. 2003 Supp. 22-3901 and 41-2708 and repealing the existing sections.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The Senate concurred.

CONFIRMATION OF APPOINTMENTS

In accordance with Senate Rule 56, the following appointments, submitted by the Governor to the senate for confirmation, was considered.

Senator Oleen moved the following appointment be confirmed as recommended by the Standing Senate Committee:

On the appointment to the:

Adjutant General:

Colonel Tod Bunting, serves at the pleasure of the Governor.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The appointment was confirmed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 256, An act concerning crime victims; relating to compensation for residents involving violent crimes committed outside the United States; amending K.S.A. 74-7301 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 3, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Huelskamp, Pugh, Tyson.

The bill passed.

SB 305, An act concerning alcoholic beverages; relating to the regulation and taxation thereof; providing for the use of revenue derived from taxes imposed thereon; amending K.S.A. 41-208, 41-301, 41-302, 41-303, 41-710, 41-712, 41-714 and 41-2704 and K.S.A. 2003 Supp. 19-101a, 41-347, 41-501 and 41-719 and repealing the existing sections; also repealing K.S.A. 41-1111, 41-1112, 41-1114 through 41-1121, was considered on final action.

On roll call, the vote was: Yeas 16, Nays 24, Present and Passing 0, Absent or Not Voting 0.

Yeas: Barnett, Betts, Brownlee, Bunten, Clark, Donovan, Helgerson, Huelskamp, Jackson, Journey, Lyon, Pugh, Salmans, Tyson, Vratil, Wagle.

Nays: Adkins, Allen, Barone, Brungardt, Buhler, Corbin, Downey, Emler, Gilstrap, Goodwin, Haley, Hensley, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger.

A constitutional majority having failed to vote in favor of the bill, **SB 305** did not pass.

EXPLANATION OF VOTE

MR. PRESIDENT: When the rights and the freedoms of adult Kansas consumers are not protected and ensured each and every day, seven days a week, three-hundred and sixty five days of each year...Kansas is *not* a free state; especially when neighboring states accord *their* citizenry the freedoms denied to our own.—DAVID HALEY

SB 334, An act concerning land; relating to agritourism, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 2, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Haley, Hensley.

The bill passed, as amended.

SB 365. An act concerning legislative post audit; relating to persons subject to audits; amending K.S.A. 46-1114 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Umbarger, Betts, Bunten, Corbin, Donovan, Downey, Emler, Helgerson, Hensley, Journey, Lee, Morris, Oleen, Schodorf, Teichman, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1812—

A RESOLUTION congratulating and commending the Kansas recipients of the 2004 Milken Family Foundation Educator Awards.

WHEREAS, Jesse Bernal, a Spanish teacher at Garden City High School, and Charles B. Jenney, a science teacher at Robinson Middle School, Wichita, have been selected as the 2004 Kansas recipients of the Milken Family Foundation Educator Awards. Each will receive an unrestricted award of \$25,000 plus recognition by the recipient's community, school and peers; and

WHEREAS, The Milken Educator Awards program was established by the Milken Family Foundation in 1985. The first Awards were presented in 1987; and

WHEREAS, The Milken Family Foundation National Educator Awards program provides public recognition and financial rewards to elementary and secondary school teachers, principals and other education professionals who are furthering excellence in education. By honoring outstanding educators, the program strives to attract, retain and motivate talented people to the challenge and adventure of teaching; and

WHEREAS, This year a total of \$2.5 million will be given; the foundation has presented \$46.9 million in awards since its inception with \$1,150,000 being awarded to Kansans; and

WHEREAS, Jesse Bernal uses music, contests, drills, cultural events and cooking sessions to help each student become more fluent in Spanish. He requires each student to acquire mastery of the language both in oral and written forms. Last year 100 percent of his students passed the AP Spanish test and two of his students received second and third place in the national Spanish examination; and

WHEREAS, Charles B. Jenney's classes in science include reading, writing, music and problem solving. His project "Travels to an Unexplored Planet" has students imagine they are part of a scientific investigation team that must travel to a different planet to solve different problems: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Jesse Bernal and Charles B. Jenney upon their selection as the 2004 Kansas recipients of the Milken Family Foundation Education Awards; and

Be it further resolved: That the Secretary of the Senate provide five enrolled copies of this resolution to Senator Umbarger.

On emergency motion of Senator Umbarger **SR 1812** was adopted unanimously.

Jesse Bernal and Charles B. Jenney were guests of the Senate and were recognized with a standing ovation.

Senators Umbarger, Bunten, Corbin, Downey, Emler, Hensley, Journey, Lee, Oleen, Schodorf, Teichman and Vratil introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1813—

A RESOLUTION congratulating and commending the 2004 Horizon Award Program educators.

WHEREAS, Twenty-eight beginning educators from across the State have been named as Kansas Horizon Award educators; and

WHEREAS, The Kansas Horizon Award program, sponsored by the Kansas State Department of Education, identifies and recognizes representatives of excellent teaching in the elementary and secondary classrooms of the state. The mission of the Kansas Horizon Award program is to recognize exemplary first-year teachers who perform in a way that distinguishes them as outstanding; and

WHEREAS, The Horizon Award program, currently in its second year, allows all school districts in the state an opportunity to nominate one elementary and one secondary teacher for the award. To be eligible for a Horizon Award, teachers must have successfully completed their first year of teaching and have performed in such a way as to distinguish themselves as outstanding. The Horizon Award program is a regional competition with four regions corresponding to the state's U.S. Congressional districts. Four elementary and four secondary classroom teachers may be selected for the award from each district; and

WHEREAS, This year's recipients are:

Region 1: Bianca Alvarez, Northwest Elementary School, USD 443 Dodge City; Erica Bammes, Natoma Elementary School, USD 399 Paradise; Krystal Breese, Southeast of Saline Elementary School, USD 306 Southeast of Saline; Barbara Browne, Junction City Middle School, USD 475 Geary County; Lawrence Chaney, McPherson High School, USD 418 McPherson; Sheila Howard, Dodge City Middle School, USD 443 Dodge City; Adam North, Stockton High School, USD 271 Stockton; Allison Shoop Rothwell, Westwood Elementary School, USD 475 Geary County;

Region 2: Dee Anne Anderson, Manhattan High School, USD 383 Manhattan; Jeffrey Armstrong, Fort Scott High School, USD 234 Fort Scott; Jerrod Bohn, Washburn Rural High School, USD 437 Auburn-Washburn; Kristen L'Ecuyer, Jay Shideler Elementary School, USD 437 Auburn-Washburn; Melissa Reves, Onaga Grade School, USD 322 Onaga-Havensville-Wheaton; Jessica Starr, Pleasant Hill Elementary School, USD 345 Seaman; Kathryn Thompson, Atchison Middle School, USD 409 Atchison; Amber Wheeler, Royster Middle School, USD 413 Chanute;

Region 3: Ashley Becker, Regency Place Elementary School, USD 233 Olathe; Jim Brockway, Gardner Elementary School, USD 231 Gardner-Edgerton; Amanda Gibb, Overland Trail Elementary School, USD 229 Blue Valley; Kelsey Kokoruda, Mill Valley High School, USD 232 DeSoto; Jason Peres, Blue Valley High School, USD 229 Blue Valley; Amy Reed, Olathe North High School, USD 233 Olathe; Marcia Riggins, Sunflower Elementary School, USD 497 Lawrence; Erin Stewart, Central Junior High School, USD 497 Lawrence; and

Region 4: Julie Baalman, Amelia Earhart Elementary School, USD 265 Goddard; Elaine Gruenbacher, Clearwater High School, USD 264 Clearwater; Tim Hayden, Meadowlark Elementary School, USD 385 Andover; Katie Parks, Eisenhower Middle School, USD 265 Goddard: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend the 2004 Kansas Horizon Award Program educators for outstanding performance in their chosen career; and

Be it further resolved: That the Secretary of the Senate provide 30 enrolled copies of this resolution to Senator Umbarger.

On emergency motion of Senator Umbarger **SR 1813** was adopted unanimously.

Senators Oleen, Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1814—

A RESOLUTION congratulating and commending the 2003 Kansas National Board Certified teachers.

WHEREAS, Forty of Kansas' finest educators have satisfied the highest professional qualifications of the National Board for Professional Teaching Standards to be designed as National Board Certified Teachers. They will be recognized as such at a program on February 12; and

WHEREAS, The 2003 Kansas National Board Certified Teachers and their specialties are: Jennifer Anderson, Junction City Sr. High School, Geary County USD 475, Early Adolescence through Young Adulthood Career and Technical Education; Amy Berg, Baldwin Elementary School, Baldwin City USD 348, Early Childhood/Generalist; Scott Cinnamon, Blue River Elementary School, Blue Valley USD 229, Early Childhood/Generalist; Barbara Crago, Indian Creek Elementary School, Olathe USD 233, Early Childhood/Generalist; Angela Diskin, Maize Sr. High School, Maize USD 266, Adolescence and Young Adulthood/Science; Stanley Dean Dreiling, Hays High School, Hays USD 489, Early Adolescence through Young Adulthood/Career and Technical Education; Ann Eastwood, Northwest High School, Wichita USD 259, Adolescence and Young Adulthood/Social Studies-History; Clifford French, Junction City Sr. High School, Geary County USD 475, Adolescence and Young Adulthood/Mathematics; Kenneth Garwick, Marlatt Elementary School, Manhattan USD 383, Middle Childhood/Generalist; Christopher George, Manhattan High School, Manhattan USD 383, Adolescence and Young Adulthood/Science; Lori Goodson, Wamego Middle School, Wamego USD 320, Early Adolescence/English Language Arts; Mary Harrison, Northwest High School, Wichita USD 259, Adolescence and Young Adulthood/English Language Arts; Ronda Hassig, Harmony Middle School, Blue Valley USD 229, Early Childhood through Young Adulthood/Library Media; Jamie Heimberger, Silver Lake Jr.-Sr. High School, Silver Lake USD 372, Early Adolescence through Young Adulthood/Career and Technical Education; JoAnn Hiatt, Olathe East High School, Olathe USD 233, Adolescence and Young Adulthood/Mathematics; Teresa Hogan, Overland Trail Middle School, Blue Valley USD 229, Early Adolescence/Mathematics; Barbara Johnstone, Junction City Sr. High School, Geary County USD 475, Adolescence and Young Adulthood/Social Studies-History; Eric Kessler, Blue Valley North High School, Blue Valley USD 229, Adolescence and Young Adulthood/Science; Patrick Lamb, Manhattan High School, Manhattan USD 383, Adolescence and Young Adulthood/Science, Natalie Lindsay, Mission Trail Elementary School, Blue Valley USD 229, Early Childhood through Young Adulthood/Library Media, Karen Mahoney Tritt, Westridge Middle School, Shawnee Mission USD 512, Early Adolescence through Young adulthood/World Languages Other than English; Cheryl Marcoux, Wamego Middle School, Wamego USD 320, Early Adolescence/Mathematics; Kristine Marshall, Silver Lake Elementary School, Silver Lake USD 372 Middle Childhood/Generalist; Sherri Martinie, Wamego Middle School, Wamego USD 320, Early Adolescence/Mathematics; Ethel Reimer, Meade Elementary School, Meade USD 226, Middle Childhood/Generalist; Kimberly Ring, Fort Scott Middle School, Fort Scott USD 234, Middle Childhood/Generalist; Desiree Rios, Blue River Elementary School, Blue Valley USD 229, Early Childhood/Generalist; Lee Schulte, Jefferson County North Elementary-Middle School, Jefferson County North USD 339, Early Adolescence/Mathematics; Ann Schuster, Blue River Elementary School, Blue Valley USD 229, Early Childhood through Young Adulthood/Library Media; Jerrilee Shuman, Oakley Elementary School, Oakley USD 274, Early and Middle Childhood/Music; Julie Stadtlander, Fort Riley Middle School, Geary County USD 475, Early Childhood through Young Adulthood/Exceptional Needs Specialist; Trenton Stern, Blue Valley West High School, Blue Valley USD 229, Adolescence and Young Adulthood/English Language Arts; Rebecca Stith, Blue Valley West High School, Blue Valley USD 229, Early Childhood through Young Adulthood/Library Media; Andria Stokes, Prairie Star Elementary School, Blue Valley USD 229, Early Childhood/Generalist; Janet Stramel, Wamego Middle School, Wamego USD 320, Early Adolescence/Mathematics; Ryan Douglas Turner, Oak Hill Elementary School, Blue Valley USD 229, Middle Childhood/Generalist; Lori Vande Velde, Silver Lake Elementary School, Silver Lake USD 372, Middle Childhood/Generalist; Lucy Ann Walters, Erie Elementary School, Erie-St. Paul

USD 101 Middle Childhood/Generalist; Rhonda Wiens, Meade Elementary School, Meade USD 226, Early Childhood/Generalist; and Mark Wittman, Kathryn O'Loughlin McCarthy Elementary School, Hays USD 489, Early Childhood/Generalist; and

WHEREAS, National Board Certification, a voluntary process established by the National Board for Professional Teaching Standards, is a symbol of professional teaching excellence. It is achieved through a performance-based assessment process that measures a teacher's practice against high and rigorous advanced standards to demonstrate accomplished practice. Through a series of assessments teachers demonstrate their subject matter knowledge, provide evidence that they know how to teach their subjects to students most effectively, and demonstrate their ability to manage and measure student learning; and

WHEREAS, the National Board for Professional Teaching Standards is an independent, nonprofit, nonpartisan and nongovernment organization. Its mission is to advance the quality of teaching and learning by: Maintaining high and rigorous standards for what accomplished teachers should know and be able to do; providing a national voluntary system certifying teachers who meet these standards; and advocating related education reforms to integrate National Board Certification in American education and to capitalize on the expertise of National Board Certified Teachers: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend each of these outstanding educators who have attained the status of National Board Certified teachers; and

Be it further resolved: That the Secretary of the Senate provide 40 enrolled copies of this resolution to Senator Oleen.

On emergency motion of Senator Oleen **SR 1814** was adopted unanimously.

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **SB 372** be passed.

Also, **SB 403** be amended on page 10, by striking all in lines 41 through 43;

On page 11, by striking all in lines 1 through 29;

And by renumbering sections accordingly;

On page 21, in line 24, by striking "72-6431,."; in line 25, by striking "72-6431c,.";

On page 1, in the title, in line 12, by striking "72-6431,."; in line 15, by striking "72-6431c,."; and the bill be passed as amended.

Committee on **Commerce** recommends **SB 417** be amended on page 3, in line 12, by striking "70%" and inserting "50%"; and the bill be passed as amended.

Committee on **Education** recommends **Substitute for HB 2145** be passed.

Also, **HB 2008** be amended on page 1, by striking all in lines 14 through 43;

On page 2, by striking all in lines 1 through 5 and inserting the following:

"Section 1. (a) Any individual who is enrolled or has been accepted for admission at a postsecondary educational institution as a postsecondary student shall be deemed to be a resident of Kansas for the purpose of tuition and fees for attendance at such postsecondary educational institution.

(b) As used in this section:

(1) "Postsecondary educational institution" has the meaning ascribed thereto in K.S.A. 74-3201b, and amendments thereto; and

(2) "individual" means a person who (A) has attended an accredited Kansas high school for three or more years, (B) has either graduated from an accredited Kansas high school or has earned a general educational development (GED) certificate issued within Kansas, regardless of whether the person is or is not a citizen of the United States of America; and (C) in the case of a person without lawful immigration status, has filed with the postsecondary educational institution an affidavit stating that the person has filed an application to legalize such person's immigration status, or will file such an application as soon as such person is eligible to do so or, in the case of a person with a legal, nonpermanent immigration status, has filed with the postsecondary educational institution an affidavit stating that such person has filed an application to begin the process for citizenship of the United States or will file such application as soon as such person is eligible to do so.

(c) The provisions of this section shall not apply to any individual who:

(1) Has a valid student visa; or

(2) at the time of enrollment, is eligible to enroll in a public postsecondary educational institution located in another state upon payment of fees and tuition required of residents of such state.”;

By renumbering the remaining section accordingly;

On page 1, in the title, by striking all in lines 9 through 11 and inserting the following: “AN ACT concerning public postsecondary education; concerning certain persons deemed to be residents for purposes of tuition and other fees at postsecondary educational institutions.”; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 379** be passed. Committee on **Natural Resources** recommends **SB 363, SB 416** be passed.

Also, **SB 364** be amended on page 1, by striking all in lines 16 through 43;

On page 2, by striking all in lines 1 through 19;

By renumbering the remaining sections accordingly;

Also on page 2, in line 20, by striking “Sec.” and inserting “Section”;

On page 1, in the title, in line 9, by striking “authorizing issuance of certain permits.”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 257**,

Be amended as recommended by the Senate Committee on Ways and Means as reported in the Journal of the Senate on March 26, 2003, and the bill be further amended:

On page 1, in line 15, by striking “2002” and inserting “2003”; by striking all in lines 37 through 40;

On page 3, in line 2, by striking “2002” and inserting “2003”;

On page 1, in the title, in line 11, by striking “2002” and inserting “2003”; and the bill be passed as amended.

REPORT ON ENGROSSED BILLS

SB 305, SB 334, SB 365 reported correctly engrossed February 12, 2004.

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 Morris in the chair.

On motion of Senator Morris the following report was adopted:

Recommended **SB 418** be passed.

The Committee considered **SB 374**.

Senator Pugh moved to amend the bill on page 1, in line 12, preceding “Section”, by inserting “New”; in lines 15, 21, 28 and 42, preceding “Sec.”, by inserting “New”;

On page 2, preceding line 9, by inserting new material to read as follows:

“Sec. 6. K.S.A. 72-53,108 is hereby amended to read as follows: 72-53,108. ~~(a)~~ The board of education of any school district is hereby authorized to *shall not* offer employment to ~~and~~ or employ lobbyists and other persons for lobbying ~~and to~~ or pay any expenses incurred in connection therewith from the general fund of the school district.

~~(b)~~ All expenditures heretofore made for the payment of expenses incurred by any school district in connection with or for the purpose of lobbying or the employment of lobbyists are hereby validated and approved in all respects, together with all proceedings authorizing such expenditures, and such expenditures and proceedings shall be valid as though they had been duly and legally authorized originally.

~~(c)~~ *(b)* As used in this section, the terms “lobbyist” and “lobbying” shall have the meanings respectively ascribed thereto in article 2 of chapter 46 of Kansas Statutes Annotated.

Sec. 7. K.S.A. 72-53,108 is hereby repealed.”;

By renumbering the remaining section accordingly;

In the title, by striking all following “ACT” and inserting “concerning boards of education; relating to the powers and duties thereof; amending K.S.A. 72-53,108 and repealing the existing section.”

Upon the showing of five hands a roll call vote was requested.

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

Yeas: Brownlee, Clark, Donovan, Huelskamp, Jackson, Jordan, Journey, Lyon, O'Connor, Pugh, Salmans, Taddiken, Tyson, Wagle.

Nays: Adkins, Allen, Barnett, Barone, Betts, Brungardt, Buhler, Bunten, Corbin, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Lee, Morris, Oleen, Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Present and Passing: Kerr.

The motion failed and the amendment was rejected.

The motion to recommend **SB 374** favorably for passage failed, and the bill remains on the calender under the heading of General Orders.

EXPLANATION OF VOTE

MR. CHAIRMAN: As a state, Kansas ranks an amazingly poor 43rd in the entire nation in percentage of total education spending that actually makes it into the classroom. This amendment would change that ranking and direct more funding into teachers' salaries and classroom spending, not overhead. Those who really support more funding for actual teaching of our children, not administrative overhead, should support this amendment.—TIM HUELSKAMP

Senators Brownlee, Clark, O'Connor and Tyson request the record to show they concur with the "Explanation of Vote" offered by Senator Huelskamp on Senator Pugh's amendment to **SB 374**.

SB 325 be amended by motion of Senator Corbin on page 6, in line 2, after "(s)" by inserting "on and after July 1, 2004."

The following amendments offered to **SB 325** were rejected:

Senator Pugh moved to amend the bill on page 2, in line 9, after "2001" by inserting ". 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"; in line 30, by striking all after "utilities, "; by striking all in lines 31 through 36; in line 37, by striking all before "but";

On page 6, in line 17, by striking "calling service"; in line 18, by striking all before the semicolon and inserting "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."; after line 26, by inserting the following:

"Sec. 2. K.S.A. 2003 Supp. 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.

Sec. 3. K.S.A. 2003 Supp. 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 location determined by the sourcing rules as provided in K.S.A. 2003 Supp. 79-3670, 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 K.S.A. 2003 Supp. 79-3670, 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 *place of business of the retailer*. 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. 79-3606, 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 exceed \$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. 4. K.S.A. 2003 Supp. 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. 5. K.S.A. 2003 Supp. 79-3602 is hereby amended to read as follows: 79-3602. 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. 84-1-101 *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 GSP 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 soft-

ware 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.

—(11) (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 K.S.A. 2003 Supp. 79-3670 through 79-3673, 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.~~
 - (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.

Sec. 6. K.S.A. 2003 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, manufacturer 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 mobility enhancing equipment *orthopedic appliances* prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry. For the purposes of this subsection: (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, *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;*

(s) except as provided in K.S.A. 2003 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. 2003 Supp. 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. 2003 Supp. 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. 2003 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. 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. 2003 Supp. 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 ~~seller~~ vendor unless the ~~seller~~ vendor 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 seller~~ vendor from collecting and remitting tax ~~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 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.~~

(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 seller~~ vendor 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 ~~seller~~ vendor 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.”;

And by renumbering sections accordingly;

Also on page 6, in line 27, by striking “79-3603 and 79-3603c” and inserting “12-189a, 12-191, 75-5151, 79-3602, 79-3603, 79-3603c, 79-3606, 79-3607, 79-3608, 79-3650, 79-3651, 79-3666, 79-3667, 79-3668, 79-3669, 79-3670, 79-3671, 79-3672, 79-3673, 79-3674, 79-3675, 79-3676, 79-3677, 79-3678, 79-3679, 79-3680, 79-3681 and 79-3682”;

On page 1, in the title, in line 10, after the semicolon, by inserting “repealing streamlined sales tax implementation provisions;”; also in line 10, by striking “79-3603” and inserting “12-189a, 12-191, 75-5151, 79-3602, 79-3603, 79-3606, 79-3607, 79-3608, 79-3650 and 79-3651”; in line 11, by striking “section” and inserting “sections”; also in line 11, after “79-3603c” by inserting “, 79-3666, 79-3667, 79-3668, 79-3669, 79-3670, 79-3671, 79-3672, 79-3673, 79-3674, 79-3675, 79-3676, 79-3677, 79-3678, 79-3679, 79-3680, 79-3681 and 79-3682”

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 14, Nays 26, Present and Passing 0, Absent or Not Voting 0.

Yeas: Brownlee, Clark, Huelskamp, Jackson, Jordan, Journey, Lyon, O'Connor, Pugh, Salmans, Schmidt, Tyson, Umbarger, Wagle.

Nays: Adkins, Allen, Barnett, Barone, Betts, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Kerr, Lee, Morris, Oleen, Schodorf, Steineger, Taddiken, Teichman, Vratil.

The motion failed and the amendment was rejected.

Senator Taddiken moved to amend the bill on page 6, after line 26, by inserting the following:

“New Sec. 2. Notwithstanding any provision of law to the contrary, for the purpose of the Kansas retailers' sales tax act and the Kansas compensating tax act, if the seller's place of business is located in this state and had annual gross receipts from retail sales of less than \$5,000,000 during the previous calendar year as reported to the department of revenue on such seller's corresponding sales tax returns, all retail sales made by such seller shall be considered to have been consummated at the place of business of such seller whether the product is received by the purchaser at the seller's place of business or shipped or delivered elsewhere.”;

And by renumbering sections accordingly;

On page 1, in the title, in line 10, after the semicolon, by inserting "sourcing of certain sales;"

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 15, Nays 24, Present and Passing 0, Absent or Not Voting 1.

Yeas: Clark, Gilstrap, Huelskamp, Jackson, Jordan, Journey, Lyon, O'Connor, Pugh, Salmans, Schmidt, Taddiken, Tyson, Umbarger, Wagle.

Nays: Adkins, Allen, Barnett, Barone, Betts, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Emler, Goodwin, Haley, Helgerson, Hensley, Kerr, Lee, Morris, Oleen, Schodorf, Steineger, Teichman, Vratil.

Absent or Not Voting: Brownlee.

The motion failed and the amendment was rejected.

Senator Tyson moved to amend the bill on page 6, after line 26, by inserting the following:

"New Sec. 2. Notwithstanding any provision of law to the contrary, for the purpose of the Kansas retailers' sales tax act and the Kansas compensating tax act, if the seller had annual gross receipts from retail sales in Kansas of less than \$200,000 during the previous calendar year as reported to the department of revenue on such seller's corresponding sales tax returns, if such seller's business is located in Kansas, all retail sales made by such seller shall be considered to have been consummated at the place of business of such seller whether the product is received by the purchaser at the seller's place of business or shipped or delivered elsewhere; and, if such seller's place of business is located outside of Kansas, such seller shall not be required to collect and remit sales or use tax greater than a seller located in Kansas in the same taxing jurisdiction as such seller's purchaser is located.";

And by renumbering sections accordingly;

On page 1, in the title, in line 10, after the semicolon, by inserting "sourcing of certain sales;"

Upon the showing of five hands a roll call vote was requested.

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

Yeas: Barone, Betts, Clark, Emler, Gilstrap, Haley, Huelskamp, Jackson, Jordan, Journey, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Taddiken, Tyson, Wagle.

Nays: Adkins, Allen, Barnett, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Goodwin, Helgerson, Hensley, Kerr, Lee, Oleen, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Absent or Not Voting: Brownlee.

The motion failed and the amendment was rejected.

EXPLANATION OF VOTE

I vote no on this amendment. Passage of this amendment would have applied only to Kansas businesses and it carries with it a substantial risk of a constitutional challenge under the interstate commerce clause. Once there is a Streamlined Governing Board appointed, there would be the opportunity for a challenge to be lodged against the state. Kansas' commitment to the streamlined sales tax effort is critical in the argument to convince Congress to pass a federal law. States are losing millions upon millions of sales tax dollars through internet and catalog sales.

We must always be mindful of our small businesses. They are very important to our State's economy and we do not want to overburden them with collecting the State's sales tax. Yet, we must also plug the leak in our sales tax system.—DAVE KERR

Senator Taddiken moved to amend the bill on page 6, in line 18, by striking all before the semicolon and by inserting ". As used in this subsection "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"; after line 26, by inserting the following:

“Sec. 2. K.S.A. 2003 Supp. 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: (1) *Except as provided in section 11 and amendments thereto, commencing on the effective date of this act and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes, at the place of business of the retailer. During such time period, 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; and retail sales involving the furnishing of services taxable under subsection (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;* (2) *on and after the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes, at the location determined by the sourcing rules as provided in K.S.A. 2003 Supp. 79-3670, 79-3671, 79-3672 and 79-3673, 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 K.S.A. 2003 Supp. 79-3670, 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. 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. 3. K.S.A. 2003 Supp. 79-3667 is hereby amended to read as follows: 79-3667. On and after the databases are developed pursuant to subsections (a), (b) and (c) of K.S.A. 2003 Supp. 79-3668 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 K.S.A. 2003 Supp. 79-3668 and amendments thereto. *Except as provided in section 11 and amendments thereto, the provisions of this section shall not be effective for the period commencing on the effective date of this act, and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes.*

Sec. 4. K.S.A. 2003 Supp. 79-3668 is hereby amended to read as follows: 79-3668. (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.

(f) *Except as provided in section 11 and amendments thereto, the provisions of this section shall not be effective for the period commencing on the effective date of this act, and ending on the date that legislation enacted by the United States Congress becomes effective*

that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes.

Sec. 5. K.S.A. 2003 Supp. 79-3669 is hereby amended to read as follows: 79-3669. (a) The retail sale of a product shall be sourced in accordance with K.S.A. 2003 Supp. 79-3670 and amendments thereto. The provisions of K.S.A. 2003 Supp. 79-3670 and amendments thereto apply regardless of the characterization of a product as tangible personal property, a digital good or a service. The provisions of K.S.A. 2003 Supp. 79-3670 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) K.S.A. 2003 Supp. 79-3670 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 K.S.A. 2003 Supp. 79-3670 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 K.S.A. 2003 Supp. 79-3670 and amendments thereto; and

(3) telecommunications services, as set out in K.S.A. 2003 Supp. 79-3673 and amendments thereto, shall be sourced in accordance with K.S.A. 2003 Supp. 79-3673 and amendments thereto.

(c) *Except as provided in section 11 and amendments thereto, the provisions of this section shall not be effective for the period commencing on the effective date of this act, and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes.*

Sec. 6. K.S.A. 2003 Supp. 79-3670 is hereby amended to read as follows: 79-3670. (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.

(f) *Except as provided in section 11 and amendments thereto, the provisions of this section shall not be effective for the period commencing on the effective date of this act, and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes.*

Sec. 7. K.S.A. 2003 Supp. 79-3671 is hereby amended to read as follows: 79-3671. (a) Notwithstanding the provisions of K.S.A. 2003 Supp. 79-3670 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.

(f) Except as provided in section 11 and amendments thereto, the provisions of this section shall not be effective for the period commencing on the effective date of this act, and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes.

Sec. 8. K.S.A. 2003 Supp. 79-3672 is hereby amended to read as follows: 79-3672. (a)

(1) Notwithstanding the provisions of K.S.A. 2003 Supp. 79-3670 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 K.S.A. 2003 Supp. 79-3670 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.

(d) Except as provided in section 11 and amendments thereto, the provisions of this section shall not be effective for the period commencing on the effective date of this act, and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes.

Sec. 9. K.S.A. 2003 Supp. 79-3673 is hereby amended to read as follows: 79-3673. (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 K.S.A. 2003 Supp. 79-3670 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 K.S.A. 2003 Supp. 79-3670 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.

(f) *Except as provided in section 11 and amendments thereto, the provisions of this section shall not be effective for the period commencing on the effective date of this act, and ending on the date that legislation enacted by the United States Congress becomes effective that authorizes the secretary of revenue to require some out-of-state, remote sellers lacking physical presence in this state to collect and remit state and local sales or use taxes.*

Sec. 10. K.S.A. 2003 Supp. 79-3682 is hereby amended to read as follows: 79-3682. (a) The provisions of K.S.A. 2003 Supp. 79-3666 through 79-3682 and amendments thereto shall be known and may be cited as the streamlined sales and use tax agreement conformity act.

(b) *Except as otherwise specifically provided, the provisions of K.S.A. 2003 Supp. 79-3666 through 79-3682 shall be effective on and after July 1, 2003.*

New Sec. 11. Commencing on the effective date of this act and ending two years thereafter, for any retailer who is sourcing retail sales of such retailer’s products pursuant to the destination based sourcing rules provided for in K.S.A. 12-191, as amended by 2003 House Bill No. 2005, and K.S.A. 2003 Supp. 79-3670, 79-3671, 79-3672 and 79-3673, as enacted by 2003 House Bill No. 2005, prior to the effective date of this act, such retailer shall be deemed to be in compliance with the sourcing provisions of this act.”;

And by renumbering sections accordingly;

Also on page 6, in line 27, by striking “79-3603 and 79-3603c” and inserting “12-191, 79-3603, 79-3603c, 79-3667, 79-3668, 79-3669, 79-3670, 79-3671, 79-3672, 79-3673 and 79-3682”; in line 30, by striking “statute book” and inserting “Kansas register”;

On page 1, in the title, in line 10, after the semicolon, by inserting “destination-based sourcing rules;”; also in line 10, by striking “79-3603” and inserting “12-191, 79-3603, 79-3667, 79-3668, 79-3669, 79-3670, 79-3671, 79-3672, 79-3673 and 79-3682”; in line 11, by striking “section” and inserting “sections”

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 13, Nays 26, Present and Passing 0, Absent or Not Voting 1.

Yeas: Clark, Huelskamp, Jackson, Jordan, Journey, Lyon, O’Connor, Pugh, Salmans, Schmidt, Taddiken, Tyson, Wagle.

Nays: Adkins, Allen, Barnett, Barone, Betts, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Kerr, Lee, Morris, Oleen, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Absent or Not Voting: Brownlee.

The motion failed and the amendment was rejected.

The Committee recommended **SB 325** be passed as amended.

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 325**, **SB 418** were advanced to Final Action and roll call.

SB 325, An act concerning sales taxation; relating to exemptions; computer software; amending K.S.A. 2003 Supp. 79-3603 and repealing the existing section; also repealing K.S.A. 2003 Supp. 79-3603c.

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

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

Absent or Not Voting: Brownlee.

The bill passed, as amended.

SB 418, An act establishing a birth defects information system; providing for administration by the secretary of health and environment and for collection of data.

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

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Jackson, Jordan, Journey, 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.

The bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: I oppose this bill, because it does a very inadequate job of protecting the privacy of confidential health records.—TIM HUELSKAMP

ORIGINAL MOTION

Having voted on the prevailing side on Final Action, Senator Brungardt moved the Senate reconsider its adverse action on **SB 305**, and the bill be returned to the calender under the heading of General Orders.

Senator Heulskamp, citing Rule 26, moved the motion to Lay on the Table. The motion failed.

The Senate returned to reconsideration of **SB 305**. The motion carried and **SB 305** was returned to the calendar under the heading of General Orders.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m, Friday, February 13, 2004.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

