

Journal of the Senate

THIRTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 24, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.

The roll was called with forty senators present.

President Kerr introduced as guest chaplain, Rev Mark R. Holland, Senior Pastor, Trinity United Methodist Church, Kansas City, KS, who delivered the invocation:

Dear Lord,

Let us be mindful today, that this is not our land but yours.

Before this was land, Kansas was the floor of your mighty ocean,

The hills and valleys we now see were carved by the receding waters.

Before this was a state, it was open space shared by the native peoples

Who knew it was not their own.

Lord, help the Senators gathered here today to be mindful that they are

The Stewards of this great land.

Guide them that they might make decisions today that respect your land,

Your resources, your people.

Give them Lord, a heart for the least among us.

A heart for the immigrant, who like our own ancestors have come

To this land seeking opportunity.

A heart for the poor, who are too often left behind.

A heart for the sick, who do not have health care.

A heart for the elderly, who are often lonely and forgotten.

A heart for the children, who look to us for their education.

A heart for all of those who have been disenfranchised because of the

Color of their skin.

Guide each word spoken here today that it might be worthy of your will,

Your word, your love.

We ask all this in your Holy, Unending name. Amen

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 544. An act concerning sales taxation; relating to exemptions; aircraft and aircraft repair; amending K.S.A. 2003 Supp. 79-3606 and repealing the existing section, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **SB 543.**

Elections and Local Government: **HB 2600.**

Judiciary: **HB 2655.**

Public Health and Welfare: **HB 2248.**

Transportation: **HB 2709.**

MESSAGE FROM THE HOUSE

Announcing passage of **SB 324**.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 335** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 335," as follows:

"Substitute for SENATE BILL No. 335

By Committee on Agriculture

"AN ACT concerning liquefied petroleum gas; relating to the regulation thereof.":

and the substitute bill be passed.

Committee on **Assessment and Taxation** recommends **SB 390**, **SB 411**, **SB 413** be passed.

Also, **SB 521** be amended on page 1, after line 12, by inserting the following:

"Section 1. K.S.A. 2003 Supp. 79-201b is hereby amended to read as follows: 79-201b. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

First. All real property, and tangible personal property, actually and regularly used exclusively for hospital purposes by a hospital as the same is defined by K.S.A. 65-425, and amendments thereto, or a psychiatric hospital as the same was defined by K.S.A. 59-2902, and amendments thereto, as in effect on January 1, 1976, which hospital or psychiatric hospital is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, or a public hospital authority; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for hospital, psychiatric hospital or public hospital authority purposes. This exemption shall not be deemed inapplicable to property which would otherwise be exempt pursuant to this paragraph because any such hospital, psychiatric hospital or public hospital authority: (a) Uses such property for a nonexempt purpose which is minimal in scope and insubstantial in nature if such use is incidental to the exempt purpose enumerated in this paragraph; or (b) is reimbursed for the actual expense of using such property for the exempt purposes enumerated in this paragraph or paragraph second of K.S.A. 79-201, and amendments thereto; or (c) permits the use of such property for the exempt purposes enumerated in this paragraph or paragraph second of K.S.A. 79-201, and amendments thereto, by more than one agency or organization for one or more of such purposes.

Second. All real property, and tangible personal property, actually and regularly used exclusively for adult care home purposes by an adult care home as the same is defined by K.S.A. 39-923, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation, interest on indebtedness, acquisition costs, interest and other expenses of financing acquisition costs, lease expenses and costs of services provided by a parent corporation at its costs and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for adult care home purposes. For purposes of this paragraph and for all taxable years commencing after December 31, 1976, an adult care home which uses its property in a manner which is consistent with the federal internal revenue service ruling 72-124 issued pursuant to section 501(c)(3) of the federal internal revenue code, shall be deemed to be operating at the lowest feasible cost. The fact that real property or real or tangible personal property may be leased from a not-for-profit corporation, which is exempt from federal income taxation pursuant to section 501(c)(3) of the internal revenue code of 1986, and amendments thereto, and which is the parent corporation to the not-for-profit

operator of an adult care home, shall not be grounds to deny exemption or deny that such property is actually and regularly used exclusively for adult care home purposes by an adult care home, nor shall the terms of any such lease be grounds for any such denial. For all taxable years commencing after December 31, 1995, such property shall be deemed to be used exclusively for adult care home purposes when used as a not-for-profit day care center for children which is licensed pursuant to K.S.A. 65-501 *et seq.*, and amendments thereto.

Third. All real property, and tangible personal property, actually and regularly used exclusively for private children's home purposes by a private children's home as the same is defined by K.S.A. 75-3329, and amendments thereto, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, charges to residents for services of which produce an amount which in the aggregate is less than the actual cost of operation of the home or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness, and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for children's home purposes.

Fourth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly and handicapped persons having a limited or lower income, or used exclusively for cooperative housing for persons having a limited or low income, assistance for the financing of which was received under 12 U.S.C.A. 1701 *et seq.*, or under 42 U.S.C.A. 1437 *et seq.*, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing. For the purposes of this subsection, cooperative housing ~~shall mean~~ *means* those not-for-profit cooperative housing projects operating or established pursuant to sections 236 or 221(d)(3), or both, of the national housing act and which have been approved as a cooperative housing project pursuant to applicable federal housing administration and U.S. Department of Housing and Urban Development statutes, and rules and regulations, during such time as the use of such properties are: (1) Restricted pursuant to such act, ~~statutes~~ or rules and regulations thereof; or (2) *subject to affordability financing standards established pursuant to the national housing act during such time that such not-for-profit corporation has adopted articles of incorporation or by-laws, or both, requiring such corporation to continue to operate in compliance with the United States department of housing and urban development affordability income guidelines established pursuant to sections 236 or 221(d)(3) of the national housing act or rules and regulations thereof.*

Fifth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for the purpose of such housing. For purposes of this paragraph and for all taxable years commencing after December 31, 1976, an adult care home which uses its property in a manner which is consistent with the federal internal revenue service ruling 72-124 issued pursuant to section 501(c)(3) of the federal internal revenue code, shall be deemed to be operating at the lowest feasible cost. For all taxable years commencing after December 31, 1995, such property shall be deemed to be used

exclusively for housing for elderly persons purposes when used as a not-for-profit day care center for children which is licensed pursuant to K.S.A. 65-501 *et seq.*, and amendments thereto.

Sixth. All real property and tangible personal property actually and regularly used exclusively for the purpose of group housing of mentally ill or retarded and other handicapped persons which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not-for-profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act, and which is licensed as a facility for the housing of mentally ill or retarded and other handicapped persons under the provisions of K.S.A. 75-3307b, and amendments thereto, or as a rooming or boarding house used as a facility for the housing of mentally retarded and other handicapped persons which is licensed as a lodging establishment under the provisions of K.S.A. 36-501 *et seq.*, and amendments thereto.

The provisions of this section, except as otherwise specifically provided, shall apply to all taxable years commencing after December 31, 1998.”;

And by renumbering sections accordingly;

Also on page 1, in line 31, by striking “1982” and inserting “1999”; in line 32, by striking “actually and regularly”; also in line 32, by striking “exclusively” and inserting “predominantly”; in line 33, after the period, by inserting “If the owner’s business or industry is the leasing of aircraft, the lessee’s use of the aircraft shall not be considered in determining this exemption. For purposes of this provision, “predominantly” means: (1) At least 80% of the total use of the aircraft; or (2) utilization of the aircraft such that all of the aircraft costs are deductible for federal income tax purposes.”; by striking all in lines 34 through 38; in line 39, by striking “is” and inserting “and K.S.A. 2003 Supp. 79-201b are”;

Also on page 1, in the title, in line 10, after the semicolon, by inserting “certain housing for elderly persons.”; also in line 10, after “and” by inserting “K.S.A. 2003 Supp. 79-201b and”; also in line 10, by striking “section” and inserting “sections”; and the bill be passed as amended.

SB 313 be reported without recommendation.

Committee on **Commerce** recommends **SB 394** be amended on page 1, in line 32, by striking “or”; in line 33, after “thereto” by inserting “, or a technical college as established by K.S.A. 72-4468, and amendments thereto”;

On page 3, in line 8, by striking “and”; in line 10, before the period, by inserting “, and (4) any costs for direct investments in education and related workforce development institutions, for improvements to workforce development, human capital, training expertise and infrastructure that exceed 10% of total program costs”;

On page 4, in line 1, by striking “The” and inserting “Subject to the limitation in K.S.A. 74-50,103, the”; and the bill be passed as amended.

Also, **SB 405** be amended on page 3, in line 5, by striking “may be”; by striking all in lines 6 through 8; in line 9, by striking all before “shall”; also in line 9, by striking “20” and inserting “30”; in line 13, by striking “phase” and inserting “project”; and the bill be passed as amended.

SB 408 be amended on page 1, in line 17, by striking “\$40,000” and inserting “\$100,000”;

On page 2, by striking all in lines 14 through 21; and the bill be passed as amended.

SB 441 be amended on page 3, in line 23, after “gives” by inserting “written”; in line 25, after “communicated” by inserting “in writing”; and the bill be passed as amended.

SB 483 be amended on page 1, in line 18, by striking “Continued absence after exhaustion of FMLA benefits” and inserting “Failure to return to work after expiration of approved personal and/or medical leave”;

On page 4, in line 18, following the period by inserting “Failure of the employee to notify the employer of an absence shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.”;

On page 6, in line 6, following “(3)” by inserting “(A)”; in line 7, by striking all following “including”; in line 8, by striking all preceding “lateness”; in line 10, by striking “(A)” and inserting “(i)”; in line 11, by striking “(B)” and inserting “(ii)”; in line 13, by striking “(C)” and inserting “(iii)”; in line 15, following the semicolon by inserting “and”; in line 16, by striking “(D)” and inserting “(iv)”; in line 17, by striking the semicolon and inserting a period; in line 18, by striking “(E)” and inserting “(B) For the purposes of this subsection (d),”; in line 20, by striking all following the period; by striking all in lines 21, 22 and 23; in line 24, by striking all preceding the period and inserting “If the employee alleges the absence was the result of health related issues, such evidence shall include documentation from a licensed and practicing health care professional as defined in subsection (a)(1). Incarceration shall not be considered good cause for absence or tardiness”; and the bill be passed as amended.

SB 520 be amended on page 3, in line 12, by striking “(a)”; in line 16, by striking “, except”; by striking all in lines 17 and 18; in line 19, by striking all before the period; in line 20, by striking all after “be”; by striking all in line 21; in line 22, by striking “collected” and inserting: “be credited to the fund for the purpose of returning all or part of the property tax increment to the taxpayer in the form of a rebate of 100% each year in years one through five, 80% in year six, 60% in year seven, 40% in year eight and 20% in year nine. No rebate shall be paid on or after the tenth year. Upon payment of taxes by the taxpayer, the rebate must be made within 30 days after the next distribution date as specified in K.S.A. 12-1678a, and amendments thereto”; by striking all in line 23 through 43;

On page 4, by striking all in line 1 through 10; and the bill be passed as amended.

Committee on **Education** recommends **SB 303** be amended on page 2, in line 28, before “qualified” by inserting “average amount of the”; in line 31, by striking all after “at”; in line 32, by striking all before the period and inserting “institutions of postsecondary education located in the midwest states”;

On page 7, in line 21, by striking “2003” and inserting “1999”; in line 22, by striking “\$4,000 or \$8,000” and inserting “\$2,000 or \$4,000”; in line 27, following the period, by inserting “For all taxable years beginning after December 31, 2004, amounts not exceeding \$3,000, or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education.”; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **SB 508** be passed.

Also, **SB 367** be amended on page 1, in line 19, before “man-” by inserting “capitated”;

On page 2, in line 20, by striking “and”; in line 24, before the period, by inserting the following:

“; and

(8) may provide that prescription drugs, transportation services and dental services are purchased outside of the capitated managed care plan to improve the efficiency, accessibility and effectiveness of the program”;

Also on page 2, in line 39, before “managed” by inserting “capitated”; and the bill be passed as amended.

SB 392 be amended on page 1, in line 13, before “Section” by inserting “New”; in line 16, following “coverages” by inserting “, including the purchase of insurance, surety coverage and similar coverage for any state agency authorized by law to make such purchase,”; after line 36 by inserting the following:

“Sec. 2. K.S.A. 75-4105 is hereby amended to read as follows: 75-4105. ~~At~~ *Except as provided in section 1, and amendments thereto, all surety bonds and insurance contracts purchased pursuant to this act shall be purchased by the committee in the manner prescribed for the purchase of supplies, materials, equipment or contractual services under K.S.A. 75-3738 to 75-3744, inclusive, and amendments thereto. The director of accounts and reports shall not pay any premium or rate on any surety bond or insurance contract until the purchase of such surety bond or contract shall have been approved by the secretary of the committee. Surety bonds or insurance contracts having a premium or rate in excess of \$500 purchased hereunder shall be purchased on sealed bids as provided by law for the purchase of other materials, equipment or contractual services. Where more than one state*

agency is covered by any bond or insurance contract, the committee shall prorate the cost of premiums or rates on any and all such bonds or contracts, except as provided in K.S.A. 75-4114, and amendments thereto, purchased as charges upon the funds of the state agency wherein any covered state officers or employees are employed or covered property is located or controlled. Such prorated charges shall constitute a lawful charge by the committee upon the funds available to any such state agency and shall be paid by each such state agency to the committee, or to the surety or insurance carrier if the committee requires it, in the manner provided by law for the payment of other obligations of such state agency.

Sec. 3. K.S.A. 75-4109 is hereby amended to read as follows: 75-4109. (a) The committee, at least once every three years, shall approve the property and casualty insurance coverages that shall be purchased by each state agency.

(b) The committee shall require that each state agency purchase the insurance coverages prescribed by K.S.A. 74-4703, 74-4705, 74-4707, 75-712e, 75-2728, 76-218, 76-391, 76-394, 76-747 and 76-491, and amendments to these sections, and shall prescribe the terms, conditions and amounts of such coverage giving due regard to the operations and requirements of the agencies involved.

(c) The committee shall, in addition to the coverages specified in subsection (b), designate the insurance coverages to be purchased by each state agency that are deemed by the committee to be necessary to protect the state for property of others that may be in the possession or control of such state agencies.

(d) Such coverages as are specified in subsections (b) and (c) may also include coverages on property of the state that are deemed by the committee to be incidental to the basic coverages herein required, and the committee shall prescribe the terms, conditions and amounts of all insurance coverages purchased pursuant to this section. Property of the state board of regents of any university or college which is referred to in subsection (b) may be self-insured as provided under this act.

(e) No property insurance coverage may be purchased by the committee, except as provided herein or by section 1, and amendments thereto, or specifically required by other Kansas statutes or appropriations.

Sec. 4. K.S.A. 75-4105 and 75-4109 are hereby repealed.”; And by renumbering the remaining sections accordingly;

On page 1, in the title, in line 10, before the period by inserting “; amending K.S.A. 75-4105 and 75-4109 and repealing the existing sections”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 350** be passed.

Also, **SB 343** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

SB 321 be amended on page 2, in line 30, before “cigarette” by inserting “contempt findings.”; and the bill be passed as amended.

SB 354 be amended on page 2, in line 2, by striking “If” and inserting “The city attorney shall cause a notice to appear to be issued, except that, if requested by the city attorney, a warrant for the accused shall be issued if”; in line 5, by striking all after “committed”; by striking all in lines 6 and 7; in line 8, by striking all before the period and inserting “such crime”;

On page 3, in line 20, after the period, by inserting “Bond shall be set within 18 hours of the person being placed in custody.”; and the bill be passed as amended.

SB 357 be amended on page 1, in line 25, by striking “36” and inserting “35”;

On page 3, in line 39, by striking “17” and inserting “16”;

On page 4, in line 13, by striking “\$25,000” and inserting “\$10,000”; in line 16, following the semicolon by inserting “and”; in line 17, by striking “; and”; by striking all in line 18; in line 19, by striking all before the period;

On page 5, in line 3, by striking all after “(2)”; by striking all in line 4; in line 5, by striking “(3)”;

And by renumbering the remaining subparagraphs accordingly;

On page 6, by striking all in lines 27 through 43;

On page 7, by striking all in lines 1 through 7;

And by renumbering sections accordingly;

On page 8, in line 21, by striking “12” and inserting “11”;

On page 10, in line 13, by striking “A,” and inserting “C”; also in line 13, by striking all after “misdemeanor”; by striking all in line 14; in line 22, by striking “B,” and inserting “C”; in line 23, by striking all after “meanor”; in line 24, by striking all before the period; in line 26, by striking “B,” and inserting “C”; in line 27, by striking all after “misdemeanor”; in line 28, by striking all before the period; in line 30, by striking “16” and inserting “15”; in line 34, by striking “B,” and inserting “C”; also in line 34, by striking all after “misdemeanor”; by striking all in line 35; in line 36, by striking “both”; in line 38, by striking “B,” and inserting “C”; in line 39, by striking all after “misdemeanor”; in line 40, by striking all before the period;

On page 11, in line 34, by striking “29” and inserting “28”;

On page 12, in line 18, by striking “31” and inserting “30”; in line 32, by striking “31” and inserting “30”;

On page 14, in line 12, by striking “34” and inserting “33”; in line 23, by striking “28” and inserting “27”; in line 26, by striking “33” and inserting “32”; and the bill be passed as amended.

SB 461 be amended on page 2, by striking all in lines 1, 2 and 3; in line 4, by striking all before “without”; and the bill be passed as amended.

SB 466 be amended on page 1, in line 26, by striking “may”; in line 28, before the period, by inserting “or could constitute an immediate and serious danger to the public”; and the bill be passed as amended.

SB 469 be amended on page 1, in line 16, before the comma, by inserting “or of a juvenile, who is in the custody of the commissioner of juvenile justice and who resides in an institution operated by or contracted through the commissioner”; in line 18, by striking “The” and inserting “A report of the”; in line 23, after “jail”, by inserting “or in a facility contracted through the city or county, or both,”; in line 25, by striking “The” and inserting “A report of the”; and the bill be passed as amended.

Committee on **Natural Resources** recommends **SB 496** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 496,” as follows:

“Substitute for SENATE BILL No. 496

By Committee on Natural Resources

“AN ACT concerning criminal hunting; relating to revocation of licenses; amending K.S.A. 21-3728 and 32-1013 and repealing the existing sections.”;

and the substitute bill be passed.

Committee on **Public Health and Welfare** recommends **SB 425** be amended on page 1, in line 35, after “board’s” by inserting “rules and”; in line 38, by striking “pulmonary” and inserting “cardiopulmonary”;

On page 2, preceding line 7, by inserting the following:

“New Sec. 2. (a) A policy of professional liability insurance issued by an insurer duly authorized to transact business in this state shall be maintained in effect by each licensed dentist actively practicing in this state as a condition to rendering professional services as a dentist in this state, except that a dentist shall not be required to maintain professional liability insurance if such person’s dental practice is limited to providing dental services under subsection (f) of K.S.A. 75-6102 and amendments thereto.

(b) This section shall be part of and supplemental to the dental practices act.”;

And by renumbering sections accordingly;

On page 1, in the title, in line 10, before “amending” by inserting “requiring dentists actively practicing to maintain a policy of professional liability insurance.”; and the bill be passed as amended.

Also, **SB 452** be amended on page 1, after line 13, by inserting the following:

“Section 1. K.S.A. 2003 Supp. 74-5344 is hereby amended to read as follows: 74-5344. Nothing contained in the licensure of psychologists act of the state of Kansas shall be construed: (a) To prevent qualified members of other professional groups such as, but not limited to, ministers, Christian Science practitioners, social workers and sociologists from doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions so long as they do not hold themselves out to

the public by any title or description of services incorporating the words “psychologic,” “psychological,” “psychologist” or “psychology”;

(b) in any way to restrict any person from carrying on any of the aforesaid activities in the free expression or exchange of ideas concerning the practice of psychology, the application of its principles, the teaching of such subject matter and the conducting of research on problems relating to human behavior if such person does not represent such person or such person’s services in any manner prohibited by such act;

(c) to limit the practice of psychology of a licensed masters level psychologist or a person who holds a temporary license to practice as a licensed masters level psychologist insofar as such practice is a part of the duties of any such person’s salaried position, and insofar as such practice is performed solely on behalf of such person’s employer or insofar as such person is engaged in public speaking with or without remuneration;

(d) to limit the practice of psychology or services of a student, intern or resident in psychology pursuing a degree in psychology in a school, college, university or other institution, with educational standards consistent with those of the state universities of Kansas if such practice or services are supervised as a part of such person’s degree program. Nothing contained in this section shall be construed as permitting such persons to offer their services as psychologists to any other person and to accept remuneration for such psychological services other than as specifically excepted herein, unless they have been licensed under the provisions of the licensure of psychologists act of the state of Kansas, registered under the provisions of K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto or granted a temporary license under the provisions of K.S.A. 74-5367 and amendments thereto;

(e) to prevent the employment, by a person, association, partnership or a corporation furnishing psychological services for remuneration, of persons ~~not~~ licensed as psychologists under the provisions of such act to practice psychology if such persons work under the supervision of a psychologist or psychologists licensed under the provisions of such act and if such persons are not in any manner held out to the public as psychologists licensed under the provisions of the licensure of psychologists act of the state of Kansas, as registered under the provisions of K.S.A. 74-5361 to 74-5371, inclusive, and amendments thereto or as holding a temporary license under the provisions of K.S.A. 74-5367 and amendments thereto;

(f) to restrict the use of tools, tests, instruments or techniques usually denominated “psychological” so long as the user does not represent oneself to be a licensed psychologist or a licensed masters level psychologist;

(g) to permit persons licensed as psychologists to engage in the practice of medicine as defined in the laws of this state, nor to require such licensed psychologists to comply with the Kansas healing arts act;

(h) to restrict the use of the term “social psychologist” by any person who has received a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a school or college as defined in the licensure of psychologists act of the state of Kansas, and who has passed comprehensive examination in the field of social psychology as a part of the requirements for the doctoral degree or has had equivalent specialized training in social psychology;

(i) to restrict the practice of psychology by a person who is certified as a school psychologist by the state department of education so long as such practice is conducted as a part of the duties of employment by a unified school district or as part of an independent evaluation conducted in accordance with K.S.A. 72-963 and amendments thereto, including the use of the term “school psychologist” by such person in conjunction with such practice; or

(j) to restrict the use of the term psychologist or the practice of psychology by psychologists not licensed under the licensure of psychologists act of the state of Kansas in institutions for the mentally retarded, in a juvenile correctional facility, as defined in K.S.A. 38-1602, and amendments thereto, or in institutions within the department of corrections insofar as such term is used or such practice of psychology is performed solely in conjunction with such person’s employment by any such institution or juvenile correctional facility.

(k) *Any person not licensed as a psychologist but who immediately prior to the effective date of this act was engaged in the practice of psychology in accordance with subsection (e) as it existed immediately prior to the effective date of this act under the supervision of a*

licensed psychologist may continue on and after the effective date of this act to engage in such practice in the manner authorized by subsection (e) as it existed immediately prior to the effective date of this act.”;

Also on page 1, by striking all in lines 14 through 43;

By striking all of page 2;

On page 3, by striking all in lines 1, 2 and 3; in line 5, by striking “July”; in line 6, by striking “1, 2007, and”; and the bill be passed as amended.

SB 453 be amended on page 1, in line 33, after “facility” by inserting a comma; also in line 33, by striking all after “operated”; in line 34, by striking all before “by”; also in line 34, before the period, by inserting: “if the board certifies annually, by resolution, that such facility, program or service:

- (1) Is supervised by a teacher who holds a certificate to teach and an administrator who holds a school administrator’s certificate issued by the state board of education pursuant to law;
- (2) conducts, through the Kansas bureau of investigation, criminal background checks on all staff members upon hiring;
- (3) provides classroom space comparable to that afforded other district programs;
- (4) is offered at a site located on property owned or leased by the school district and which property complies with required building and fire codes;
- (5) maintains staff and student records and emergency contact information;
- (6) does not allow children under the age of three years to enroll at such facility or in such program or service; and
- (7) assists students to achieve academic performance at or above state standards.

A copy of such resolution shall be sent to the secretary on or before November 1 of each year.”;

Also on page 1, after line 34, by inserting the following:

“Sec. 2. K.S.A. 72-8236 is hereby amended to read as follows: 72-8236. (a) The board of education of any school district may: (1) Establish, operate and maintain a child care facility; (2) enter into cooperative or interlocal agreements with one or more other boards for the establishment, operation and maintenance of a child care facility; (3) contract with private, nonprofit corporations or associations or with any public or private agency or institution, whether located within or outside the state, for the establishment, operation and maintenance of a child care facility; and (4) prescribe and collect fees for providing care at a child care facility.

(b) Fees for providing care at a child care facility established under authority of this section shall be prescribed and collected only to recover the costs incurred as a result of and directly attributable to the establishment, operation and maintenance of the child care facility. Revenues from fees collected by a board under this section shall be deposited in the general fund of the school district and shall be considered reimbursements to the district for the purpose of the school district finance and quality performance act and may be expended whether the same have been budgeted or not and amounts so expended shall not be considered operating expenses.

(c) *Except as provided in K.S.A. 65-501, and amendments thereto, every school district which establishes, operates and maintains a child care facility shall be subject to the provisions contained in article 5 of chapter 65 of Kansas Statutes Annotated.*

(d) As used in this section, the term “child” means any child who is three years of age or older, and any infant or toddler whose parent or parents are pupils or employees of a school district which establishes, operates and maintains, or cooperates in the establishment, operation and maintenance of, a child care facility under authority of this act.”;

And by renumbering sections accordingly;

Also on page 1, in line 35, by striking “is” and inserting “and 72-8236 are”;

In the title, in line 10, after “65-501” by inserting “and 72-8236”; in line 11, by striking “section” and inserting “sections”; and the bill be passed as amended.

SB 511 be amended on page 1, in line 17, by striking “within three to five days”; by striking all in line 18 and inserting “within five days of”; in line 20, by striking “significant”; in line 26, by striking “significant”; and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1819 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 24, 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 Barnett in the chair.

On motion of Senator Jordan the following report was adopted:

Recommended **SB 183, SB 348, SB 383, 385, SB 501** be passed.

SB 309, SB 330, SB 366, SB 373, SB 422, SB 423, SB 446 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 524 be amended by motion of Senator Schmidt on page 26, in line 42, by striking "its" and inserting "the secretary's";

On page 109, by striking all in lines 6 through 25 and inserting new material to read as follows:

"Sec. 156. K.S.A. 2-1008 is hereby amended to read as follows: 2-1008. (a) The secretary and the duly authorized representatives thereof shall have free access to all places of business, mills, buildings and vessels, of whatsoever kind, used in the manufacture, transportation, importation, sale or storage of any commercial feeding stuffs and may open any parcel containing, or supposed to contain, any commercial feeding stuffs and may take therefrom, in the manner prescribed in K.S.A. 2-1009 and amendments thereto, samples for analysis and shall pay the retail price of the sample or samples procured. Before entering the premises, the representatives of the *Kansas* department of agriculture shall make application to party or parties in charge of any manufacturer, importer, jobber, firm, association, corporation or person who sells, offers, or exposes for sale or distributes in this state any commercial feeding stuffs.

(b) The secretary or a duly authorized representative thereof, acting as the enforcing officer, may issue and enforce a written or printed stop sale order to the owner or custodian of any quantity of commercial feeding stuffs which the secretary or the duly authorized representative of the secretary determines to be misbranded or adulterated or contains or may contain any substance injurious to public health or the health of livestock, poultry or pets or which are sold, offered or exposed for sale in violation of any of the statutes contained in article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or any rules and regulations adopted thereunder. The stop sale order shall prohibit further sale and movement of such commercial feeding stuffs, except on approval of the enforcing officer, until the enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the stop sale order. Any stop sale order issued pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The provisions of this subsection shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the statutes contained in article 10 of chapter 2 of the Kansas Statutes Annotated and amendments thereto.

Sec. 157. K.S.A. 2-1012 is hereby amended to read as follows: 2-1012. The secretary shall remit all moneys received by or for the secretary under article 10 of chapter 2 of Kansas Statutes Annotated, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the feeding stuffs fee fund. On and after July 1, 2000, through June 30, 2002, an amount not to exceed \$35,000 per year may be used to fund plant pest activities. All expenditures from the feeding stuffs fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the *Kansas* department of agriculture or by a person or persons designated by the secretary.

Sec. 158. K.S.A. 2-1421a is hereby amended to read as follows: 2-1421a. (a) (1) Each wholesaler shall register with the secretary and shall pay a registration fee not to exceed

\$300. The current wholesale registration fee is hereby set at \$175 and shall remain at that amount until changed by rules and regulations of the secretary.

(2) Each retailer shall register with the secretary and shall pay a registration fee not to exceed \$30. The current retailer registration fee is hereby set at \$10 and shall remain at that amount until changed by rules and regulations of the secretary.

(3) Registration shall be required for each place of business at which agricultural seed is sold, offered or exposed for sale by the wholesaler or retailer.

(4) An individual who conducts a wholesaler and retailer business at the same location shall be required to register as both a wholesaler and retailer.

(b) Application for registration shall be made on a form provided by the secretary. Each registration for a wholesaler or retailer shall expire on August 31 following the date of issuance unless such registration is renewed annually.

(c) Each seed conditioner shall register with the secretary. Such seed conditioner registration shall require no registration fee and shall be a biennial registration. Any seed conditioner who is ceasing to do business as a seed conditioner shall notify the *Kansas* department of agriculture within 30 days of ceasing to do business.

(d) As used in this section, "agricultural seed" shall include grain when sold as such, or when sold according to grain standards and the seller knows, or has reason to know, that the grain is to be used for seeding or planting purposes.

(e) The secretary shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the agricultural seed fee fund which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person or persons designated by the secretary.

(f) All moneys credited to the agricultural seed fee fund shall be expended for any purpose consistent with the Kansas seed law.

(g) The secretary may adopt rules and regulations necessary to administer the provisions of this act.

(h) This section shall be part of and supplemental to the Kansas seed law, K.S.A. 2-1415 *et seq.*, and amendments thereto.

Sec. 159. K.S.A. 2-2911 is hereby amended to read as follows: 2-2911. The secretary shall remit all moneys received by or for the secretary under this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the agricultural liming materials fee fund, which fund is hereby created. On and after July 1, 2000, through June 30, 2002, an amount not to exceed \$5,000 per year may be used to fund plant pest activities. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the *Kansas* department of agriculture or by a person or persons designated by the secretary.

Sec. 160. K.S.A. 2-3002a is hereby amended to read as follows: 2-3002a. (a) Except for funds necessary to pay payroll expenses incurred through June 30, 2000, and payable in July, 2000, on and after July 1, 2000, the balance of all funds and all liabilities associated with the grain commodities pursuant to K.S.A. 2-2601 *et seq.* as in effect prior to July 1, 2000, and K.S.A. 2-3001 *et seq.*, and amendments thereto, shall be paid and liabilities be transferred to each respective commission created by this act. Any remaining funds of the money retained for payroll expenses shall be paid to the respective commission created by this act.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the *Kansas* department of agriculture with regard to the corn, grain sorghum and soybean commission and the Kansas wheat commission are hereby transferred to and conferred and imposed upon the respective corn, grain sorghum, soybean and wheat commissions established by the act.

(c) Except as otherwise provided by this act, the corn, grain sorghum, soybean and wheat commissions established by this act shall be the successor in every way to the powers, duties

and functions of the *Kansas* department of agriculture with regard to the corn, grain sorghum and soybean commissions and the Kansas wheat commission in which the same were vested prior to July 1, 2000. Every act performed in the exercise of such powers, duties and functions by or under the authority of the *Kansas* department of agriculture with regard to the corn, grain sorghum and soybean commissions and the Kansas wheat commission established by this act shall be deemed to have the same force and effect as if performed by the respective corn, grain sorghum, soybean and wheat commission, respectively in which such powers, duties and functions were vested prior to July 1, 2000.

(d) Except as otherwise provided by this act, whenever the *Kansas* department of agriculture with regard to the corn, grain sorghum and soybean commissions and the Kansas wheat commission, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the respective corn, grain sorghum, soybean and wheat commission established by this act.

(e) On the effective date of this act, all property of the Kansas wheat commission prior to July 1, 2000, shall become the property of the wheat commission established by this act.

Sec. 161. K.S.A. 2-3601 is hereby amended to read as follows: 2-3601. As used in this act:

- (a) "Council" means the Kansas agricultural seed council.
- (b) "Seedsman" or "seedsmen" means a person, private entity or corporation registered with the *Kansas* department of agriculture to sell seed in Kansas.
- (c) "Agricultural seed," "retailer" and "wholesaler" have the meanings provided by K.S.A. 2-1415, and amendments thereto.

Sec. 162. K.S.A. 2003 Supp. 2-3602 is hereby amended to read as follows: 2-3602. (a) There is hereby created the Kansas agricultural seed council.

(b) The council shall consist of seven members who will be elected at the annual meeting of the Kansas seed industry association. The board of directors of the Kansas seed industry association shall act as interim council members until council members can be elected and qualified. Vacancies which may occur shall be filled for unexpired terms by the board of directors of the Kansas seed industry association from among the seedsmen or representatives of seed product development, distribution and production of the state. Each council member appointed on and after the effective date of this act, other than a council member appointed to fill a vacancy for an unexpired term, shall be elected for a term of four years except that three of the council members first elected on and after the effective date of this act shall be elected for a term of two years. No member may serve more than two consecutive terms. Upon the expiration of a term of a member of the council, such member shall continue to serve as a member of the council until a successor to such member is elected and qualified.

(c) Members of the council shall be residents of this state and currently be active seedsmen. Members of the council shall include representatives of seed product development, distribution and production. At least three members shall be elected from the list of wholesalers registered with the *Kansas* department of agriculture and the remaining members shall be active seedsmen or representatives of seed product development, distribution and production elected at large. The elections will be held at an open session to all seedsmen and representatives of seed product development, distribution and production at the annual meeting of the Kansas seed industry association.

(d) The director of the agricultural experiment stations of Kansas state university of agriculture and applied science or the director's representative and the director of the agricultural products development division of the department of commerce or the director's representative shall serve as ex officio nonvoting members of the council.

(e) The council shall elect annually a chairperson from its membership.

(f) A member of the council may cease to hold such member's position on the council for any of the following reasons, at the discretion of a majority of the council, upon resolution duly adopted by the council dismissing such member: (1) Failure to attend two or more regular meetings of the council, if unexcused; or (2) ceasing to be an active seedsmen.

(g) Members of the Kansas agricultural seed council attending meetings of such council, or attending a subcommittee meeting authorized by such council, may be paid compensation and other expenses.

(h) The council shall meet at least once every calendar quarter regularly and hold an annual meeting which shall be open to the public. The day, time and place of each meeting shall be determined by the council. The chairperson or any three members of the council may call special meetings of the council upon such notice as may be prescribed by the duly adopted procedures of the council.

Sec. 163. K.S.A. 34-101c is hereby amended to read as follows: 34-101c. Any contracts entered into pursuant to K.S.A. 34-101b, and amendments thereto, may provide for reimbursement to the *Kansas* department of agriculture by the commodity credit corporation for such services so performed and furnished, and any money received pursuant to the terms of such contracts shall be deposited in the warehouse fee fund.

Sec. 164. K.S.A. 34-125 is hereby amended to read as follows: 34-125. (a) The secretary, prior to June 1 each year, shall determine a schedule of maximum and minimum charges to be made by public grain warehouses, licensed under the laws of the state of Kansas, for the storage of grain and for such other and extraordinary services performed or to be performed by such licensed public grain warehousemen during the ensuing license year. Such charges made by such warehouse shall be filed with the *Kansas* department of agriculture and such warehouse shall not be required to refile such charges unless such warehouse is changing such charges that are posted or until such time that the charges are changed by the secretary.

(b) If any of such charges be changed from those previously in effect the secretary shall notify all currently licensed public warehousemen of such schedule of maximum and minimum charges.

Sec. 165. K.S.A. 34-132 is hereby amended to read as follows: 34-132. On and after September 1, 1997:

(a) When any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The *Kansas* department of agriculture shall succeed to all property and records concerning public warehouses which were used for or pertain to the performance of the powers, duties and functions transferred to the *Kansas* department of agriculture. Any conflict as to the proper disposition of property or records arising under this section, and resulting from the transfer or attachment of any state agency, or all or part of the powers, duties and functions thereof, shall be determined by the governor, whose decision shall be final.

Sec. 166. K.S.A. 34-133 is hereby amended to read as follows: 34-133. On and after September 1, 1997:

(a) The *Kansas* department of agriculture shall have the legal custody of all records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the Kansas state grain inspection department concerning public warehouses and any agency or office transferred thereto under this act.

(b) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

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

Sec. 167. K.S.A. 34-134 is hereby amended to read as follows: 34-134. On and after September 1, 1997:

(a) The balance of all funds appropriated and reappropriated to the Kansas state grain inspection department concerning public warehouses is hereby transferred to the *Kansas* department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) The liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the Kansas state grain inspection department concerning public warehouses, or who become a part of the *Kansas* department of agriculture, or the powers, duties and functions of which are transferred to the *Kansas* department of agriculture, shall be assumed and paid by the *Kansas* department of agriculture.

Sec. 168. K.S.A. 2003 Supp. 55-443 is hereby amended to read as follows: 55-443. (a) It is a violation for any person to:

(1) Act as or represent such person's self to be a technical representative without having a valid license issued by the *Kansas* department of agriculture;

(2) hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under the petroleum products inspection law;

(3) failure to follow the applicable version of NIST Handbook as referenced in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder when installing, repairing, calibrating or testing a device;

(4) failure to complete the testing or placing-in-service report in its entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;

(5) filing a false or fraudulent application or report to the secretary;

(6) failure to pay all fees and penalties as prescribed by the petroleum products inspection law and the rules and regulations adopted and promulgated pursuant to the petroleum products inspection law;

(7) refuse to keep and make available for examination by the *Kansas* department of agriculture all books, papers, and other information necessary for the enforcement of the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;

(8) failure to have any commercial dispensing device tested as required by the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;

(9) sell, offer or expose for sale any petroleum product which does not comply with the provisions of the petroleum products inspection law;

(10) sell, use, remove, otherwise dispose of or fail to remove from the premises specified, any dispensing device, package or commodity contrary to the terms of any order issued by the secretary;

(11) represent that diesel fuel is or contains biodiesel fuel blend or otherwise to represent that diesel fuel is made from renewable resources, unless not less than 2% of the diesel fuel mixture is mono-alkyl esters derived from vegetable oil, recycled cooking oil or animal fat. Biodiesel fuel used in biodiesel fuel blends shall conform with specification D6751-02, issued March 2002, by the American society of testing and materials or a later version as adopted by rules and regulations of the secretary. If a retail petroleum marketer is alleged to have violated the provisions of this subsection, it shall be a defense, that the retail petroleum marketer relied in good faith upon the bill of lading; and

(12) violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto.

(b) Any person who violates any provision of the petroleum products inspection law or any applicable provisions of chapter 83 of the Kansas Statutes Annotated, or amendments thereto, or any rules and regulations adopted thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (c) in an amount, fixed by rules and regulations of the secretary, of not less than \$100 nor more than \$5,000 for each such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(c) In determining the amount of the civil penalty, the following shall be taken into consideration: (1) The extent of harm caused by the violation; (2) the nature and persistence of the violation; (3) the length of time over which the violation occurs; (4) any corrective actions taken; and (5) any and all relevant circumstances.

(d) All civil penalties assessed shall be due and payable within 10 days after written notice of assessment is served on the person, unless a longer period of time is granted by

the secretary. If a civil penalty is not paid within the applicable time period, the secretary may file a certified copy of the notice of assessment with the clerk of the district court in the county where the weighing and measuring device or dispensing device is located. The notice of assessment shall be enforced in the same manner as a judgment of the district court.

(e) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the person who committed the violation or to the person whose agent or employee committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(f) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(g) An appeal to the district court or to an appellate court shall not stay the payment of the civil penalty.

(h) Any civil penalty recovered pursuant to the provisions of this section or any penalty recovered under the consumer protection act for violations of this section, and amendments thereto, or any rules and regulations adopted thereunder, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

(i) This section shall be part of and supplemental to the petroleum products inspection act, article 4 of chapter 55 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 169. K.S.A. 2003 Supp. 55-447 is hereby amended to read as follows: 55-447. Except as provided in K.S.A. 83-401 through 83-410, and amendments thereto, nothing in article 4 of chapter 55 of the Kansas Statutes Annotated, and amendments thereto, shall prohibit the owner of a dispensing device or the owner's employee or agent, from servicing or repairing such device. However, if such device is found out of tolerance and is rejected by the ~~state~~ *Kansas* department of agriculture, the owner is responsible for repairing the device within the time specified on the rejection tag and notifying the department when the device is repaired and in operation. The owner shall pay a fee commensurate with the expense incurred by the secretary in performing the follow-up inspection or test.

Sec. 170. K.S.A. 65-1,177 is hereby amended to read as follows: 65-1,177. (a) There is hereby created the Kansas special commission on surface water quality standards. Within the limits of appropriations therefor, the commission shall undertake the following activities:

(1) Investigate and evaluate the technical and scientific basis of the 1994 surface water quality standards, including: (A) Stream designations use attainability analysis as required when compiling the 1996 *Kansas Water Quality Assessment* 305(b) report pursuant to 33 U.S.C. 1315(b)(1)(D) or 33 U.S.C. 1313(c)(2)(A); (B) low, high and yearly average flow impact criteria; and (C) scientific appropriateness of the criteria guidance of the United States Environmental Protection Agency and the department;

(2) evaluate whether the 1994 surface water quality standards, including the use designations, surface water chemical and microbial criteria and the "Kansas Surface Water Register," as published by the department on June 20, 1994, are based on sound scientific and technical data and information, whether such standards are more stringent than are required by federal law and those of other midwestern and plains states, whether generally accepted criteria exist for evaluating the appropriateness and cost-effectiveness of the standard and whether the department should be directed to make any changes in the standards;

(3) develop and recommend cost-benefit or risk assessment models for the evaluation of the impact of surface water quality standards on the various elements of the environment, health and economy of Kansas, including but not limited to human health, animal and plant species actually found or likely to be reintroduced in Kansas waters, industry, agriculture and wastewater treatment;

(4) assess the probability that designated uses contained in the surface water quality standards can be attained in a cost-effective and reasonable manner when requirements are met;

(5) evaluate whether the 1994 surface water quality standards were adopted in full compliance with the requirements of Kansas law in effect at the time of adoption of the standards and whether the estimates of economic impact completed at the time accurately predicted the fiscal impact of the standards on communities facing compliance with the standards in 1997 and 1998;

(6) advise the governor, legislature and secretary of any revisions to the 1994 surface water quality standards that are justified based on additional scientific and technical information and data;

(7) advise the governor, legislature and secretary whether the department's process of revising the 1994 surface water quality standards is in full compliance with federal and state law;

(8) advise the governor, legislature and secretary regarding the extent of the department's compliance with the provisions of 1996 House Resolution No. 6013, concerning consultation with community officials on the impacts of the 1994 surface water quality standards on the communities of the state; and

(9) recommend the adoption of any procedures that the commission deems advisable to ensure the collection and evaluation of scientific and technical information necessary for the revision of the 1994 surface water quality standards in future years.

(b) In completing its study, the commission shall evaluate and advise the governor, legislature and secretary whether:

(1) There is reliable scientific documentation of the actual existence of the species that are designed to be protected by the special aquatic use designation contained in the 1994 surface water quality standards; and

(2) the special aquatic use designation and reduced mixing zone requirements contained in the 1994 surface water quality standards are based on any recognized scientific data and models and whether there is an established and clear relationship between the presence of the regulated pollutants and the protection or restoration of the targeted aquatic species.

(c) The commission shall consist of seven members appointed by the governor. All members shall serve at the pleasure of the governor. The term of office of such members shall commence at the time of appointment until July 1, 1998, or unless the commission or the appointment is terminated by action of the governor on an earlier date. The chairperson of the commission shall be appointed by the governor from among the members of the commission. The staff of the department of health and environment, the *Kansas* department of agriculture, the Kansas biological survey and the department of wildlife and parks shall cooperate with and assist the deliberations of the commission.

(d) Members of the commission shall have experience in one or more of the following areas and disciplines: Environmental sciences; civil engineering; business and industry; public finance; municipal wastewater treatment; agriculture or agribusiness; environmental law; public health sciences; aquatic biology; risk assessment; and cost benefit analysis. At least one member shall represent the general public. Except for faculty members of universities under the supervision of the Kansas board of regents, no state officer or employee shall serve on the commission.

(e) Before assuming office as a member of the commission, each person appointed as a member shall complete and file with the office of the secretary of state:

(1) A statement containing the information required in a statement of substantial interests pursuant to K.S.A. 46-247 and amendments thereto; and

(2) a list of citations of any publications written by the person.

(f) Within the limits of appropriations provided therefor, the commission may retain such consultants and temporary staff as the commission deems necessary to complete the commission's investigations and final report. The secretary of administration shall provide appropriate space for the meetings of the commission. Each member of the commission shall receive compensation, subsistence, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto.

(g) On or before January 1, 1998, the commission shall submit a preliminary report to the governor and the legislature. The commission shall submit a final report to the governor and the legislature on or before June 30, 1998. The department shall hold public hearings and accept public comment on the commission's final report. After completion of the hearings and receipt of the comments, the department shall develop and publish proposed rules and regulations on or before December 31, 1998, and shall adopt rules and regulations in accordance with the rules and regulations filing act. On and after July 1, 1999, all stream designations and criteria contained in the 1994 surface water quality standards shall be in full force and effect unless otherwise revised by rules and regulations adopted by the secretary.

Sec. 171. K.S.A. 65-688 is hereby amended to read as follows: 65-688. (a) As used in this section and K.S.A. 65-689, and amendments thereto:

(1) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines, or any plant which is registered by the *Kansas* department of agriculture under article 7 of chapter 65 of the *Kansas Statutes Annotated* or which is licensed by the *Kansas* department of agriculture under article 6a of chapter 65 of the *Kansas Statutes Annotated*.

(2) "Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. "Food processing plant" shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail, or any plant which is registered by the *Kansas* department of agriculture under article 7 of chapter 65 of the *Kansas Statutes Annotated* or which is licensed by the *Kansas* department of agriculture under article 6a of chapter 65 of the *Kansas Statutes Annotated*.

(3) "Secretary" means the secretary of health and environment.

(b) In order to reimburse the state of Kansas for inspections by the secretary of health and environment of retail food stores and food processing plants, the secretary of health and environment shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case may be.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food inspection fee fund.

(d) The secretary of health and environment shall adopt rules and regulations necessary to carry out the provisions of this section.

Sec. 172. K.S.A. 65-771 is hereby amended to read as follows: 65-771. As used in this act:

(a) "Adulterated" has the same meaning as provided in K.S.A. 65-664, and amendments thereto.

(b) "Dairy manufacturing plants" means any place where dairy products, grade A milk or milk products are manufactured or prepared for sale or distribution, either at wholesale or retail. This term shall not include a licensed food service establishment which is licensed to manufacture homemade ice cream pursuant to this act.

(c) "Dairy products" means products which may be made from milk or cream for manufacturing purposes and which are not required to meet grade A standards, including butter,

cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk, whole or skim, condensed whole milk, condensed skim milk, sweetened or plain, frozen dairy dessert, and frozen dairy dessert mixes and such other products as may be otherwise designated by rules and regulations.

(d) "Frozen dairy dessert" means and includes products containing milk or cream and other ingredients which are frozen or semi-frozen prior to consumption, such as ice cream, ice milk or sherbet, including frozen dairy desserts for special dietary purposes.

(e) "Frozen dairy dessert mix" means the pasteurized unfrozen combination of all ingredients with or without fruits, fruit juices, candy, nut meats, flavor or harmless color which makes a frozen dairy dessert.

(f) "Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5 % milkfat and not less than 7.5 % milk solids not fat. Goat milk shall be produced according to the sanitary standards of this act.

(g) "Grade A pasteurized milk" means pasteurized milk which has at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The milk shall meet the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk does not have at least a 90% survey rating.

(h) "Grade A pasteurized milk products" means all pasteurized milk products which have at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The pasteurized milk products shall meet the requirements for grade A under rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk products within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk products do not have at least a 90% survey rating.

(i) "Grade A raw milk for pasteurization" means milk having at least 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation, the raw milk meeting the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A raw milk for pasteurization within the statewide system of milk inspection and regulatory services, although such milk does not have at least a 90% survey rating.

(j) "Imminent health hazard" means any condition which involves milk, milk products, or dairy products, or any practice or procedure in the handling, transportation, storage, processing or manufacturing of a milk, milk product or dairy product which poses a significant threat of danger to the public health which should be corrected immediately to prevent injury or sickness and which should not be permitted to continue while a hearing or other proceeding is being conducted. An imminent health hazard may be declared at any point in a chain of events which ultimately may result in harm or danger to the public health. The occurrence of the final anticipated injury or other disease related condition shall not be a prerequisite for the establishment of the existence of an imminent health hazard.

(k) "In package form" means any commodity put up or packaged in any manner in advance of sale so as to constitute a unit quantity of the commodity for either wholesale or retail sale, exclusive of any auxiliary container enclosing such packages which individually conform to the requirements of this act.

(l) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8.25% milk solids not fat and not less than 3.25% milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized. Milk shall be interpreted to include goat milk.

(m) "Milk distributor" means any person who first sells or offers for sale in Kansas any packaged grade A pasteurized milk, milk product, or dairy product.

(n) "Milk hauler/sampler" means any person who collects official samples and may transport raw milk from a farm or raw milk products to or from a milk plant or both, receiving station or transfer station and has in their possession a permit from any state to sample such products.

(o) "Milk inspection and regulatory services" means the inspection, sampling, laboratory testing and the administrative procedures relating thereto, necessary to determine that the production, processing, distribution and sale of grade A milk, milk products, and dairy products comply with the requirements of this act and any rules and regulations adopted hereunder.

(p) "Milk or cream for manufacturing purposes" means raw milk or raw cream which is not subject to grade A standards and which is produced for processing and manufacturing into dairy products for human consumption. Milk for manufacturing purposes may contain less than 3.25% of butterfat and shall be delivered pure, sweet and clean.

(q) "Milk or cream receiving station" means any place where milk or cream may be received, collected, handled, processed, stored or collected and prepared for further transporting.

(r) "Milk or cream transfer station" means any place where milk or cream are transferred directly from one milk tank truck to another.

(s) "Milk processor" means any person who operates any place, premises or establishment where grade A raw milk for pasteurization or milk or cream for manufacturing purposes is processed, pasteurized, bottled or prepared for distribution.

(t) "Milk producer" means any person who owns or operates a dairy farm and who provides, sells or offers for sale grade A raw milk for pasteurization or milk or cream for manufacturing purposes to a milk plant, receiving station or transfer station.

(u) "Milk products" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, nonfat skim milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk, cultured nonfat skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, acidified nonfat skim milk, low-sodium milk, low-sodium reduced fat or lowfat milk, low-sodium nonfat skim milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat skim milk, aseptically processed and packaged milk and milk products, milk, reduced fat or lowfat milk or nonfat skim milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined herein. Milk products also include those dairy foods made by modifying the federally standardized products listed in this section in accordance with 21 C.F.R. 130.10, requirements for foods named by use of a nutrient content claim and a standardized term. Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein or if they are labeled as Grade A as adopted and described by rules and regulations promulgated under this act. Except as otherwise provided, the term milk shall not include dietary products, infant formula, ice cream or other desserts, butter or cheese.

(v) "Misbranded" has the same meaning as ascribed to it in K.S.A. 65-665, and amendments thereto.

(w) "On-farm retail sales of milk or milk products" means the sale of milk or milk products on the farm by the producer from the production of the dairy herd to the final consumer, so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm. The advertisement upon any such sign shall state that such milk or milk products are raw and shall be in letters of a uniform size. Each container in which

any unpasteurized milk is sold or offered for sale shall be clearly labeled as ungraded raw milk.

(x) "Pasteurized" has the same meaning as ascribed to it in 21 C.F.R. 131.3 and 135.3.
(y) "Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

(z) "Plant fabricating single service articles" means any place which manufactures single service articles which are expected to come in contact with grade A milk or grade A milk products.

(aa) "Secretary" means the secretary of the ~~state~~ *Kansas* department of agriculture, or the secretary's designee.

(bb) "Single service article or container" means any container having a milk or milk product-contact surface and used in the packaging, handling, storage or servicing of grade A milk and is intended for one usage only.

Sec. 173. K.S.A. 65-772 is hereby amended to read as follows: 65-772. (a) The secretary shall adopt such rules and regulations as are necessary to implement the provisions of this act, and shall be charged with the enforcement of this act and of any rules and regulations adopted hereunder.

(b) All rules and regulations of the *Kansas* department of agriculture or the secretary of the *Kansas* department of agriculture concerning milk, cream and dairy products in existence on the effective date of this act shall continue to be effective until revised, amended, revoked or nullified pursuant to law.

Sec. 174. K.S.A. 66-1,160 is hereby amended to read as follows: 66-1,160. The commission shall publish notice of the time, place and subject matter of such hearing in newspapers having general circulation in the counties in which is located any portion of the land which has been or is proposed to be acquired in connection with the construction, operation and maintenance of the proposed nuclear generation facility or addition to a nuclear generation facility once each week for three consecutive weeks, the last publication to be not less than five days before such hearing date. Written notice of such hearing and a copy of the application also shall be served not less than 20 days prior to the hearing date upon all landowners, as shown by the files, records and indexes of the register of deeds of the county in which such land is located, and the chief administrative officer, or any person designated by such officer to receive such service, of the department of commerce, *Kansas* department of agriculture, Kansas water office, department of health and environment, department of transportation, state geological survey and division of the budget of the department of administration. In addition to the information contained in the published notice, such written notice shall state that the electric utility has filed the application and supporting documents as required by K.S.A. 66-1,159 and amendments thereto, and that such application and supporting documents are available in the office of the commission for examination and copying by the person or board or agency desiring copies thereof.

Sec. 175. K.S.A. 68-506b is hereby amended to read as follows: 68-506b. Where any city of the state, a part of whose boundary is formed by a state line between this and any other state, has heretofore begun proceedings by resolution, ordinance or otherwise, whereby the board of county commissioners of the county in which said city is located has undertaken, under the provisions of K.S.A. 68-506, and said resolution has been adopted by the board of county commissioners, whereby said city has been declared a benefit district, and said road through said city has been declared a public utility, said proceedings shall not by reason of the passage of this act be invalidated or set aside, but said action and the proceedings taken thereunder shall be, and they are hereby ratified, confirmed and made valid, and it is hereby made the duty of the board of county commissioners in conjunction with the governing body of said city, subject to the approval of the secretary of transportation, to proceed with the work, or to advertise for and let contracts in the manner provided for by law in other cases for the construction of other highways, so as to connect the roads so constructed to the city limits on either side of said city.

Where it has become or shall hereafter become necessary to leave the route heretofore or hereafter proposed to be used as a portion of the road or street connecting said highways at the city limits, in order to eliminate steam or electric grade crossings, or any other dangerous places on said highways, or to conform to the requirements of the *Kansas* department

of agriculture or the United States bureau of public roads to obtain federal aid upon said road, or any part thereof, the county engineer and board of county commissioners, in conjunction with the governing body of said city, shall change the route so as to eliminate such dangerous crossings, or other dangerous places, and the governing body of said city shall proceed to designate or acquire by purchase or donation a right-of-way for said street along the route over which said road may be relocated; and where the right-of-way for said purpose cannot be obtained by donation or purchase the city council is hereby authorized to condemn a right-of-way for said purpose in the manner provided for by article 2, chapter 26 of the Kansas Statutes Annotated, relating to the opening, widening or extending any street, insofar as the same is applicable.

Sec. 176. K.S.A. 74-553 is hereby amended to read as follows: 74-553. The grape and wine industry advisory council shall have the following duties, authorities and powers:

(a) Advise the *Kansas* department of agriculture and other state agencies on the grape and wine industry initiatives, problems and needs;

(b) determine and recommend specific research programs and priorities at Kansas state university;

(c) facilitate improved communication and interaction among grape and wine producers, wine and liquor wholesalers and retailers, governmental agencies, both federal and state, and state tourism interests;

(d) determine and recommend specific marketing program priorities to assist in promoting and marketing the state's grape and wine industry;

(e) develop and recommend a long-term plan for financing continued programs for promotion, marketing, research and extension in support of the Kansas grape and wine industry; and

(f) report to the *Kansas* department of agriculture and the standing committees on agriculture of the senate and house of representatives on the status of the Kansas grape and wine industry.

Sec. 177. K.S.A. 74-562 is hereby amended to read as follows: 74-562. (a) On the effective date of this act, there is hereby created within and as part of the *Kansas* department of agriculture a state board of agriculture.

(b) The board shall be composed of nine members who shall be appointed by the governor. One member shall be appointed from each congressional district with the remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. At no time shall more than five members of the board of agriculture be members of the same political party.

(c) Subsequent redistricting shall not disqualify any member of the board from service for the remainder of such member's term.

(d) The regular term of office of members of the board of agriculture shall be four years. Regular terms shall commence on the second Monday in January following appointment of the board member.

(e) Of the members of the board appointed in the year 1995: (1) Four members shall have terms ending on the second Monday in January 2001 and no more than two such members shall be members of the same political party; and (2) five members shall have terms ending on the second Monday in January 1999 and no more than three such members shall be members of the same political party.

(f) Any member appointed subsequent to 1995 shall be appointed for a four-year term, unless such appointment is to fill the unexpired term where a vacancy has occurred on the board, in which case the member shall be appointed for the remainder of the unexpired term.

(g) No officer or employee of the *Kansas* department of agriculture shall be a member of the state board of agriculture.

Sec. 178. K.S.A. 2003 Supp. 74-567 is hereby amended to read as follows: 74-567. (a) The state board of agriculture shall have such powers, duties and functions as prescribed by this section. The board shall serve in an advisory capacity to the governor and the secretary to review and make recommendations on department legislative initiatives and proposed rules and regulations or proposed revised rules and regulations prior to the submission of such rules and regulations to the secretary of administration pursuant to K.S.A. 77-420,

and amendments thereto, other than rules and regulations pertaining to personnel matters of the department and rules and regulations of the division of water resources. The board shall not have any powers, duties or functions concerning the day-to-day operations of the *Kansas* department of agriculture.

(b) The board shall serve in an advisory capacity to the agriculture products development division of the department of commerce. The board shall advise the division on issues and concerns relating to agriculture products development and marketing.

(c) The agriculture products development division of the department of commerce shall report to the board, at not less than two meetings of such board each year, on the activities and functions of the division.

Sec. 179. K.S.A. 74-578 is hereby amended to read as follows: 74-578. On and after July 1, 2000, there is hereby created in the state treasury the grain commodities commission services fund. All moneys received by the *Kansas* department of agriculture for services performed by the department for the grain commodities commission created pursuant to the provisions of K.S.A. 2-3001 *et seq.* and K.S.A. 2003 Supp. 2-3002a, and amendments thereto, shall be remitted to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit it to the grain commodities commission services fund. All costs and expenses incurred by the department in providing services to the grain commodities commissions shall be paid from the grain commodities commission services fund. All expenditures from the grain commodities commission services fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

Sec. 180. K.S.A. 2003 Supp. 74-50,159 is hereby amended to read as follows: 74-50,159. (a) On the effective date of this act, officers and employees who, immediately prior to such date, were engaged in the performance of any powers and duties of the *Kansas* department of agriculture listed in K.S.A. 74-50,156, and amendments thereto, which are transferred to the department of commerce, and who, in the opinion of the secretary of commerce, are necessary to perform the powers and duties of the department of commerce, shall be transferred to, and shall become officers and employees of such department.

(b) On the effective date of this act, officers and employees who, immediately prior to such date, were engaged in the performance of any powers and duties of the agricultural value added center which is abolished by this act and who, in the opinion of the secretary of commerce, are necessary to perform the powers and duties of the department of commerce, agriculture products development division, shall be transferred to and become officers and employees of such department.

Sec. 181. K.S.A. 2003 Supp. 74-50,162 is hereby amended to read as follows: 74-50,162. (a) On the effective date of this act, the balances of all funds appropriated or reappropriated to the *Kansas* department of agriculture, the agricultural value added center at the Kansas technology enterprise corporation for any of the powers and duties transferred to the department of commerce pursuant to K.S.A. 74-50,156, and amendments thereto, are hereby transferred to the department of commerce and shall be used only for the purpose for which the appropriation was originally made.

(b) On the effective date of this act, the liability for all accrued compensation, wages or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the *Kansas* department of agriculture, the agricultural value added center at the Kansas technology enterprise corporation which are transferred to the department of commerce pursuant to K.S.A. 74-50,156, and amendments thereto, shall be assumed and paid by the department of commerce.

Sec. 182. K.S.A. 82a-1803 is hereby amended to read as follows: 82a-1803. (a) There is hereby established in the state treasury the water conservation projects fund, to be administered by the director of the Kansas water office.

(b) Revenue from the following sources shall be credited to the water conservation projects fund:

- (1) Amounts provided for by K.S.A. 82a-1801; and
- (2) moneys received from any source by the state in the form of gifts, grants, reimbursements or appropriations for use for the purposes of the fund.

(c) Moneys credited to the water conservation projects fund may be expended only for the purpose of paying all or a portion of the costs of the following water management, conservation, administration and delivery projects, and similar types of projects, in those areas of the state lying in the upper Arkansas river basin and directly impacted by the provisions of the Arkansas river compact between this state and the state of Colorado:

- (1) Efficiency improvements to canals or laterals owned by a ditch company or projects to improve the operational efficiency or management of such canals or laterals;
- (2) water use efficiency devices, tailwater systems or irrigation system efficiency upgrades;
- (3) water measurement flumes, meters, gauges, data collection platforms or related monitoring equipment;
- (4) artificial recharge or purchase of water rights for stream recovery or aquifer restoration;
- (5) maintenance of the Arkansas river channel; or
- (6) monitoring and enforcement of Colorado's compliance with the Arkansas river compact.

Moneys credited to the fund may be expended to reimburse costs of projects described by this subsection that were required by the division of water resources and commenced on or after July 1, 1994.

(d) Any person or entity may apply to the director of the Kansas water office for the expenditure of moneys in the water conservation projects fund for the purposes provided by this section. The director of the Kansas water office and the chief engineer of the division of water resources of the *Kansas* department of agriculture shall review and approve each proposed project for which moneys in the fund will be expended. In reviewing and approving proposed projects, the director and the chief engineer shall give priority to: (1) Projects that achieve the greatest water conservation efficiency for the general good; and (2) projects that have been required by the division of water resources. Upon such review and approval, the director of the Kansas water office shall request the legislature to appropriate, as a line item, moneys from the fund to pay all or a portion of the costs of the specific project, except that any project for which an aggregate of less than \$10,000 will be expended from the fund shall not require a line-item appropriation.

(e) Interest attributable to moneys in the water conservation projects fund shall be credited to the state general fund as provided by K.S.A. 75-4210a and amendments thereto.

(f) All expenditures from the water conservation projects fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the Kansas water office or a person designated by the director of the Kansas water office.

Sec. 183. K.S.A. 2003 Supp. 82a-1903 is hereby amended to read as follows: 82a-1903.

(a) (1) On or before November 15, 1999, the chief engineer of the division of water resources of the *Kansas* department of agriculture, in accordance with K.S.A. 77-420 and amendments thereto, shall submit to the secretary of administration and the attorney general proposed rules and regulations containing all current standards, statements of policy and general orders that: (A) Have been issued or adopted by the chief engineer; (B) are of general application and have the effect of law; and (C) are not contained in current rules and regulations adopted by the chief engineer.

(2) If any standard, statement of policy or general order described in subsection (a) (1) is not submitted as required by subsection (a), such standard, statement of policy or general order shall be void and of no effect after November 15, 1999, until adopted by rules and regulations.

(b) (1) On or before March 1, 2000, each groundwater management district shall submit to the chief engineer of the division of water resources of the *Kansas* department of agriculture recommended rules and regulations containing all current standards, statements of policy and general orders that: (A) Have been issued or adopted by such district; (B) are of general application within the district and have the effect of law; and (C) are not contained in current rules and regulations adopted by the chief engineer.

(2) If any standard, statement of policy or general order described in subsection (b)(1) is not submitted as required by that subsection, such standard, statement of policy or general

order shall be void and of no effect after March 1, 2000, until adopted by rules and regulations.

(c) Any standard, policy or order of a groundwater management district which is within the authority of the chief engineer, other than an administrative standard or policy relating to management of the district, shall be void and of no effect after January 1, 2003, unless adopted by rules and regulations of the chief engineer as provided by subsection (o) of K.S.A. 82a-1028, and amendments thereto. Any standard, policy or order of a groundwater management district which is within the authority of another state agency, other than an administrative standard or policy relating to management of the district, shall be void and of no effect after January 1, 2004, unless adopted by rules and regulations of such agency as provided by subsection (p) of K.S.A. 82a-1028, and amendments thereto.

Sec. 184. K.S.A. 2003 Supp. 82a-1904 is hereby amended to read as follows: 82a-1904. The chief engineer of the division of water resources of the *Kansas* department of agriculture, for good cause shown, may grant an exemption from or waiver of a rule and regulation adopted by the chief engineer if the chief engineer determines that the exemption or waiver will not prejudicially or unreasonably affect the public interest and will not impair any existing water right. The exemption or waiver shall be in writing and shall include the reason for the exemption or waiver.

Sec. 185. K.S.A. 83-205 is hereby amended to read as follows: 83-205. (a) There is hereby established in the *Kansas* department of agriculture a weights and measures inspection program to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder. The program shall be under the supervision of the secretary, and the secretary shall employ an administrator of the program and appoint such personnel as may be necessary for the proper administration of chapter 83 of the Kansas Statutes Annotated, and amendments thereto. The administrator shall be in the unclassified service of the Kansas civil service act.

(b) The weights and measures inspection program shall perform the following functions:

(1) Assure that weights and measures in commercial service within the state are suitable for their intended use, properly installed, accurate and are so maintained by their owner or user;

(2) prevent unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within this state;

(3) make available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the *Kansas* department of agriculture;

(4) promote uniformity, to the extent such conformance is practicable and desirable, between weights and measures requirements of this state and those of other states and federal agencies;

(5) encourage desirable economic growth while protecting the consumer through the adoption by rule and regulation of weights and measures requirements as necessary to assure equity among buyers and sellers; and

(6) such other functions as may be specified by law or deemed necessary by the secretary to carry out the duties and functions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder.

Sec. 186. K.S.A. 2003 Supp. 83-219 is hereby amended to read as follows: 83-219. (a) It shall be unlawful for any person:

(1) To offer or expose for sale, or to sell or otherwise dispose of any weight, measure or weighing or measuring device that does not meet the tolerances and specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or which has been rejected without first obtaining the written authorization of the secretary;

(2) to use or possess a weight, measure or weighing or measuring device that is used for or intended to be used for commercial purposes which does not meet the tolerance and specifications required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or that does not conform to the standard authorized by the secretary for determining the quantity of any commodity or article of merchandise, for the purpose of:

(A) Buying or selling any commodity or article of merchandise;

(B) computation of any charge for services rendered on the basis of weight or measure;

(C) determining weight or measure, either when a charge is made for such determination or where no charge is made for use of such weight, measure, weighing or measuring device;

(3) except as allowed in K.S.A. 83-225, and amendments thereto, to break or remove any tag, mark or seal placed on any weighing or measuring device by the secretary or a county or city inspector of weights and measures, without specific written authorization from the proper authority or to use a weighing or measuring device after the lapse of the authorized period following the placing of a rejection tag thereon by the secretary, unless further extension of time for any repair purposes is first obtained from the secretary;

(4) to sell, offer or expose for sale, less than the represented quantity of any commodity, thing or service;

(5) to take or attempt to take more of the represented quantity of any commodity, thing or service when the buyer furnishes the weight, measure or weighing or measuring device by which the amount of any commodity, thing or service is determined;

(6) to keep for the purpose of sale, or to offer or expose for sale, or to sell any commodity in a manner contrary to the law or contrary to any rule and regulation;

(7) to use in retail trade, except in preparation of packages of merchandise put up in advance of sale, a weighing or measuring device that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from a reasonable customer position;

(8) to violate any of the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or rules and regulations adopted thereunder, for which a specific penalty is not provided;

(9) to sell or offer for sale, or use or possess for the purpose of selling or using any device or instrument to be used or calculated to falsify any weight or measure;

(10) to dispose of any rejected weight or measure in a manner contrary to law or rules and regulations;

(11) to expose for sale, offer for sale or sell any commodity in package form, without it being so wrapped, or the container so made, formed or filled, that it will not mislead the purchaser as to the quantity of the contents of the package;

(12) to expose for sale, offer for sale or sell any commodity in any container where the contents of the container fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the secretary;

(13) to misrepresent the price of any commodity or service sold, offered, exposed or advertised for sale by weight, measure or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive any person;

(14) to misrepresent, or represent in a manner calculated or tending to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed or advertised for sale at retail;

(15) to compute or attempt to compute at the time of sale of an item, a value which is not a true extension of a price per unit which is then advertised, posted or quoted;

(16) to charge or attempt to charge, at the time of the sale of an item or commodity, a value which is more than the price which is advertised, posted or quoted;

(17) to alter a weight certificate, use or attempt to use any such certificate for any load or part of a load or for articles or things other than for which the certificate is given, or, after weighing and before the delivery of any articles or things so weighted, alter or diminish the quantity thereof;

(18) to hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(19) to fail to follow the standards and requirements established in K.S.A. 83-202, and amendments thereto, or any rules and regulations adopted thereunder;

(20) to fail to pay all fees and penalties as prescribed by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted thereunder;

(21) to fail to keep or make available for examination or provide to the secretary all inspection reports, test reports and any other service reports or other information on any

device owned or operated by the owner or any agent or employee of the owner and other information necessary for the enforcement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, and as required by the secretary;

(22) to fail to have any commercial weight, measure or weighing and measuring device tested as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(23) to sell or offer or expose for sale liquefied petroleum gas in packages or containers which do not bear a statement as to tare and net weight as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder, or packages or containers which bear a false statement as to weights;

(24) to sell, use, remove, or otherwise dispose of, or fail to remove from the premises specified, any weighing or measuring device or package or commodity contrary to the terms of any order issued by the secretary;

(25) to violate any order issued by the secretary pursuant to chapter 83 of the Kansas Statutes Annotated, and amendments thereto; and

(26) to prohibit a buyer or seller from observing the weighing or operation of any transaction to which such buyer or seller is a party.

(b) It shall be unlawful for any service company or technical representative to:

(1) Act as or represent such person's self to be a technical representative without having a valid license issued by the *Kansas* department of agriculture;

(2) certify a device as correct unless the device meets the tolerances and specifications as required by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder;

(3) hinder or obstruct in any way the secretary in the performance of the secretary's official duties under chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder;

(4) fail to follow the standards and requirements set forth in K.S.A. 83-202, and amendments thereto, or any rules and regulations adopted thereunder;

(5) fail to complete the testing or placing-in-service report in its entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;

(6) file a false or fraudulent service company or technical representative application or reports to the secretary;

(7) fail to pay all fees and penalties as prescribed by chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted thereunder;

(8) fail to keep or make available for examination in an accessible and legible manner or provide to the secretary in a legible manner all inspection reports, test reports, and any other service or report work information on any device which the service company or an agent or employee performed work on and other information necessary for the enforcement of chapter 83 of the Kansas Statutes Annotated, and amendments thereto or any rules and regulations adopted thereunder; or

(9) sell, offer or expose for sale a weighing or measuring device intended to be used commercially, which is not traceable to a national type evaluation program certificate of conformance.

(c) For the purpose of paragraph (a)(4), the selling and delivery of a stated quantity of any commodity shall be prima facie evidence of representations on the part of the seller that the quantity sold and delivered was the quantity bought by the purchaser.

(d) Violation of this section shall be deemed a deceptive act and practice as defined by K.S.A. 50-626, and amendments thereto. Violations of the provisions of K.S.A. 83-219, and amendments thereto, may be enforced by the secretary under the administrative provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or by the attorney general or a county or district attorney under the Kansas consumer protection act.

Sec. 187. K.S.A. 2003 Supp. 83-302 is hereby amended to read as follows: 83-302. (a) Each person, other than an authorized representative of the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, desiring to operate and perform testing and other services as a company in Kansas shall apply to the secretary for

a service company license, on a form to be supplied by the secretary, and shall obtain such license from the secretary before operating and performing testing or other services as a service company. Each service company shall obtain a license for each place of business maintained in Kansas and shall pay a license application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of \$100 and thereafter an annual license renewal application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of \$100 for each place of business. Each service company license shall expire on June 30 following issuance, shall be void unless renewed prior to the expiration and shall not be transferable.

(b) If any service company maintains any out-of-state places of business which the company operates in serving Kansas patrons, the service company seeking to obtain or renew a license under this section shall list in the application such places of business and the firm names under which the company operates at each such place of business. If any out-of-state place of business is established by a service company after being licensed under this section, the licensee shall supply such information to the secretary before any work is performed in Kansas from such out-of-state location. Each nonresident service company shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any liabilities arising from operations thereunder. Each nonresident service company which maintains no established place of business in Kansas shall obtain a license under this section for each out-of-state place of business and shall list on the application the firm name or names for each place of business from which the service company intends to operate.

(c) Each technical representative shall be licensed annually by the secretary. Each technical representative shall be required to attend continuing education seminars on an annual basis as required by rules and regulations adopted by the secretary and to pass a reasonable examination prescribed by the secretary each year prior to being licensed. The *Kansas* department of agriculture shall be authorized to charge a fee to the attendees of the continuing education seminars sponsored by the agency. The amount charged shall be no more than is necessary to cover the expenses incurred in providing the seminar. Each technical representative's license shall expire on June 30 following the issuance of the license and shall be void unless renewed prior to the expiration.

(d) No service company license may be issued or renewed under this section until the applicant's weights or measures, or both have been tested for accuracy and sealed by the secretary. The secretary is authorized to accept a certification of the accuracy of the applicant's weights or measures issued by the national institute of standards and technology or by a weights and measures laboratory certified by the national institute of standards and technology in lieu of a test by the secretary, if such certificate shows that the weights or measures have been tested within the last 365 days preceding the license application.

(e) The secretary shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

Sec. 188. K.S.A. 2003 Supp. 83-402 is hereby amended to read as follows: 83-402. (a) Each person, other than an authorized representative of the secretary or an authorized representative of a city or county department of public inspection of weights and measures established pursuant to K.S.A. 83-210, and amendments thereto, desiring to operate and perform testing and other services as a service company in Kansas shall apply to the secretary for a service company license, on a form to be supplied by the secretary, and shall obtain such license from the secretary before operating and performing testing or other services as a service company. Each service company shall obtain a license for each place of business maintained in Kansas and shall pay a license application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of \$100 and thereafter an annual license renewal application fee of \$50, or commencing July 1, 2002, and ending June 30, 2005, a fee of \$100 for each place of business. Each service company license shall expire on June 30 following issuance, shall be void unless renewed prior to the expiration and shall not be transferable.

(b) If any service company maintains any out-of-state places of business which the service company operates in serving Kansas patrons, the applicant seeking to obtain or renew a license under this section shall list in the application such places of business and the firm

names under which the service company operates at each such place of business. If any out-of-state place of business is established by a service company after being licensed under this section, the licensee shall supply such information to the secretary before any work is performed in Kansas from such out-of-state location. Each nonresident service company shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any liabilities arising from operations thereunder. Each nonresident service company which maintains no established place of business in Kansas shall obtain a license under this section for each out-of-state place of business and shall list on the application the firm name or names for each place of business from which the service company intends to operate.

(c) Each technical representative shall be licensed annually by the secretary. Each technical representative shall be required to attend continuing education seminars on an annual basis as required by rules and regulations adopted by the secretary and to pass a reasonable examination prescribed by the secretary each year prior to being licensed. The ~~state~~ *Kansas* department of agriculture shall be authorized to charge a fee to the attendees of the seminar sponsored by the department. The amount charged shall be no more than is necessary to cover the expenses incurred in providing the seminar. All technical representatives who install, repair, adjust or calibrate a device and certify such devices shall be required to pass the state examination annually. Each technical representative license shall expire on June 30 following issuance of the license and shall be void unless renewed prior to the expiration.

(d) No service company license may be issued or renewed under this section until the applicant's weights and measures have been tested for accuracy and sealed by the secretary. The secretary is authorized to accept a certification of the accuracy of the applicant's weights or measures issued by the national institute of standards and technology, by a weights and measures laboratory certified by the national institute of standards and technology, or by the appropriate certifying agency of another state in lieu of a test by the secretary, if such certificate shows that the weights or measures have been tested within the 12 calendar months next preceding the license application.

(e) The secretary shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the weights and measures fee fund.

Sec. 189. K.S.A. 2-127, 2-128, 2-129, 2-129i, 2-131b, 2-131d, 2-131e, 2-132, 2-137, 2-142, 2-144d, 2-158, 2-714, 2-716, 2-907, 2-1002, 2-1004, 2-1004a, 2-1008, 2-1010, 2-1012, 2-1013, 2-1014, 2-1201, 2-1209, 2-1220, 2-1226, 2-1227, 2-1228, 2-1316, 2-1317, 2-1318, 2-1319, 2-1322, 2-1327, 2-1331, 2-1421a, 2-1424a, 2-1425, 2-1427, 2-1437, 2-2003, 2-2005, 2-2009, 2-2202, 2-2210, 2-2212, 2-2438a, 2-2439, 2-2444a, 2-2461, 2-2464a, 2-2469, 2-2472, 2-2802, 2-2803, 2-2814, 2-2901, 2-2903, 2-2911, 2-3002a, 2-3309, 2-3315, 2-3601, 11-201, 12-636, 12-761, 12-766, 12-2713, 16-1503, 16-1505, 19-1561b, 19-2963, 24-407, 24-418, 24-656, 24-659, 24-1202, 24-1204, 27-328, 28-813, 34-101c, 34-125, 34-132, 34-133, 34-134, 42-701, 42-725, 44-820, 47-1902, 47-1903, 47-1904, 47-1905, 47-2001, 47-2301, 50-905, 55-153, 65-1,177, 65-688, 65-6a19, 65-6a24, 65-6a26, 65-6a28, 65-6a29, 65-6a30, 65-6a31, 65-6a32, 65-6a33, 65-6a35, 65-6a44, 65-6a44a, 65-6a45, 65-6a56, 65-771, 65-772, 65-34,103, 65-5703, 66-1,160, 68-506b, 68-1414, 68-1702, 68-2203, 74-504, 74-504a, 74-504b, 74-504e, 74-505, 74-505c, 74-506a, 74-506b, 74-506d, 74-509, 74-510a, 74-511, 74-515a, 74-515b, 74-542, 74-550, 74-553, 74-554, 74-555, 74-562, 74-578, 74-2610, 74-5048, 75-3149, 75-3150, 76-478, 82a-301a, 82a-303a, 82a-307a, 82a-405, 82a-603, 82a-612, 82a-701, 82a-706e, 82a-732, 82a-734, 82a-903, 82a-1021, 82a-1023, 82a-1301, 82a-1335, 82a-1501, 82a-1803, 83-205 and 83-403 and K.S.A. 2003 Supp. 2-1333, 2-2906, 2-3602, 47-816, 55-443, 55-447, 65-6a18, 74-567, 74-2622, 74-50,159, 74-50,162, 74-8101, 79-3425c, 82a-731, 82a-954, 82a-1603, 82a-1903, 82a-1904, 83-219, 83-302 and 83-402 are hereby repealed.”;

By renumbering the remaining section accordingly;

On page 1, in the title, by striking all in lines 9 through 30 and inserting the following:

“AN ACT concerning agriculture; amending K.S.A. 2-127, 2-128, 2-129, 2-129i, 2-131b, 2-131d, 2-131e, 2-132, 2-137, 2-142, 2-144d, 2-158, 2-714, 2-716, 2-907, 2-1002, 2-1004, 2-1004a, 2-1008, 2-1010, 2-1012, 2-1013, 2-1014, 2-1201, 2-1209, 2-1220, 2-1226, 2-

1227, 2-1228, 2-1316, 2-1317, 2-1318, 2-1319, 2-1322, 2-1327, 2-1331, 2-1421a, 2-1424a, 2-1425, 2-1427, 2-1437, 2-2003, 2-2005, 2-2009, 2-2202, 2-2210, 2-2212, 2-2438a, 2-2439, 2-2444a, 2-2461, 2-2464a, 2-2469, 2-2472, 2-2802, 2-2803, 2-2814, 2-2901, 2-2903, 2-2911, 2-3002a, 2-3309, 2-3315, 2-3601, 11-201, 12-636, 12-761, 12-766, 12-2713, 16-1503, 16-1505, 19-1561b, 19-2963, 24-407, 24-418, 24-656, 24-659, 24-1202, 24-1204, 27-328, 28-813, 34-101c, 34-125, 34-132, 34-133, 34-134, 42-701, 42-725, 44-820, 47-1902, 47-1903, 47-1904, 47-1905, 47-2001, 47-2301, 50-905, 55-153, 65-1,177, 65-688, 65-6a19, 65-6a24, 65-6a26, 65-6a28, 65-6a29, 65-6a30, 65-6a31, 65-6a32, 65-6a33, 65-6a35, 65-6a44, 65-6a44a, 65-6a45, 65-6a56, 65-771, 65-772, 65-34,103, 65-5703, 66-1,160, 68-506b, 68-1414, 68-1702, 68-2203, 74-504, 74-504a, 74-504b, 74-504e, 74-505, 74-505c, 74-506a, 74-506b, 74-506d, 74-509, 74-510a, 74-511, 74-515a, 74-515b, 74-542, 74-550, 74-553, 74-554, 74-555, 74-562, 74-578, 74-2610, 74-5048, 75-3149, 75-3150, 76-478, 82a-301a, 82a-303a, 82a-307a, 82a-405, 82a-603, 82a-612, 82a-701, 82a-706e, 82a-732, 82a-734, 82a-903, 82a-1021, 82a-1023, 82a-1301, 82a-1335, 82a-1501, 82a-1803, 83-205 and 83-403 and K.S.A. 2003 Supp. 2-1333, 2-2906, 2-3602, 47-816, 55-443, 55-447, 65-6a18, 74-567, 74-2622, 74-50,159, 74-50,162, 74-8101, 79-3425c, 82a-731, 82a-954, 82a-1603, 82a-1903, 82a-1904, 83-219, 83-302 and 83-402 and repealing the existing sections.”, and **SB 524** be passed as amended.

SB 257 as amended by adoption of the committee amendments, be further amended by motion of Senator Buntin as further amended by Senate Committee, on page 1, in line 22, by striking “(5)” and inserting “(3) or (4)”; in line 23, after the second “breeder” by inserting “, distributor”; by striking all in lines 26 and 27; in line 28, by striking “(3)” and inserting “(2)”;

And by renumbering the remaining subparagraphs accordingly;

Also on page 1, also in line 28, by striking “(5)” and inserting “(3) or (4)”; in line 29, by striking “or” and inserting a comma; also in line 29, before “an” by inserting “pound or shelter”; in line 30, by striking “\$350” and inserting “\$375”; in line 34, by striking “\$750” and inserting “\$625”, and **SB 257** be passed as further amended.

SB 376 be amended by adoption of the committee amendments, be further amended by motion of Senator Allen as amended by Senate Committee, on page 1, in line 17, by striking “2” and inserting “4”

On page 6, by striking all in lines 38 through 43;

On page 7, by striking all in lines 1 through 24 and inserting the following:

“Sec. 2. K.S.A. 2003 Supp. 25-4143 is hereby amended to read as follows: 25-4143. As used in the campaign finance act, unless the context otherwise requires:

(a) “Candidate” means an individual who: (1) Appoints a treasurer or a candidate committee;

(2) makes a public announcement of intention to seek nomination or election to state or local office;

(3) makes any expenditure or accepts any contribution for such person’s nomination or election to any state or local office; or

(4) files a declaration or petition to become a candidate for state or local office.

(b) “Candidate committee” means a committee appointed by a candidate to receive contributions and make expenditures for the candidate.

(c) “Clearly identified candidate” means a candidate who has been identified by the:

(1) Use of the name of the candidate;

(2) use of a photograph or drawing of the candidate; or

(3) unambiguous reference to the candidate whether or not the name, photograph or drawing of such candidate is used.

(d) “Commission” means the governmental ethics commission.

(e) (1) “Contribution” means:

(A) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value given to a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.

(B) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office;

(C) a transfer of funds between any two or more candidate committees, party committees or political committees;

(D) the payment, by any person other than a candidate, candidate committee, party committee or political committee, of compensation to an individual for the personal services rendered without charge to or for a candidate's campaign or to or for any such committee;

(E) the purchase of tickets or admissions to, or advertisements in journals or programs for, testimonial events;

(F) a mailing of materials designed to expressly advocate the nomination, election or defeat of a clearly identified candidate, which is made and paid for by a party committee with the consent of such candidate.

(2) "Contribution" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer related to the rendering of volunteer services not exceeding a fair market value of \$50 during an allocable election period as provided in K.S.A. 25-4149, and amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning;

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding a fair market value of \$50 per event; or

(E) *the transfer of campaign funds to a bona fide successor committee or candidacy in accordance with K.S.A. 25-4157a and amendments thereto.*

(f) "Election" means:

(1) A primary or general election for state or local office; and

(2) a convention or caucus of a political party held to nominate a candidate for state or local office.

(g) (1) "Expenditure" means:

(A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made by a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.

(B) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made to expressly advocate the nomination, election or defeat of a clearly identified candidate for a state or local office;

(C) any contract to make an expenditure;

(D) a transfer of funds between any two or more candidate committees, party committees or political committees; or

(E) payment of a candidate's filing fees.

(2) "Expenditure" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer incidental to the rendering of volunteer services not exceeding a fair market value of \$50 during an allocable election period as provided in K.S.A. 25-4149, and amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning or payment of such costs by the treasurer of a candidate or candidate committee;

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding fair market value of \$50 per event; or

(E) any communication by an incumbent elected state or local officer with one or more individuals unless the primary purpose thereof is to expressly advocate the nomination, election or defeat of a clearly identified candidate.

(h) "Expressly advocate the nomination, election or defeat of a clearly identified candidate" means any communication which uses phrases including, but not limited to:

(1) "Vote for the secretary of state";

(2) "re-elect your senator";

- (3) "support the democratic nominee";
- (4) "cast your ballot for the republican challenger for governor";
- (5) "Smith for senate";
- (6) "Bob Jones in '98";
- (7) "vote against Old Hickory";
- (8) "defeat" accompanied by a picture of one or more candidates; or
- (9) "Smith's the one."
 - (i) "Party committee" means:
 - (1) The state committee of a political party regulated by article 3 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto;
 - (2) the county central committee or the state committee of a political party regulated under article 38 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto;
 - (3) the bona fide national organization or committee of those political parties regulated by the Kansas Statutes Annotated;
 - (4) not more than one political committee established by the state committee of any such political party and designated as a recognized political committee for the senate;
 - (5) not more than one political committee established by the state committee of any such political party and designated as a recognized political committee for the house of representatives; or
 - (6) not more than one political committee per congressional district established by the state committee of a political party regulated under article 38 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto, and designated as a congressional district party committee.
 - (j) "Person" means any individual, committee, corporation, partnership, trust, organization or association.
 - (k) (1) "Political committee" means any combination of two or more individuals or any person other than an individual, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.
 - (2) "Political committee" shall not include a candidate committee or a party committee.
 - (l) "Receipt" means a contribution or any other money or thing of value, but not including volunteer services provided without compensation, received by a treasurer in the treasurer's official capacity.
 - (m) "Public office" means a state or local office.
 - (n) "Local office" means:
 - (1) A member of the governing body of a city of the first class;
 - (2) an elected office of:
 - (A) A unified school district having 35,000 or more pupils regularly enrolled in the preceding school year;
 - (B) a county; or
 - (C) the board of public utilities.
 - ~~(m)~~ (o) "State office" means any state office as defined in K.S.A. 25-2505, and amendments thereto.
 - ~~(n)~~ (p) "Testimonial event" means an event held for the benefit of an individual who is a candidate to raise contributions for such candidate's campaign. Testimonial events include but are not limited to dinners, luncheons, rallies, barbecues and picnics.
 - ~~(o)~~ (q) "Treasurer" means a treasurer of a candidate or of a candidate committee, a party committee or a political committee appointed under the campaign finance act or a treasurer of a combination of individuals or a person other than an individual which is subject to paragraph (2) of subsection (a) of K.S.A. 25-4172, and amendments thereto.
 - ~~(p)~~ "Local office" means a member of the governing body of a city of the first class, any elected office of a unified school district having 35,000 or more pupils regularly enrolled in the preceding school year, a county or of the board of public utilities.

Sec. 3. K.S.A. 25-4157a is hereby amended to read as follows: 25-4157a. (a) No monies received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and

no such moneys shall be used by such candidate or the candidate committee of such candidate except for:

- (1) Legitimate campaign purposes;
- (2) expenses of holding political office ;
- (3) contributions to the party committees of the political party of which such candidate is a member;
- (4) any membership dues or donations paid to a community service, *charitable* or civic organization in the name of the candidate or candidate committee of any candidate;
- (5) expenses incurred in the purchase of tickets to meals and special events sponsored by any organization the major purpose of which is to promote or facilitate the social, business, commercial or economic well being of the local community; or
- (6) expenses incurred in the purchase and mailing of greeting cards to voters and constituents.

For the purpose of this subsection, expenditures for "personal use" shall include expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of public office.

(b) No moneys received by any candidate or candidate committee of any candidate as a contribution shall be used to pay interest or any other finance charges upon moneys loaned to the campaign by such candidate or the spouse of such candidate.

(c) No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution. The provisions of this subsection shall not be construed to prohibit:

(1) A candidate or candidate committee from accepting moneys from another candidate or candidate committee if such moneys constitute a reimbursement for one candidate's proportional share of the cost of any campaign activity participated in by both candidates involved. Such reimbursement shall not exceed an amount equal to the proportional share of the cost directly benefiting and attributable to the personal campaign of the candidate making such reimbursement; or

(2) *A candidate or candidate committee from transferring campaign funds to a bona fide successor committee or candidacy established by the candidate.*

(d) ~~At the time of the termination of any campaign and prior to the filing of a termination report in accordance with K.S.A. 25-4157, and amendments thereto, all residual funds otherwise not obligated for the payment of expenses incurred in such campaign or the holding of office shall be contributed to a charitable organization, as defined by the laws of the state, contributed to a party committee or returned as a refund in whole or in part to any contributor or contributors from whom received or paid into the general fund of the state. At the time of the termination of any campaign and prior to the filing of a termination report in accordance with K.S.A. 25-4157, and amendments thereto, all residual funds not otherwise obligated for the payment of expenses incurred in such campaign or the holding of office, or any portion of such funds, shall be:~~

- (1) *Contributed to a charitable organization, as defined by the laws of the state;*
- (2) *contributed to a party committee;*
- (3) *returned as a refund in whole or in part to any contributor or contributors from whom such funds were received; or*
- (4) *paid into the general fund of the state; or*
- (5) *transferred to a bona fide successor committee or candidacy established by the candidate; or*

(6) *transferred for the purpose of retiring the remaining debt to the original committee or candidacy from which funds were transferred pursuant to paragraph (2) of subsection (f).*

Whenever a transfer to a bona fide successor committee or candidacy is made pursuant to paragraph (5), all moneys shall be transferred to the bona fide successor committee or candidacy.

(e) *Upon transferring money to a bona fide successor committee or candidacy as defined by paragraph (2) of subsection (f), the candidate may only accept contributions to the orig-*

inal candidacy sufficient to retire the debt. Such contributions shall be subject to the contribution limits for the original office sought as set forth in K.S.A. 25-4153 and amendments thereto. Once the candidate has received sufficient contributions to retire the debt, the candidate must terminate the candidacy pursuant to the provisions set forth in subsection (d).

(f) For the purposes of this section, “bona fide successor committee or candidacy” means:

(1) The candidate’s campaign committee or candidacy for a public office initiated at the termination of the original candidacy; or

(2) the candidate’s campaign committee or candidacy initiated at the time of the transfer of all moneys to a new campaign committee or candidacy for public office when there is debt in the original campaign at the time of the transfer and the candidate does not terminate the original campaign committee or candidacy.

New Sec. 4. (a) For the period commencing on January 1, 1976, and ending on the day preceding the effective date of this act, any candidate who transferred campaign funds to a bona fide successor candidacy, as such term is defined in K.S.A. 25-4157a, and amendments thereto, shall be deemed to have made such transfer in compliance with the provisions of the campaign finance act in existence at the time of such transfer regardless of when the original campaign fund is closed after the date such transfer is made and such transfer is hereby validated.

(b) This section shall be part of and supplemental to the campaign finance act.”

And by renumbering sections accordingly;

Also on page 7, in line 26, by striking “is” and inserting “and 25-4157a and K.S.A. 2003 Supp. 25-4143 are”;

On page 1, in the title, in line 12, before “and” by inserting “and 25-4157a and K.S.A. 2003 Supp. 25-4143”; also in line 12, by striking “section” and inserting “sections”

Senator Hensley moved to amend **SB 376** as amended by Senate Committee, on page 7, after line 24, by inserting a new section to read as follows:

“New Sec. 3. (a) (1) Except as otherwise provided in this subsection, the definitions set forth in K.S.A. 25-4143, and amendments thereto, shall be applicable to the provisions in this section.

(2) As used in this section: (A) “Regulated entity” means any person who is required by law to be licensed by the insurance commissioner, or any person who engages in a business or profession which is regulated by the insurance commissioner, or any person employed by a company regulated by the insurance commissioner; and

(B) “contracting entity” means any person who contracts with the department of insurance to provide legal services for the department in cases in which the workers compensation fund is involved.

(b) No regulated entity or contracting entity and no person or political committee acting on behalf of a regulated entity or contracting entity shall make a contribution to or on behalf of a person holding the office of insurance commissioner, to or on behalf of a candidate for the office of insurance commissioner or, to or on behalf of a candidate committee of any such candidate.

(c) No person holding the office of insurance commissioner and no candidate for the office of insurance commissioner shall knowingly solicit or accept a contribution from any regulated entity or contracting entity or any person or political committee acting on behalf of a regulated entity or contracting entity.

(d) Any person or entity violating the provisions of this act shall be punished in the manner and be subject to the penalties prescribed by K.S.A. 25-4181, and amendments thereto.”;

And by renumbering the remaining sections accordingly.

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

On roll call, the vote was: Yeas 9, Nays 27, Present and Passing 3, Absent or Not Voting 1.

Yeas: Barone, Betts, Downey, Gilstrap, Helgerson, Hensley, Lee, Salmans, Steineger.

Nays: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Clark, Donovan, Emler, Huelskamp, Jackson, Jordan, Journey, Kerr, Lyon, Morris, O’Connor, Oleen, Pugh, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Present and Passing: Bunten, Goodwin, Haley.

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Absent or Not Voting: Corbin.

The motion failed and the amendment was rejected.

The Committee recommended **SB 376** be passed as further amended.

SB 417 be amended by adoption of the committee amendments, be further amended by motion of Senator Lee as amended by Senate Committee, on page 3, in line 13, by striking "50%" and inserting "70%" and **SB 417** be passed as further amended.

On motion of Senator Oleen the Senate adjourned until 10:00 a.m., Wednesday, February 25, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

