

# Journal of the Senate

FORTY-SEVENTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Thursday, March 18, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.  
The roll was called with thirty-nine senators present.  
Senator Wagle was excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

From time to time I go back in my files and select a prayer which seems to be appropriate today. I prayed this prayer on April 24, 1986. It's a special prayer for the secretaries. I'm sure You remember it, Lord, but I doubt anyone else here today does.

I have "amended" it somewhat to make it "flow" better and bring it up to date.

They come to work all neat and clean,  
Dressed in the latest style,  
And throughout the day they stay that way  
While wearing a pleasant smile.

Their bosses are under pressure  
And may get testy once in a while,  
But secretaries must stay quite calm  
While wearing a pleasant smile.

Constituents can rant and rave  
With language not too mild;  
While secretaries just count to ten,  
Still wearing a pleasant smile.

It's been a rough day, and it's time to go home  
When the boss walks in with a file;  
"I'm sorry, but this has to go out today"  
So they return to their desks with a smile.

So day after day they do their job,  
Often going the second mile.  
Everyone else may fret and frown,  
But they keep wearing their smile.

So I'm asking You to forgive them, Lord,  
When they wish for some desert isle,  
Where they can gripe and say whatever they please  
And never again have to smile.

Grant them Your presence each day, O God,  
So they won't need a desert isle,  
And they'll find the most natural thing in the world  
Is to be wearing a pleasant smile.

I pray in the Name of Jesus Christ,

AMEN

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was referred to Committee as indicated:

Assessment and Taxation: **HB 2484**.

**MESSAGE FROM THE HOUSE**

Announcing passage of **HB 2544, HB 2682**.

Also passage of **SB 183**.

Passage of **SB 147**, as amended by **House Substitute for SB 147; SB 312**, as amended.

The House nonconcur in Senate amendments to **HB 2871**, requests a conference and has appointed Representatives Hayzlett, Faber and Long as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 353** and has appointed Representatives D. Johnson, Powell and Thimesch as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 404** and has appointed Representatives Dahl, Novascone and Ruff as conferees on the part of the House.

**INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS**

**HB 2544, HB 2682** were thereupon introduced and read by title.

**CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR**

On motion of Senator Vratil the Senate nonconcurred in the House amendments to **SB 141** and requested a conference committee be appointed.

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

On motion of Senator Vratil the Senate nonconcurred in the House amendments to **SB 297** and requested a conference committee be appointed.

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

**FINAL ACTION ON CONSENT CALENDAR**

**HB 2542** having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

**HB 2542**, An act concerning crimes, punishment and criminal procedure; relating to collection of specimens; amending K.S.A. 2003 Supp. 21-2511 and repealing the existing section.

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

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

Absent or Not Voting: Wagle.

The bill passed.

**FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS**

**SB 405**, An act concerning cities; relating to certain redevelopment projects; amending K.S.A. 12-1771a and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**SB 459**, An act requiring information regarding services for seniors and their families as part of budget estimates of state agencies and the governor's budget report; amending K.S.A. 2003 Supp. 75-3717 and 75-3721 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed.

**SB 528**, An act concerning the Kansas parole board; amending K.S.A. 2003 Supp. 22-3709 and repealing the existing section, was considered on final action.

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

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

Nays: Haley.

Absent or Not Voting: Wagle.

The bill passed.

**SB 560**, An act concerning the interstate water litigation fund; providing for a river master; amending K.S.A. 82a-1802 and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed.

**HB 2154**, An act relating to highways and other public improvements; concerning certain construction contracts; relating to certain penalties; amending K.S.A. 66-274 and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2553**, An act concerning municipalities; relating to payment of claims; amending K.S.A. 2003 Supp. 12-105b and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed.

**HB 2555**, An act concerning probate; amending K.S.A. 59-2239 and 59-2246 and K.S.A. 2003 Supp. 59-605 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2580**, An act relating to banks and banking; concerning powers thereof; amending K.S.A. 2003 Supp. 9-1101 and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed.

**HB 2669**, An act concerning the division of accounts and reports; relating to the write off of accounts receivable; setoff collection assistance fee; amending K.S.A. 44-716a and K.S.A. 2003 Supp. 60-2310 and 75-6210 and repealing the existing sections; also repealing K.S.A. 75-3728a, 75-3728c and 75-3728d and K.S.A. 2003 Supp. 75-3728b, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2737**, An act concerning the state board of healing arts; relating to licensure of athletic trainers; amending K.S.A. 65-6901, 65-6902, 65-6903, 65-6904, 65-6905, 65-6906, 65-6907, 65-6909, 65-6910 and 65-6911 and K.S.A. 2003 Supp. 65-2891, 65-2913 and 65-5418 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2745**, An act relating to motor vehicles; concerning the registration of certain motor vehicles; relating to isolated or occasional sales; amending K.S.A. 2003 Supp. 79-3603 and repealing the existing section; also repealing K.S.A. 2003 Supp. 79-3603c, was considered on final action.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**REPORTS OF STANDING COMMITTEES**

Committee on **Assessment and Taxation** recommends **SB 507** be amended on page 2, in line 27, by striking "any"; in line 28, by striking "motor vehicle which is" and by inserting "not more than two motor vehicles which are"; in line 29, by striking "and absent from this"; in line 30, by striking "state solely by reason of military orders"; and the bill be passed as amended.

Committee on **Education** recommends **Substitute for HB 2558** be amended on page 2, in line 21, by striking "after the federal"; in line 22, by striking "funds are expended" and inserting "if federal funds are not available"; and the substitute bill be passed as amended.

Also, **HB 2795**, as amended by House Committee, be amended on page 1, in line 20, after "to" by inserting "be regularly enrolled in and"; in line 33, after "in" by inserting "and attending"; in line 42, after "is" by inserting "regularly enrolled in a school as required by subsection (a) and is";

On page 2, in line 1, by striking "and in a high school";

On page 3, in line 35, by striking ", the terms"parent"" and inserting: "

(1) "Parent" ;

Also on page 3, after line 37, by inserting the following:

"(2) "Regularly enrolled" means enrolled in five or more hours of instruction each school day. For the purposes of subsection (b)(3), hours of instruction received at a postsecondary educational institution shall be counted.";

Also on page 3, by striking all in line 38 and inserting in lieu thereof the following:

"New Sec. 2. This act shall be known and may be cited as the Kansas private and out-of-state postsecondary educational institution act.

New Sec. 3. As used in this act:

(a) "Academic degree" means any associate, bachelor's, first professional, master's, intermediate (specialist) or doctor's degree.

(b) "Accreditation" means an accreditation by an agency recognized by the United States department of education.

(c) "Branch campus" means any subsidiary place of business maintained within the state of Kansas by an institution at a site which is separate from the site of the institution's principal place of business and at which the institution offers a course or courses of instruction or study identical to the course or courses of instruction or study offered by the institution at its principal place of business.

(d) "Commission" means the advisory commission on private and out-of-state postsecondary educational institution established pursuant to this act.

(e) "Distance education" means any course delivered primarily by use of correspondence study, audio, video or computer technologies.

(f) "Out-of-state postsecondary educational institution" means a postsecondary educational institution chartered, incorporated or otherwise organized under the laws of any jurisdiction other than the state of Kansas.

(g) "Institution" means an out-of-state or private postsecondary educational institution.

(h) "Institution employee" means any person, other than an owner, who directly or indirectly receives compensation from an institution for services rendered.

(i) "Owner of an institution" means:

(1) In the case of an institution owned by an individual, that individual;

(2) in the case of an institution owned by a partnership, all full, silent and limited partners;

(3) in the case of an institution owned by a corporation, the corporation, its directors, officers and each shareholder owning shares of issued and outstanding stock aggregating at least 10% of the total of the issued and outstanding shares; and

(4) in the case of an institution owned by a limited liability company, the company, its managers and all its members.

(j) "Person" means an individual, firm, partnership, association or corporation.

(k) "Physical presence" means the employment in Kansas of a Kansas resident for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising or any other activity on behalf of the institution, or the delivery of, or the intent to deliver,

instruction in Kansas with the assistance from any entity within the state in delivering the instruction including, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution.

(l) "Private postsecondary educational institution" means an entity which:

(1) Is a business enterprise, whether operated on a profit or not-for-profit basis, which has a physical presence within the state of Kansas or which solicits business within the state of Kansas;

(2) offers a course or courses of instruction or study through classroom contact or by distance education, or both, for the purpose of training or preparing persons for a field of endeavor in a business, trade, technical or industrial occupation or which offers a course or courses leading to an academic degree; and

(3) is not specifically exempted by the provisions of this act.

(m) "Representative" means any person employed by an institution to act as an agent, solicitor or broker to procure students or enrollees for the institution by solicitation within this state at any place other than the office or a place of business of the institution.

(n) "State board" means the Kansas board of regents or the board's designee.

(o) "Support" or "supported" means the primary source and means by which an institution derives revenue to perpetuate operation of the institution.

(p) "University" means a postsecondary educational institution authorized to offer bachelor degrees together with graduate or first professional degrees.

(q) "State educational institution" means any state educational institution as defined by K.S.A. 76-711, and amendments thereto.

New Sec. 4. This act shall not apply to:

(a) An institution supported primarily by Kansas taxation from either a local or state source;

(b) an institution or training program which offers instruction only for avocational or recreational purposes as determined by the state board;

(c) a course or courses of instruction or study, excluding degree-granting programs, sponsored by an employer for the training and preparation of its own employees, and for which no tuition or other fee is charged to the student;

(d) a course or courses of instruction or study sponsored by a recognized trade, business or professional organization having a closed membership for the instruction of the members of the organization, and for which no tuition or other fee is charged to the student;

(e) an institution which is otherwise regulated and approved under any other law of this state;

(f) a course or courses of special study or instruction having a closed enrollment and financed or subsidized on a contract basis by local or state government, private industry, or any person, firm, association or agency, other than the student involved;

(g) an institution financed or subsidized by federal or special funds which has applied to the state board for exemption from the provisions of this act and which has been declared exempt by the state board because it has found that the operation of such institution is outside the purview of this act;

(h) the Kansas City college and bible school, inc.; and

(i) any postsecondary educational institution which was granted approval to confer academic or honorary degrees by the state board of education under the provisions of K.S.A. 17-6105 prior to its repeal.

New Sec. 5. (a) The state board may adopt rules and regulations for the administration of this act. Prior to the adoption of any such rules and regulations, the state board shall afford the advisory commission an opportunity to make recommendations thereon.

(b) Specific standards shall be set for determining those institutions which qualify for approval to confer or award academic degrees. Such standards shall be consistent with standards applicable to state educational institutions under the control and supervision of the state board.

(c) The state board shall maintain a list of institutions that have been issued a certificate of approval.

(d) Any state agency having information which will enable the state board to exercise its powers and perform its duties in administering the provisions of this act shall furnish such information when requested by the state board.

New Sec. 6. (a) The advisory commission on private and out-of-state postsecondary educational institutions is hereby created. The commission shall consist of nine members appointed by the state board. Except as provided by this section, members shall be appointed for terms of four years. Vacancies shall be filled by the state board for the unexpired term. Five members of the commission shall be owners or managers of private postsecondary educational institutions, at least two of the five members shall represent institutions, which at the time of appointment of such members, have enrollments of under 125 students, and at least one shall represent a degree granting institution. Four members shall be selected from among persons representing: Secondary schools, postsecondary schools, business and industry, members of the employment community, economic development interests of the state and health occupations.

(b) The commission shall elect one member as chairperson of the commission and such other officers as may be necessary.

(c) The commission shall meet at least once annually in Topeka during the month of October, and shall conduct special meetings on the call of the chairperson or the state board or at the request of at least four members of the commission.

(d) Members attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(e) A majority of the commission is a quorum to conduct business, but no less than four members must concur to pass upon any matter before the commission.

(f) The commission may recommend to the state board such policies, minimum standards and rules and regulations that the commission deems necessary for administering the provisions of this act.

New Sec. 7. (a) No institution may operate within this state without obtaining a certificate of approval from the state board as provided in this act. No institution shall confer or award any degree, whether academic or honorary, unless such institution has been approved for such purpose by the state board of regents.

(b) Any contract entered into by or on behalf of any owner, employee or representative of an institution which is subject to the provisions of this act, but which has not obtained a certificate of approval, shall be unenforceable in any action.

New Sec. 8. (a) Each institution shall apply to the state board for a certificate of approval. An institution shall not be required to obtain a separate certificate of approval for maintenance of any branch institution.

(b) An application for a certificate of approval shall be made on a form prepared and furnished by the state board and shall contain such information as may be required by the state board.

(c) The state board may issue a certificate of approval upon determination that an institution meets the standards established by the state board. The state board may issue a certificate of approval to any institution accredited by a regional or national accrediting agency recognized by the United States department of education without further evidence.

New Sec. 9. The state board shall issue a certificate of approval to an institution when the state board is satisfied that the institution meets minimum standards established by the state board by adoption of rules and regulations to insure that:

(a) Courses, curriculum and instruction are of such quality, content and length as may reasonably and adequately ensure achievement of the stated objective for which the courses, curriculum or instruction are offered;

(b) institutions have adequate space, equipment, instructional material and personnel to provide education and training of good quality;

(c) educational and experience qualifications of directors, administrators and instructors are such as may reasonably insure that students will receive instruction consistent with the objectives of their program of study;

(d) institutions maintain written records of the previous education and training of students and applicant students, and that training periods are shortened when warranted by such previous education and training or by skill or achievement tests;

(e) a copy of the course outline, schedule of tuition, fees and other charges, settlement policy, rules pertaining to absence, grading policy and rules of operation and conduct are furnished to students upon entry into class;

(f) upon completion of training or instruction, students are given certificates, diplomas or degrees as appropriate by the institution indicating satisfactory completion of the program;

(g) adequate records are kept to show attendance, satisfactory academic progress and enforcement of satisfactory standards relating to attendance, progress and conduct;

(h) institutions comply with all local, state and federal regulations;

(i) institutions are financially responsible and capable of fulfilling commitments for instruction;

(j) institutions do not utilize erroneous or misleading advertising, either by actual statement, omission or intimation; and

(k) institutions have and maintain a policy, which shall be subject to state board approval, for the refund of unused portions of tuition, fees and other charges if a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom at any time prior to completion. Such policies shall take into account those costs of the institution that are not diminished by the failure of the student to enter or complete a course of instruction.

New Sec. 10. (a) After review of an application for a certificate of approval and if the state board determines that the institution meets the requirements of this act, the state board shall issue a certificate of approval to the institution. Certificates of approval shall be in a form specified by the state board. Certificates of approval shall state:

(1) The date of issuance and term of approval;

(2) the correct name and address of the institution;

(3) the signature of the chief executive officer of the Kansas board of regents or a person designated by the state board to administer the provisions of this act; and

(4) any other information required by the state board.

(b) Certificates of approval shall be valid for a term of one year.

(c) Each certificate of approval shall be issued to the owner of an institution and shall not be transferable. If a change in ownership of an institution occurs, the new owner shall apply within 30 days prior to the change in ownership for a new certificate of approval. The state board may waive the thirty-day requirement upon determination that an emergency exists and that the waiver and change in ownership would be in the best interests of students currently enrolled in the institution. Whenever a change in ownership occurs as a result of death, court order or operation of law, the new owner shall apply immediately for a new certificate of approval.

(d) At least 60 days prior to expiration of a certificate of approval, the state board shall forward to the institution a renewal application form.

(e) Any institution which is not yet in operation when its application for a certificate of approval is filed shall not accept payments for tuition, fees or other enrollment charges until receipt of the certificate of approval.

(f) Any institution which does not plan to renew a certificate of approval shall notify the state board of its intent not to renew at least 60 days prior to the expiration date of the certificate of approval.

New Sec. 11. (a) After review of an application for a certificate of approval and if the state board determines that the applicant does not meet the requirements of this act, the state board shall refuse to issue the certificate and set forth the reasons for the determination.

(b) If an applicant, upon written notification of refusal by the state board to issue a certificate of approval, desires to contest such refusal, the applicant shall notify the state board in writing, within 15 days after the date of service of such notice of refusal, of the desire to be heard. Such applicant shall be afforded a hearing in accordance with the provisions of the Kansas administrative procedure act. Upon conclusion of any such hearing, the state board shall issue a certificate of approval or a final refusal to do so.

(c) If an applicant, upon service of notice of refusal by the state board to issue a certificate of approval, fails to request a hearing within 15 days after the date of service of such notice of refusal, the state board's refusal shall be final.

New Sec. 12. (a) The state board may revoke a certificate of approval or impose reasonable conditions upon the continued approval represented by a certificate. Prior to revocation or imposition of conditions upon a certificate of approval, the state board shall give written notice to the holder of the certificate of the impending action setting forth the grounds for the action contemplated to be taken and affording a hearing on a date within 30 days after the date of such notice. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) A certificate of approval may be revoked or conditioned if the state board has reasonable cause to believe that the institution is in violation of any provision of this act or of any rules and regulations adopted under this act.

New Sec. 13. Any action of the state board pursuant to sections 10, 11 or 13, and amendments thereto, is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. If it appears to the state board on the basis of its own inquiries or investigations or as a result of a complaint that any provision of this act has been or may be violated, the state board may request the attorney general to institute an action enjoining such violation or for an order directing compliance with the provisions of this act.

New Sec. 14. (a) Each representative of an institution shall register with the state board. Application for registration may be made at any time on a form prepared and furnished by the state board and shall contain such information as may be required by the state board.

(b) Registration of a representative shall be effective upon receipt of notice from the state board and shall remain in effect until expiration of the certificate of approval of the institution employing such representative. Renewal of representative registration shall be in accordance with the renewal application form forwarded to the institution by the state board.

(c) Denial or revocation of registration of a representative by the state board shall be in accordance with the provisions of this act applicable to denial or revocation of a certificate of approval.

(d) A representative employed by more than one institution shall not be required to register for each institution when such institutions have a common ownership.

New Sec. 15. (a) Before a certificate of approval is issued under this act, a bond in the penal sum of \$20,000 shall be provided by the institution for the period for which the certificate of approval is to be issued. The obligation of the bond shall be that the institution and its officers, agents, representatives and other employees shall be bound, upon closure of the institution, to deliver or make available to the state board the records of all students who are in attendance at the institution at the time of closure or who have attended the institution at any time prior to closure. The bond shall be a corporate surety bond issued by a company authorized to do business in this state. The bond shall be filed with the state board. If the institution ceases operation, the state board may recover against the bond all necessary costs for the acquisition, permanent filing and maintenance of student records of the institution.

(b) In lieu of the corporate surety bond required under subsection (a), an institution may provide any similar certificate or evidence of indebtedness or insurance as may be acceptable to the state board if such certificate or evidence of indebtedness or insurance is conditioned that the requirements of subsection (a) shall be met.

New Sec. 16. (a) Subject to the provisions of subsection (b), no tuition in an amount greater than \$350 shall be collected from a student by any institution more than 30 days before the student receives classroom instruction, and not more than \$150 of such amount may be retained by an institution from any student who fails to enter the institution.

(b) In the case of distance education, no tuition in an amount greater than \$200 shall be collected from a student prior to the first submission of a lesson by the student, and not more than \$75 of such amount may be retained by an institution from any student who fails to enter the institution.

New Sec. 17. (a) No person shall:

- (1) Operate an institution without a certificate of approval;
- (2) solicit prospective students without being registered as required by this act;

- (3) accept contracts or enrollment applications from a representative who is not registered as required by this act;
- (4) use fraud or misrepresentation in advertising or in procuring enrollment of a student;
- (5) use the term "accredited" in the name or advertisement of the institution unless such institution is accredited as defined in this act; and
- (6) use the term "university" in the name or advertisement of the institution unless such institution is a university as defined by this act.

(b) Violation of any provision of subsection (a) or of any other provision of this act is a class C nonperson misdemeanor.

New Sec. 18. Upon application of the attorney general or a county or district attorney, a district court shall have jurisdiction to enjoin any violation of this act and to enjoin persons from engaging in business in this state. In any action brought to enforce the provisions of this act, if the court finds that a person willfully used any deceptive or misleading act or practice, the attorney general or a county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this act, a civil penalty not exceeding \$1,000 for each violation. For purposes of this section, a willful violation occurs when the person committing the violation knew or should have known that the conduct of the person consisted of acts or practices which were deceptive or misleading.

New Sec. 19. Any note or contract taken by any institution or its officers, directors, agents or representatives, without having complied with the provisions of this act, shall be null and void and any person who has entered into a contract with such institution or its officers, directors, agents or representatives shall be entitled to a full refund of the money or consideration paid plus interest accruing from the date of payment at a rate per annum equal to the rate specified in K.S.A. 16-207, and amendments thereto, together with other damages sustained by such person.

New Sec. 20. Whenever any institution negotiates any promissory instrument or note received from a student or on behalf of a student as payment of tuition or other fees charged by each institution, any person or assignee or holder to whom the instrument or note is assigned shall take such instrument or note subject to all defenses which would be available to the student from whom or on behalf of whom the instrument or note was received.

New Sec. 21. (a) The state board shall fix, charge and collect fees for certificates of approval, registration of representatives and providing transcripts to students who attended an institution that has ceased operation by adopting rules and regulations for such purposes, subject to the following limitations:

(1) For institutions domiciled or having their principal place of business within the state of Kansas:

Initial issuance of certificate of approval nondegree granting — not more than .....	\$1,700
Initial issuance of certificate of approval degree granting — not more than .....	\$2,000
Renewal of certificate of approval nondegree granting — not more than .....	\$1,200
Renewal of certificate of approval degree granting — not more than .....	\$1,600
Initial registration of representative — not more than .....	\$150
Annual renewal of registration of representative — not more than .....	\$100

(2) For institutions domiciled or having their principal place of business outside the state of Kansas:

Initial issuance of certificate of approval nondegree granting — not more than .....	\$3,400
Initial issuance of certificate of approval degree granting — not more than .....	\$3,800
Renewal of certificate of approval nondegree granting — not more than .....	\$2,400
Renewal of certificate of approval degree granting — not more than .....	\$2,800
Initial registration of representative — not more than .....	\$300
Annual renewal of registration of representative — not more than .....	\$200
Student transcript from institution that has ceased operation — not more than .....	\$10

(b) The state board shall determine on or before June 1 of each year the amount of

revenue which will be required to properly carry out and enforce the provisions of the Kansas private and out-of-state postsecondary educational institution act for the next ensuing fiscal year and shall fix the fees authorized for such year at the sum deemed necessary for such purposes within the limits of this section. Prior to adoption of any such fees, the state board shall afford the advisory commission an opportunity to make recommendations on the proposed fees.

(c) Fees may be charged to conduct onsite reviews for degree granting or to review curriculum in content areas where the state board does not have expertise.

New Sec. 22. (a) The state board shall remit all moneys received pursuant to the provisions of this act to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount remitted in the state treasury and shall credit the same to the private and out-of-state postsecondary educational institution fee fund to be used for the purpose of administering this act. All expenditures from such fee fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state board or the board's designee.

(b) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the private and out-of-state postsecondary educational institution fee fund interest earnings based on: (1) The average daily balance of moneys in such fee fund for the preceding month; and (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

New Sec. 23. If any clause, paragraph, subsection or section of the Kansas private and out-of-state postsecondary educational institution act shall be unconstitutional or invalid, it shall be conclusively presumed that the legislature would have enacted the remainder of the act without such unconstitutional or invalid clause, paragraph, subsection or section.

Sec. 24. K.S.A. 2003 Supp. 74-32,151 is hereby amended to read as follows: 74-32,151. (a) This section and K.S.A. 74-32,152 through 74-32,159, and amendments thereto, shall be known and may be cited as the workforce development loan program act.

(b) As used in the workforce development loan act, "postsecondary educational institution" shall have the meaning ascribed thereto by K.S.A. 74-3201b, and amendments thereto.

(c) Within the limits of appropriations and private contributions therefor, and in accordance with the provisions of this act, the state board of regents may award such loans to Kansas residents who are enrolled in or admitted to an area vocational technical school, technical college, community college, vocational school coordinated under the state board of regents or associate degree programs at postsecondary educational institutions and who enter into a written agreement with the state board of regents as provided in K.S.A. 74-32,152 and amendments thereto.

(d) The board of regents may accept any private contributions to the program. The chief executive officer of the board of regents shall turn such contributions over to the state treasurer who shall deposit such moneys into the workforce development loan fund.

(e) After consultation with the secretaries of the departments of human resources, social and rehabilitation services and commerce, the board may establish a list of education programs in which an applicant must enroll to be eligible for a loan under this program.

(f) The loans shall be awarded on a priority basis to qualified applicants who have the greatest financial need with the highest priority given to those applicants with the greatest financial need who were in foster care on ~~or before~~ their 18th birthday or were released from foster care prior to their 18th birthday after having graduated from high school or completing the requirements for a general educational development (GED) certificate while in foster care. All loans shall be awarded to resident students attending area vocational technical schools, technical colleges, community colleges, area vocational schools or associate degree programs at postsecondary educational institutions. Special preference shall also be established for residents drawing unemployment compensation or such residents who were laid off from employment within the prior six months. The board may also establish preferences for workers deemed to be eligible for North American free trade agreement transition assistance under United States department of labor standards or the Kansas department of human resources standards.

(g) Loans awarded under this program shall be awarded on an annual basis and shall be in effect for one year unless otherwise terminated before the expiration of such period of time. Such loans shall be awarded for the payment of tuition, fees, books, room and board and any other necessary school related expenses.

Sec. 25. K.S.A. 74-32,161 is hereby amended to read as follows: 74-32,161. (a) As used in this section:

(1) "Kansas educational institution" means ~~and includes area vocational schools, area vocational-technical schools, community colleges, state educational institutions, Washburn university of Topeka and technical colleges any state educational institution as defined by K.S.A. 76-711, and amendments thereto.~~

(2) "State board" means the state board of regents.

(b) Subject to appropriations therefor and except as otherwise provided by this section, every Kansas educational institution shall provide for enrollment without charge of tuition, undergraduate fees, including registration, matriculation and laboratory fees for any eligible applicant. No Kansas educational institution shall be required by this section to provide for the enrollment of more than ~~three~~ *five* new applicants in any academic year. An applicant who was in the custody of social and rehabilitation services on the date such applicant reached 18 years of age, *who has graduated from a high school or fulfilled the requirements for a general educational development (GED) certificate while in foster care, was released from the custody of the Kansas department of social and rehabilitation services prior to age 18 after having graduated from a high school or fulfilled the requirements for a general educational development (GED) certificate while in foster care placement and in the custody of the Kansas department of social and rehabilitation services, or an applicant who was adopted from a foster care placement on or after such applicant's 16th birthday,* and who is accepted to a Kansas educational institution within two years following the date such applicant graduated from a high school or fulfilled the requirements for a general educational development (GED) certificate shall be eligible for enrollment at a Kansas educational institution without charge of tuition or such fees *through the semester the eligible applicant reaches 21 years of age* not to exceed eight semesters of undergraduate instruction, or the equivalent thereof, at all such institutions.

(c) Subject to appropriations therefor, any Kansas educational institution which at the time of enrollment did not charge tuition or fees as prescribed by subsection (b), and amendments thereto, of the eligible applicant may file a claim with the state board for reimbursement of the amount of such tuition and fees. The state board shall be responsible for payment of reimbursements to Kansas educational institutions upon certification by each such institution of the amount of reimbursement to which the educational institution is entitled. Such payments to Kansas educational institutions shall be made upon vouchers approved by the state board and upon warrants of the director of accounts and reports. Payments may be made by issuance of a single warrant to each Kansas educational institution at which one or more eligible applicants are enrolled for the total amount of tuition and fees not charged eligible applicants for enrollment at that institution. The director of accounts and reports shall cause such warrant to be delivered to the Kansas educational institution at which such eligible applicant or applicants are enrolled. If an eligible applicant discontinues attendance before the end of any semester, after the Kansas educational institution has received payment under this subsection, the institution shall pay to the state the entire amount which such eligible applicant would otherwise qualify to have refunded, not to exceed the amount of the payment made by the state on behalf of such applicant for the semester. All amounts paid to the state by Kansas educational institutions under this subsection shall be deposited in the state treasury and credited to the tuition waiver gifts, grants and reimbursements fund *unless such amount was from federal funds transferred under the authority of subsection (g) which funds shall be returned to the director of accounts and reports for deposit to the originating federal funding source.*

(d) The chief executive officer of the state board shall submit a report to the house and senate committees on education during the ~~2004~~ 2005 and ~~2006~~ 2007 regular session of the legislature on the results, outcomes and effectiveness of the tuition waiver program authorized by this section.

(e) The state board is authorized to receive any grants, gifts, contributions or bequests made for the purpose of supporting the tuition waiver program authorized by this section and to expend the same.

(f) There is hereby established in the state treasury the tuition waiver gifts, grants and reimbursements fund. Expenditures from the fund may be made for the purpose of payment of claims of Kansas educational institutions pursuant to this section and for such purposes as may be specified with regard to any grant, gift, contribution or bequest. All such expenditures shall be authorized by the chief executive officer of the state board, or such officer's designee and made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief executive officer of the state board, or such officer's designee.

(g) During each year, the chief executive officer of the state board shall make one or more certifications of the amount or amounts required to pay claims received from Kansas educational institutions for tuition and fees under this section to the director of accounts and reports and the secretary of social and rehabilitation services. *Each certification made by the chief executive officer shall include a provision stating that 20% of the total amount or amounts required to pay claims received from Kansas educational institutions for tuition and fees under this section are either cash, in-kind contributions, state general funds or other non-federal sources not used to match other funds, and that the remaining 80% shall be paid from the federal award from the foster care assistance federal fund.* Upon receipt of each such certification, the director of accounts shall transfer the amount certified from moneys received under the federal Chafee foster care independence grant and credited to the foster care assistance federal fund of the department of social and rehabilitation services to the tuition waiver gifts, grants and reimbursements fund of the state board. *Annual expenditures for the tuition waiver program made by the Kansas department of social and rehabilitation services shall not exceed a maximum of more than 30% of the amount of the federal award in effect on July 1 of each state fiscal year.*

(h) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the tuition waiver gifts and grants fund interest earnings based on:

(1) The average daily balance of moneys in the tuition waiver gifts and grants fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(i) Applicants eligible for the benefits under this section shall be exempt from the provisions of K.S.A. 76-717, and amendments thereto.

(j) The state board shall adopt rules and regulations requiring eligible applicants to be enrolled as a full-time undergraduate student in good academic standing and to maintain part-time employment to remain eligible and other rules and regulations, as appropriate, for administration of the applicable provisions of this section ~~and shall determine the eligibility of applicants for the benefits provided under this section.~~ *When there is a candidate that appears to meet the eligibility guidelines for federal Chafee funding administered by the Kansas department of social and rehabilitation services, the state board shall notify the Kansas department of social and rehabilitation services. The Kansas department of social and rehabilitation services shall notify the state board of approval of the candidate's eligibility.*

(k) The provisions of this section shall expire on June 30, 2006, except that any eligible applicant who received a tuition waiver before June 30, 2006, and is deemed by the state board to be eligible pursuant to this section shall be allowed to remain eligible until such applicant completes such applicant's course of study or becomes ineligible pursuant to the provisions of this section.

Sec. 26. K.S.A. 2003 Supp. 75-646 is hereby amended to read as follows: 75-646. (a) Family postsecondary education savings accounts established pursuant to the provisions of K.S.A. 2003 Supp. 75-640 to 75-648, and amendments thereto shall be governed by the provisions of this section.

(b) A family postsecondary education savings account may be opened by any person or persons who desire to save money for the payment of the qualified higher education expenses of the designated beneficiary. Such persons shall be considered the account owner.

(1) An application for such account shall be in the form prescribed by the state treasurer and contain the following:

(A) The name, address and social security number or employer identification number of the account owner or owners;

(B) the designation of a designated beneficiary;

(C) the name, address and social security number of the designated beneficiary;

(D) the certification relating to no excess contributions; and

(E) such other information as the state treasurer may require.

(2) The state treasurer may establish a nominal nonrefundable application fee for such application.

(c) ~~From and after January 1, 2002;~~ Any person may make contributions to the account after the account is opened.

(d) Contributions to accounts may be made only in cash.

(e) An account owner may withdraw all or part of the balance from an account on sixty-days notice or such shorter period as may be authorized under rules and regulations governing the program.

(f) (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established pursuant to the provisions of K.S.A. 2003 Supp. 75-640 to 75-648, and amendments thereto.

(2) An account owner may transfer all or a portion of an account to another family postsecondary education savings account, the designated beneficiary of which is a member of the family as defined in section 529 of the federal internal revenue code of 1986, as amended.

(3) Changes in designated beneficiaries and transfers under this subsection shall not be permitted to the extent that they would constitute excess contributions or unauthorized investment choices.

(g) The program shall provide separate accounting for each designated beneficiary.

(h) Subject to the provisions of section 529 of the internal revenue code of 1986, in effect on January 1, 2002, or later versions as established in rules and regulations adopted by the treasurer, an account owner of any account shall be permitted to direct the investment of any contributions to an account or the earnings thereon.

(i) Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

(j) Except as provided in K.S.A. 2003 Supp. 75-640 through 75-648, and amendments thereto, or section 529 of the federal internal revenue code of 1986, as amended, any withdrawal made within one year after an account has been opened under a qualified tuition program as defined in section 529 of the federal internal revenue code of 1986, as amended, is a nonqualified withdrawal.

(k) (1) The state treasurer shall adopt rules and regulations to prevent contributions on behalf of a designated beneficiary in excess of an amount equal to the average amount of the qualified higher education expenses that would be incurred for five years of study at institutions of postsecondary education located in the midwest states. Such amount shall be determined annually by the state treasurer.

(2) Such rules and regulations shall include requirements that any excess contributions with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or transferred to another account.

(l) (1) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the federal internal revenue service and the account owner or owners, the designated beneficiary, or the distributee to the extent required by federal law or regulation.

(2) Statements shall be provided to each account owner at least once each year within 60 days after the end of the twelve-month period to which they relate. The statement shall

identify the contributions made during a preceding twelve-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the state treasurer shall require to be reported to the account owner.

(3) Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

(m) (1) A state or local government, or agency or instrumentality thereof, or organization described in section 501(c)(3) of the federal internal revenue code of 1986, as amended, may open and become the account owner of an account to fund scholarships for persons whose identity will be determined upon disbursement.

(2) In the case of any account opened pursuant to provision (1) of this subsection, the requirement set forth in subsection (b) that a designated beneficiary be designated when an account is opened shall not apply and each individual who receives an interest in such account as a scholarship shall be treated as a designated beneficiary with respect to such interest.

(n) An annual fee may be imposed upon the account owner or owners for the maintenance of the account.

(o) An account owner or designated beneficiary of a Kansas postsecondary education savings account must be a citizen or resident of the United States of America.

(p) The program shall disclose the following information in writing to each account owner and prospective account owner of a family postsecondary education savings account:

(1) The terms and conditions for purchasing a family postsecondary education savings account;

(2) any restrictions on the substitution of beneficiaries;

(3) the person or entity entitled to terminate the savings agreement;

(4) the period of time during which a beneficiary may receive benefits under the savings agreement;

(5) the terms and conditions under which money may be wholly or partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

(6) the probable tax consequences associated with contributions to and distributions from accounts; and

(7) all other rights and obligations pursuant to savings agreements, and any other terms, conditions and provisions deemed necessary and appropriate by the state treasurer.

(q) Nothing in K.S.A. 2003 Supp. 75-640 to 75-648, and amendments thereto, or in any savings agreement entered into pursuant to K.S.A. 2003 Supp. 75-640 to 75-648, and amendments thereto, shall be construed as a guarantee by the state of Kansas or any institution of postsecondary education that a beneficiary will be admitted to the institution of postsecondary education or, upon admission to any institution of postsecondary education, will be permitted to continue to attend or will receive a degree from such institution of postsecondary education.

(r) ~~The amendments to this section by this act shall apply to any action or transaction taken or occurring from and after January 1, 2002. Moneys in a family postsecondary education savings account shall be exempt from attachment, execution or garnishment as provided by K.S.A. 60-2308, and amendments thereto.~~

Sec. 27. K.S.A. 2003 Supp. 79-32,117 is hereby amended to read as follows: 79-32,117.

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

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

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

31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

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

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

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

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

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

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2003 Supp. 79-32,204 and amendments thereto.

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

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2003 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

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

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

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

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

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

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

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

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

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

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

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

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

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

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

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

(xv) For all taxable years beginning after December 31, 1999, amounts not exceeding \$2,000; or \$4,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. *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.* The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2003 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

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

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

Sec. 28. K.S.A. 2003 Supp. 13-13a25 is hereby amended to read as follows: 13-13a25.

(a) As used in K.S.A. 13-13a25 through 13-13a34, and amendments thereto:

(1) "Board of levy" means the board of county commissioners of every county in which there is not located a municipal university and the township trustee, township clerk and township treasurer, acting as a board, of every township within every county in which there is located a municipal university, except that board of levy shall not include a township within a county in which there is located a municipal university which has levied a countywide retailer's sales tax.

(2) "Municipal university" means a municipal university established under the provisions of article 13a of chapter 13 of Kansas Statutes Annotated.

(3) "Municipal university district" means the taxing district of a municipal university.

(4) "Taxing subdivision" means every county in which there is not located a municipal university and every township within every county in which there is located a municipal university, except that taxing subdivision shall not include a township within a county in which there is located a municipal university which has levied a countywide retailer's sales tax.

(5) "State board" means the state board of regents.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 29. K.S.A. 2003 Supp. 13-13a26 is hereby amended to read as follows: 13-13a26.

(a) The board of regents of a municipal university, in accordance with rules and regulations of the state board, shall determine and collect an amount of out-district tuition to be charged for each student attending the municipal university whose residence is outside of the municipal university district.

(b) The board of levy of any taxing subdivision charged with payment of out-district tuition shall levy a tax on all of the taxable property of the taxing subdivision sufficient to pay all out-district tuition charges authorized by this act.

(c) The proceeds from the tax levied under authority of this section shall be deposited in a special fund for payment of out-district tuition. Upon receiving a statement of charges for out-district tuition the board of levy shall allow and pay the same promptly from the special fund. If there is insufficient or no money in the special fund, out-district tuition shall be paid from the general fund of the taxing subdivision or from the proceeds of the sale of no-fund warrants issued for the purpose of the payment of out-district tuition.

(d) The total out-district tuition charged by a municipal university shall be: (1) For the ~~2000~~ fiscal year, an amount equal to the number of duly enrolled out-district students times ~~\$24~~ for each credit hour of each such duly enrolled out-district student; (2) for the ~~2001~~ fiscal year, an amount equal to the number of duly enrolled out-district students times ~~\$18~~ for each credit hour of each such student; (3) for the ~~2002~~ fiscal year, the ~~2003~~ fiscal year and the ~~2004~~ fiscal year and the ~~2005~~ fiscal year, an amount equal to the number of duly enrolled out-district students times \$12 for each credit hour of each such student; and (4) (2) for the ~~2005~~ 2006 fiscal year, an amount equal to the number of duly enrolled out-district students times \$6 for each credit hour of each such student.

(e) Out-district tuition shall ~~only~~ be charged *only* for credit hours of students if such students, as determined by the state board, have not more than 64 credit hours from any institution of postsecondary education or the students have not more than 72 credit hours and are enrolled in terminal type nursing courses or freshman-sophomore preengineering courses.

(f) Expenditures for out-district tuition shall be exempt from the budget law of this state to the extent of such payments not anticipated in the budget of the taxing subdivision.

(g) The levy of taxes and the payment of out-district tuition by counties required under the provisions of this section shall not be subject to the exercise of home rule by counties

~~under the provisions of article 1 of chapter 19 of Kansas Statutes Annotated. Counties shall have no power to exempt from, or effect changes in, the provisions of this section K.S.A. 19-101a, and amendments thereto.~~

(h) Taxes levied by townships under the authority of this section shall be in addition to all other tax levies authorized or limited by law and shall not be subject to or within the aggregate tax levy limit prescribed by K.S.A. 79-1962, and amendments ~~thereof~~ *thereto*.

(i) In May of each fiscal year, the board of regents shall notify each board of levy of the approximate amount of out-district tuition which will be charged to the taxing subdivision in the succeeding fiscal year.

(j) The provisions of this section shall expire on June 30, ~~2005~~ *2006*.

Sec. 30. K.S.A. 2003 Supp. 13-13a27 is hereby amended to read as follows: 13-13a27.

(a) Out-district tuition shall be based only upon enrollments of students who are residents of the state of Kansas. For the purpose of determination of out-district tuition: (1) Persons enrolling in a municipal university who, if adults, have not been, or if minors, whose parents have not been, residents of the state of Kansas for six months prior to enrollment for any term or session are nonresidents of the state of Kansas; and (2) persons enrolling in a municipal university who, if adults, have not been, or if minors, whose parents have not been, residents of the municipal university district for six months prior to enrollment for any term or session are nonresidents of the municipal university district.

(b) For the purpose of determining residence of persons, the residence of minors shall be determined as provided in K.S.A. 72-1046, and amendments thereto, and of adults as provided in subpart *twenty-third* of K.S.A. 77-201, and amendments thereto.

(c) The state board of regents may adopt rules and regulations prescribing criteria or guidelines for determination of residence of students and shall make conclusive determination of any residence matter for the purpose of determination of liability of taxing subdivisions for out-district tuition.

(d) The provisions of this section shall expire on June 30, ~~2005~~ *2006*.

Sec. 31. K.S.A. 2003 Supp. 13-13a29 is hereby amended to read as follows: 13-13a29.

(a) The determination of credit hours of duly enrolled out-district students shall be made at the end of the fifth week of the regular spring and fall semesters and at the end of the equivalent period for summer sessions. The determination of credit hours of duly enrolled out-district students for payments for short-term courses shall be made at such times as are prescribed by the state board of regents.

(b) On or before November 1 and on or before April 1 of each year, the president and treasurer of a municipal university shall certify under oath to the state board the total number of duly enrolled credit hours of out-district students of the municipal university during the current school term. The state board may require a municipal university to furnish any additional information deemed necessary by it to carry out the provisions of this act and shall prescribe such forms, to be approved by the attorney general, as may be necessary for making such reports.

(c) The state board and the post auditor may audit the records of a municipal university to verify the accuracy of the reports submitted by the municipal university. The state board may promulgate rules and regulations for the administration of this act.

(d) The provisions of this section shall expire on June 30, ~~2005~~ *2006*.

Sec. 32. K.S.A. 2003 Supp. 13-13a31 is hereby amended to read as follows: 13-13a31.

(a) Subject to the provisions of subsection (b), no out-district tuition shall be charged or paid for any student attending a municipal university whose residence outside the municipal university district is in a taxing subdivision in which there is located a community college.

(b) The provisions of subsection (a) shall not apply to any such out-district student when the course of study or program which the student selects, or a course of study or program which is substantially equivalent thereto, is not offered in the community college which is located in the taxing subdivision in which such student resides.

(c) The provisions of this section shall expire on June 30, ~~2005~~ *2006*.

Sec. 33. K.S.A. 2003 Supp. 13-13a32 is hereby amended to read as follows: 13-13a32.

(a) Subject to the provisions of subsection (b), no out-district tuition shall be charged to or paid by any county in which there is located a municipal university for any student attending

a community college whose residence outside the community college district is in a county in which there is located a municipal university.

(b) The provisions of subsection (a) shall not apply to any such out-district student when the course of study or program which the student selects, or a course of study or program which is substantially equivalent thereto, is not offered in the municipal university which is located in the county in which such student resides.

(c) The provisions of this section shall expire on June ~~30, 2005~~ 2006.

Sec. 34. K.S.A. 2003 Supp. 13-13a33 is hereby amended to read as follows: 13-13a33.

(a) The state board of regents shall adopt rules and regulations prescribing criteria or guidelines for the purpose of determining which courses of study and programs offered in the community colleges are substantially equivalent to the courses of study and programs offered in municipal universities. A current, complete list of such courses of study and programs shall be maintained on file in the office of the state board of regents, and shall be open for public inspection at any reasonable time.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 35. K.S.A. 2003 Supp. 13-13a34 is hereby amended to read as follows: 13-13a34.

(a) No out-district tuition charged by a municipal university shall be based upon any course or program which is taught in an area vocational school, an area vocational-technical school, or a technical college under an agreement with the municipal university and for which payments of state or federal moneys are made to the area vocational school, area vocational-technical school, or technical college under the provisions of article 44 of chapter 72 of Kansas Statutes Annotated.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 36. K.S.A. 2003 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a)

The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

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

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

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

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

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

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

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

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

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

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

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a

portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

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

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

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

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

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

(B) This provision shall expire on June 30, ~~2005~~ 2006.

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

(B) This provision shall expire on June 30, ~~2005~~ 2006.

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

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

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

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

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

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

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

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

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

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

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

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

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-1,178 through 65-1,199 or K.S.A. 2003 Supp. 17-5909, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2003 Supp. 80-121, and amendments thereto.

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

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such

local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

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

Sec. 37. K.S.A. 2003 Supp. 71-301a is hereby amended to read as follows: 71-301a. (a) The board of trustees, in accordance with rules and regulations of the state board, shall determine an amount of out-district tuition to be charged for each out-district student attending the community college. The board of county commissioners of any county charged with payment of out-district tuition shall levy a tax on all of the taxable property of the county sufficient to pay all out-district tuition charges authorized by this act. The proceeds from the tax levied under authority of this section shall be deposited in a special fund for payment of out-district tuition. Upon receiving a statement of charges for out-district tuition, the board of county commissioners shall allow and pay the same from the special fund within 45 days from the receipt of such statement. If there is insufficient or no money in the special fund, out-district tuition shall be paid from the county general fund or from the proceeds of the sale of no-fund warrants issued for the purpose of the payment of out-district tuition. If the board of county commissioners fails to pay such amount at the time required under this subsection, the board of trustees shall notify the state board of such failure to pay and shall certify to the state board the amount to be paid. Upon receipt by the state board of such notification, the amount to be paid as certified to the state board shall become an amount due and owing to the state board. The state board shall notify the board of county commissioners that this amount is now due and owing to the state board. If the board of county commissioners fails to pay such amount to the state board within 14 days of the receipt of such notification, the state board shall initiate proceedings under K.S.A. 75-6201 *et seq.* for the collection of such money. Money paid to or collected by the state board under this subsection shall be deposited in the out-district tuition suspense account which is hereby created in the state treasury. The state board shall pay moneys from this account, in accordance with rules and regulations of the state board, to the community colleges entitled to receive such money.

(b) The total out-district tuition charged by a community college shall be: (1) For the ~~2000~~ fiscal year, an amount equal to the number of duly enrolled out-district students times ~~\$24~~ for each credit hour of each such student; (2) for the 2001 fiscal year, an amount equal to the number of duly enrolled out-district students times \$18 for each credit hour of each such student; (3) for the 2002 fiscal year, the 2003 fiscal year and the 2004 fiscal year *and the 2005 fiscal year*, an amount equal to the number of duly enrolled out-district students times \$12 for each credit hour of each such student; and ~~(4)~~ (2) for the ~~2005~~ 2006 fiscal year, an amount equal to the number of duly enrolled out-district students times \$6 for each credit hour of each such student.

(c) In May of each fiscal year, the board of trustees shall notify the board of county commissioners of the approximate amount of out-district tuition which will be charged to the county in the succeeding fiscal year.

(d) Expenditures for out-district tuition shall be exempt from the budget law of this state to the extent of such payments not anticipated in the budget of the county.

(e) The provisions of this section shall take effect and be in force on July 1, 1999, and shall expire on June 30, ~~2005~~ 2006.

Sec. 38. K.S.A. 2003 Supp. 71-304 is hereby amended to read as follows: 71-304. (a) Notwithstanding any provision contained in chapter 71 of Kansas Statutes Annotated to the contrary, and subject to the provisions of K.S.A. 71-305, and amendments thereto, no out-district tuition shall be charged or paid for any student attending a community college whose residence outside the community college district is in another community college district.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 39. K.S.A. 2003 Supp. 71-305 is hereby amended to read as follows: 71-305. (a) The provisions of K.S.A. 71-304, and amendments thereto, do not apply to any out-district student when the course of study or program which the student selects, or a course of study or program which is substantially equivalent thereto, is not offered in the community college of the district in which such student resides.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 40. K.S.A. 2003 Supp. 71-306 is hereby amended to read as follows: 71-306. (a) The state board of regents shall adopt rules and regulations prescribing criteria or guidelines for the purpose of determining which courses of study and programs offered in the community colleges are substantially equivalent. A current, complete list of such courses of study and programs shall be maintained on file in the office of the state board of regents, and shall be open for public inspection at any reasonable time.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 41. K.S.A. 2003 Supp. 71-308 is hereby amended to read as follows: 71-308. (a) No out-district tuition charges shall be based upon credit hours in any subject or course the principal part of which is taught at a location outside the county of the main campus of a community college, unless the location of such subject or course is specifically authorized by the state board of regents.

(b) (1) No out-district tuition charges shall be based upon credit hours in any subject or course which is taught in a county in which the main campus of a state educational institution is located, unless the teaching of such subject or course is specifically authorized by the chief executive officer of the state educational institution or by a designee of the chief executive officer. The chief executive officer of each state educational institution may designate and authorize a person or committee to act on behalf of the chief executive officer in granting the authorizations required by this subsection. No authorization required by this subsection shall be considered to be or construed in any manner as an agreement provided for by subsection (c).

(2) For the purposes of this subsection, the term "main campus of a state educational institution" as applied to Kansas state university of agriculture and applied science means and includes the campus of the university located in Riley county and the campus of the university's college of technology located in Saline county.

(3) The provisions of this subsection are subject to the provisions of subsection (c).

(c) No out-district tuition charges shall be based upon credit hours in any subject or course all or the principal part of which is taught at Fort Hays state university or at Wichita state university under an agreement for the teaching of such subject or course entered into by a community college and either such university. An agreement entered into under the provisions of this subsection for the teaching of a subject or course by a community college at Fort Hays state university or at Wichita state university shall constitute the authorization required by subsection (b) for the teaching of such subject or course, and no separate authorization under subsection (b) shall be required.

(d) No out-district tuition charges shall be based upon any course or program if such course or program is taught in an area vocational school, an area vocational-technical school, or a technical college under an agreement with a community college and for which payments of state or federal moneys are made to the area vocational school, the area vocational-technical school, or the technical college under the provisions of article 44 of chapter 72 of Kansas Statutes Annotated.

(e) No out-district tuition charges shall be based upon any motorcycle driver safety course conducted by a community college.

(f) The provisions of this section shall take effect and be in force on July 1, 1999, and shall expire on June 30, ~~2005~~ 2006.

Sec. 42. K.S.A. 2003 Supp. 71-401 is hereby amended to read as follows: 71-401. (a) Persons enrolling in a community college who, if adults, have not been, or if minors, whose parents have not been residents of the county in which is located the principal campus of the community college for at least six months prior to enrollment for any term or session are nonresidents of the community college district for the purpose of determining liability of counties for payment of out-district tuition.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 43. K.S.A. 2003 Supp. 71-402 is hereby amended to read as follows: 71-402. (a) For the purpose of determining the county of residence of persons, residence of minors shall be determined as provided in K.S.A. 72-1046, and amendments thereto, and of adults as provided in subpart *Twenty-third* of K.S.A. 77-201, and amendments thereto.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 45. K.S.A. 2003 Supp. 71-403 is hereby amended to read as follows: 71-403. (a) The state board of regents may adopt rules and regulations prescribing criteria or guidelines for determination of residence of students for the purpose of determining liability of counties for out-district tuition of students in community colleges. The state board may make conclusive determination of any residence matter for the purpose of determination of out-district tuition.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 45. K.S.A. 2003 Supp. 71-610 is hereby amended to read as follows: 71-610. (a) Notwithstanding any provision contained in chapter 71 of Kansas Statutes Annotated to the contrary, whenever there are two community college districts located within one county, no out-district tuition shall be charged for any student residing in such county and attending either such community college.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 46. K.S.A. 2003 Supp. 71-1705 is hereby amended to read as follows: 71-1705. (a) Notwithstanding any provision contained in chapter 71 of Kansas Statutes Annotated to the contrary, whenever any area vocational school or area vocational-technical school consolidates with a community college in accordance with the provisions of this act, no out-district tuition shall be charged for any student enrolled in any vocational education course or program offered by the community college if such course or program was taught in the area vocational school or area vocational-technical school immediately prior to the consolidation of such area vocational school or area vocational-technical school with such community college and as a result of such consolidation such course or program is now being offered by the community college.

(b) The provisions of this section shall expire on June 30, ~~2005~~ 2006.

Sec. 47. K.S.A. 72-1111, 72-4916, 72-4919, 72-4920, 72-4921, 72-4922, 72-4924 through 72-4937, inclusive, 72-4939, 72-4940, 74-3249 through 74-3253 and 74-32,161 and K.S.A. 2003 Supp. 13-13a25, 13-13a26, 13-13a27, 13-13a29, 13-13a31, 13-13a32, 13-13a33, 13-13a34, 19-101a, 71-301a, 71-304, 71-305, 71-306, 71-308, 71-401, 71-402, 71-403, 71-610, 71-1705, 72-4938, 74-32,151, 75-646 and 79-32,117 are hereby repealed.”;

By renumbering the remaining sections accordingly;

In the title, by striking all in lines 10 through 12 and inserting: “AN ACT concerning higher education; concerning postsecondary educational institutions and tuition and fees relating thereto; relating to savings programs therefor; amending K.S.A. 72-1111 and 74-32,161 and K.S.A. 2003 Supp. 13-13a25, 13-13a26, 13-13a27, 13-13a29, 13-13a31, 13-13a32, 13-13a33, 13-13a34, 19-101a, 71-301a, 71-304, 71-305, 71-306, 71-308, 71-401, 71-402, 71-403, 71-610, 71-1705, 74-32,151, 75-646 and 79-32,117; also repealing K.S.A. 72-4916, 72-4919, 72-4920, 72-4921, 72-4922, 72-4924 through 72-4937, inclusive, 72-4939, 72-4940 and 74-3249 through 74-3253 and K.S.A. 2003 Supp. 72-4938.”; and the bill be passed as amended.

The Committee on **Federal and State Affairs** recommends **HB 2393**, **HB 2489**, **HB 2490**, all as amended by House Committee of the Whole, be passed.

Committee on **Financial Institutions and Insurance** recommends **Substitute for HB 2635** be passed.

Also, **HB 2545** be amended on page 1, in line 13, preceding “K.S.A.” by inserting “From and after July 1, 2004.”;

On page 16, by striking all in lines 31 through 33 and inserting:

“Sec. 2. K.S.A. 2003 Supp. 40-2,105 is hereby amended to read as follows: 40-2,105. (a) On or after the effective date of this act, every insurer which issues any individual or group policy of accident and sickness insurance providing medical, surgical or hospital expense coverage for other than specific diseases or accidents only and which provides for reimbursement or indemnity for services rendered to a person covered by such policy in a medical care facility, must provide for reimbursement or indemnity under such individual

policy or under such group policy, except as provided in subsection (d), which shall be limited to not less than 30 days per year when such person is confined for treatment of alcoholism, drug abuse or nervous or mental conditions in a medical care facility licensed under the provisions of K.S.A. 65-429 and amendments thereto, a treatment facility for alcoholics licensed under the provisions of K.S.A. 65-4014 and amendments thereto, a treatment facility for drug abusers licensed under the provisions of K.S.A. 65-4605 and amendments thereto, a community mental health center or clinic licensed under the provisions of K.S.A. 75-3307b and amendments thereto or a psychiatric hospital licensed under the provisions of K.S.A. 75-3307b and amendments thereto. Such individual policy or such group policy shall also provide for reimbursement or indemnity, except as provided in subsection (d), of the costs of treatment of such person for alcoholism, drug abuse and nervous or mental conditions, limited to not less than 100% of the first \$100, 80% of the next \$100 and 50% of the next \$1,640 in any year and limited to not less than \$7,500 in such person's lifetime, in the facilities enumerated when confinement is not necessary for the treatment or by a physician licensed or psychologist licensed to practice under the laws of the state of Kansas.

(b) For the purposes of this section "nervous or mental conditions" means disorders specified in the diagnostic and statistical manual of mental disorders, fourth edition, (DSM-IV, 1994) of the American psychiatric association but shall not include conditions:

(1) Not attributable to a mental disorder that are a focus of attention or treatment (DSM-IV, 1994); and

(2) defined as a mental illness in K.S.A. 2003 Supp. 40-2,105a and amendments thereto.

(c) The provisions of this section shall be applicable to health maintenance organizations organized under article 32 of chapter 40 of the Kansas Statutes Annotated.

(d) There shall be no coverage under the provisions of this section for any assessment against any person required by a diversion agreement or by order of a court to attend an alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto or for evaluations and diagnostic tests ordered or requested in connection with criminal actions, divorce, child custody or child visitation proceedings.

(e) The provisions of this section shall not apply to any medicare supplement policy of insurance, as defined by the commissioner of insurance by rule and regulation.

(f) The provisions of this section shall be applicable to the Kansas state employees health care benefits program developed and provided by the Kansas state employees health care commission.

(g) The outpatient coverage provisions of this section shall not apply to a high deductible health plan as defined in ~~Section 301 of P.L. 104-191 and any amendments thereto~~ *federal law* if such plan is purchased in connection with a medical or health savings account pursuant to that ~~act~~ *federal law, regardless of the effective date of the insurance policy*. After the amount of eligible deductible expenses have been paid by the insured, the outpatient costs of treatment of the insured for alcoholism, drug abuse and nervous or mental conditions shall be paid on the same level they are provided for a medical condition, subject to the yearly and lifetime maximums provided in subsection (a).

Sec. 3. From and after July 1, 2004, K.S.A. 8-173 is hereby amended to read as follows: 8-173. (a) An application for registration of a vehicle as provided in article 1 of chapter 8 of the Kansas Statutes Annotated and amendments thereto, shall not be accepted unless the person making such application shall exhibit:

(1) A receipt showing that such person has paid all personal property taxes levied against such person for the preceding year, including taxes upon such vehicle, except that if such application is made before June 21 such receipt need show payment of only one-half the preceding year's tax; or

(2) evidence that such vehicle was assessed for taxation purposes by a state agency, or was assessed as stock in trade of a merchant or manufacturer or was exempt from taxation under the laws of this state.

(b) An application for registration of a vehicle as provided in article 1 of chapter 8 of the Kansas Statutes Annotated shall not be accepted if the records of the county treasurer show that the applicant is delinquent and owes personal property taxes levied against the applicant for any preceding year.

(c) An application for registration or renewal of registration of a motor vehicle shall not be accepted until the applicant signs a certification, provided by the director of motor vehicles, certifying that the applicant has and will maintain, during the period of registration, the required insurance, self insurance or other financial security required pursuant to K.S.A. 40-3104 and amendments thereto.

(d) An application for registration or renewal of registration of a vehicle shall not be accepted if the applicant is unable to provide proof of the insurance, self insurance or other financial security required by article 31 of chapter 40 of the Kansas Statutes Annotated. Proof of insurance shall be verified by examination of the insurance card or other documentation issued by an insurance company, a certificate of self insurance issued by the commissioner, a binder of insurance, a certificate of insurance, a motor carrier identification number issued by the state corporation commission, proof of insurance for vehicles covered under a fleet policy, a commercial policy covering more than one vehicle or a policy of insurance required by K.S.A. 40-3104, and amendments thereto and for vehicles used as part of a drivers education program, a dealership contract and a copy of a motor vehicle liability insurance policy issued to a school district or accredited nonpublic school. Examination of a photocopy or facsimile of any of these documents shall suffice for verification of registration or renewal. Proof of insurance may also be verified on-line or electronically and the commissioner of insurance may require, by duly adopted rules and regulations, any motor vehicle liability insurance company authorized to do business in this state to provide verification of insurance in that manner. Any motor vehicle liability insurance company which is providing verification of insurance on-line or electronically on the day preceding the effective date of this act may continue to do so in the same manner and shall be deemed to be in compliance with this section.

Sec. 4. From and after July 1, 2004, K.S.A. 40-306 is hereby amended to read as follows: 40-306. The board of directors shall elect from their number a president and vice-president, and shall appoint a secretary, treasurer and such other officers as shall be prescribed in the bylaws, and shall fill any vacancy that may occur. They shall also have power to appoint any agents necessary for transacting the business of the company, pay such salaries and require such bonds as they may deem reasonable; and it shall be their duty to keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders. ~~All contracts made by the company shall be signed by the president or vice-president, and secretary, but such requirement shall not apply to any contract now in existence or hereafter entered into between the company and its agents.~~

Sec. 5. From and after July 1, 2004, K.S.A. 40-2202 is hereby amended to read as follows: 40-2202. (a) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

- (1) The entire money and other considerations therefor are expressed therein;
- (2) the time at which the insurance takes effect and terminates is expressed therein;
- (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of such family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder;
- (4) the style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than 10-point with a lower-case unspaced alphabet length not less than 120-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions);
- (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in K.S.A. 40-2203 and amendments thereto, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and reductions," provided, that if an exception or reduction specifically applies only to a particular benefit of the policy, a

statement of such exception or reduction shall be included with the benefit provision to which it applies;

(6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner of insurance; and

(8) any provision purporting to base the payment of benefits on "usual, customary and reasonable charges" or a standard of similar import is specifically defined; ~~or~~ and the determination of payable benefits is developed from a statistically valid sample which: (A) Equitably recognizes geographic variations; (B) is produced at least every six months; and (C) is collected on the basis of the most current codes and nomenclature developed and maintained by recognized authorities.

(b) If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner of insurance that any such policy is not subject to approval or disapproval by such official, the commissioner of insurance may by ruling require that such policy meet the standards set forth in subsection (a) of this section and in K.S.A. 40-2203 and amendments thereto.

New Sec. 6. (a) This act applies to any insurer authorized in this state which either assumes or transfers the obligations or risks, or both, on contracts of insurance pursuant to an assumption reinsurance agreement.

(b) This act does not apply to: (1) Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks, or both, under the contracts of insurance subject to the reinsurance agreement;

(2) the substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer;

(3) the transfer of contracts of insurance pursuant to mergers or consolidations of two or more insurers to the extent that those transactions are regulated by statute;

(4) any insurer subject to a judicial order of liquidation or rehabilitation;

(5) any reinsurance agreement or transaction to which a state insurance guaranty association is a party, provided that policyholders do not lose any rights or claims afforded under their original policies pursuant to K.S.A. 40-2901 et seq., and amendments thereto, or K.S.A. 40-3001 et seq., and amendments thereto; or

(6) the transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder.

(c) This section shall take effect on and after July 1, 2004.

New Sec. 7. For the purposes of this act:

(a) "Assuming insurer" means the insurer that acquires an insurance obligation or risk, or both, from the transferring insurer pursuant to an assumption reinsurance agreement.

(b) "Assumption reinsurance agreement" means any contract that both:

(1) Transfers insurance obligations or risks, or both, of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and

(2) is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks, or both, under the contracts are extinguished.

(c) "Commissioner" means the commissioner of insurance as defined by K.S.A. 40-102 and amendments thereto, unless the context requires otherwise.

(d) "Contract of insurance" means any written agreement between an insurer and policyholder pursuant to which the insurer, in exchange for premium or other consideration, agrees to assume an obligation or risk, or both, of the policyholder or to make payments on behalf of, or to, the policyholder or its beneficiaries. Contract of insurance includes all property, casualty, life, health, accident, surety, title and annuity business authorized to be written pursuant to the insurance laws of this state.

(e) "Home service business" means insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.

(f) "Notice of transfer" means the written notice to policyholders required by section 8 and amendments thereto.

(g) "Policyholder" means any individual or entity which has the right to terminate or otherwise alter the terms of a contract of insurance.

Policyholder includes any certificateholder whose certificate is in force on the proposed effective date of the assumption, if the certificateholder has the right to keep the certificate in force without change in benefit following termination of the group policy.

The right to keep the certificate in force shall not include the right to elect individual coverage under the consolidated omnibus budget reconciliation act ("COBRA") section 601 et seq., of the employee retirement income security act of 1974, as amended, 29 U.S.C. 1161 et seq.

(h) "Transferring insurer" means the insurer which transfers an insurance obligation or risk, or both, to an assuming insurer pursuant to an assumption reinsurance agreement.

(i) This section shall take effect on and after July 1, 2004.

New Sec. 8. (a) The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

(b) The notice of transfer shall state or provide:

(1) The date the transfer and novation of the policyholder's contract of insurance is proposed to take place;

(2) the name, address and telephone number of the assuming and transferring insurer;

(3) that the policyholder has the right to either consent to or reject the transfer and novation;

(4) the procedures and time limit for consenting to or rejecting the transfer and novation;

(5) a summary of any effect that consenting to or rejecting the transfer and novation will have on the policyholder's rights;

(6) a statement that the assuming insurer is licensed to write the type of business being assumed in the state where the policyholder resides, or is otherwise authorized, as provided herein, to assume such business;

(7) the name and address of the person at the transferring insurer to whom the policyholder should send its written statement of acceptance or rejection of the transfer and novation;

(8) the address and phone number of the insurance department where the policyholder resides so that the policyholder may write or call the insurance department for further information regarding the financial condition of the assuming insurer;

(9) the following financial data for both companies:

(A) Ratings for the last five years if available or for such lesser period as is available from two nationally recognized insurance rating services acceptable to the commissioner including the rating service's explanation of the meaning of the ratings. If ratings are unavailable for any year of the five-year period, this shall also be disclosed;

(B) a balance sheet as of December 31 for the previous three years, if available, or for such lesser period as is available and as of the date of the most recent quarterly statement;

(C) a copy of the management's discussion and analysis that was filed as a supplement to the previous year's annual statement; and

(D) an explanation of the reason for the transfer.

(c) Notice in a form identical or substantially similar to the form set forth in this act shall be deemed to comply with the requirements of subsection (b) of section 8 and amendments thereto.

(d) The notice of transfer shall include a pre-addressed, postage-paid response card which a policyholder may return as such policyholder's written statement of acceptance or rejection of the transfer and novation.

(e) The notice of transfer shall be filed as part of the prior approval requirement.

(f) This section shall take effect on and after July 1, 2004.

New Sec. 9. (a) Prior approval by the commissioner is required for any transaction where an insurer domiciled in this state assumes or transfers obligations or risks, or both, on contracts of insurance under an assumption reinsurance agreement. No insurer licensed in this state shall transfer obligations and/or risks on contracts of insurance issued to or owned by residents of this state to any insurer that is not licensed in this state. An insurer domiciled in this state shall not assume obligations or risks, or both, on contracts of insurance issued to or owned by policyholders residing in any other state unless it is licensed in the other state, or the insurance regulatory official of that state has approved the assumption.

(b) Any licensed foreign insurer that enters into an assumption reinsurance agreement which transfers the obligations or risks, or both, on contracts of insurance issued to or owned by residents of this state, shall file or cause to be filed with the commissioner of insurance of this state the assumption certificate, a copy of the notice of transfer and an affidavit that the transaction is subject to substantially similar requirements in the state of domicile of both the transferring and assuming insurer. If no such requirements exist in the domicile of either the transferring or assuming insurers, then the requirements of this act shall apply.

(c) Any licensed foreign insurer that enters into an assumption reinsurance agreement which transfers the obligations or risks, or both, on contracts of insurance issued to or owned by residents of this state, shall obtain prior approval of the commissioner of insurance of this state and be subject to all other requirements of this act with respect to residents of this state, unless the transferring and assuming insurers are subject to assumption reinsurance requirements adopted by statute or regulation in the jurisdiction of their domicile which are substantially similar to those contained herein.

(d) The following factors, along with such other factors as the commissioner deems appropriate under the circumstances, shall be considered by the commissioner in reviewing a request for approval:

(1) The financial condition of the transferring and assuming insurers and the effect the transaction will have on the financial condition of each company;

(2) the competence, experience and integrity of those persons who control the operation of the assuming insurer;

(3) the plans or proposals the assuming party has with respect to the administration of the policies subject to the proposed transfer;

(4) whether the transfer is fair and reasonable to the policyholders of both companies; and

(5) whether the notice of transfer to be provided by the insurer is fair, adequate and not misleading.

(e) This section shall take effect on and after July 1, 2004.

New Sec. 10. (a) Policyholders shall have the right to reject the transfer and novation of their contracts of insurance. Policyholders electing to reject the assumption transaction shall return to the transferring insurer the pre-addressed, postage-paid response card or other written notice and indicate thereon that the assumption is rejected (collectively referred to as the "response card").

(b) Payment of any premium to the assuming company during the 24-month period after notice is received shall be deemed to indicate the policyholder's acceptance of the transfer to the assuming insurer and a novation shall be deemed to have been effected, provided that the premium notice clearly states that payment of the premium to the assuming insurer shall constitute acceptance of the transfer. However, the premium notice shall also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to any home service business or any other business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by section 8, and amendments thereto, and in the assumption certificate.

(c) After no fewer than 24 months from the mailing of the initial notice of transfer required under section 8, and amendments thereto, if positive consent to, or rejection of, the transfer and assumption has not been received or consent has not been deemed to have occurred under subsection (b) of this section, the transferring company shall send to the

policyholder a second and final notice of transfer as specified in section 8 and amendments thereto. If the policyholder does not accept or reject the transfer during the one-month period immediately following the date on which the transferring insurer mails the second and final notice of transfer, the policyholder's consent will be deemed to have occurred and novation of the contract will be effected. With respect to the home service business, or any other business not using premium notices, the 24-month and one-month periods shall be measured from the date of delivery of the notice of transfer pursuant to subsection (a) of section 8 and amendments thereto.

(d) The transferring insurer will be deemed to have received the response card on the date it is postmarked. A policyholder may also send its response card by facsimile or other electronic transmission or by registered mail, express delivery or courier service, in which case the response card shall be deemed to have been received by the assuming insurer on the date of actual receipt by the transferring insurer.

(e) This section shall take effect on and after July 1, 2004.

New Sec. 11. If a policyholder consents to the transfer pursuant to section 10, and amendments thereto, or if the transfer is effected under section 12, and amendments thereto, there shall be a novation of the contract of insurance subject to the assumption reinsurance agreement with the result that the transferring insurer shall thereby be relieved of all insurance obligations or risks, or both, transferred under the assumption reinsurance agreement and the assuming insurer shall become directly and solely liable to the policyholder for those insurance obligations or risks, or both.

This section shall take effect on and after July 1, 2004.

New Sec. 12. If an insurer domiciled in this state or in a jurisdiction having a substantially similar law is deemed by the domiciliary commissioner to be in hazardous financial condition or an administrative proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the contracts of insurance is in the best interest of the policyholders, as determined by the domiciliary commissioner, a transfer and novation may be effected notwithstanding the provisions of this act. This may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer as approved by the commissioner.

This section shall take effect on and after July 1, 2004.

New Sec. 13. Residents of this state whose policies were previously subject to the protections set forth in K.S.A. 40-2901 et seq., and amendments thereto, or K.S.A. 40-3001 et seq., and amendments thereto, and whose policies are transferred to an unlicensed insurer pursuant to this section are entitled to continued protection thereunder.

This section shall take effect on and after July 1, 2004.

New Sec. 14. A notice of transfer and form for response by an insured to such a notice shall be deemed to be sufficient for the purposes of this act if it substantially conforms with the following form:

**NOTICE OF TRANSFER**

**IMPORTANT: THIS NOTICE AFFECTS YOUR CONTRACT RIGHTS. PLEASE READ IT CAREFULLY.**

**Transfer of Policy**

The [ABC Insurance Company] has agreed to replace us as your insurer under[insert policy/certificate name and number] effective [insert date]. The[ABC Insurance Company's] principal place of business is [insert address] and certain financial information concerning both companies is attached, including (1) ratings for the last five years, if available, or for such lesser period as is available from two nationally recognized insurance rating services; (2) balance sheets for the previous three years, if available, or for such lesser period as is available and as of the date of the most recent quarterly statement; (3) a copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement; and (4) an explanation of the reason for the transfer. You may obtain additional information concerning[ABC Insurance Company] from reference materials in your local library or by contacting your Insurance Commissioner at [insert address and phone number].

The [ABC Insurance Company] is licensed to write this coverage in your state. The Commissioner of Insurance in your state has reviewed the potential effect of the proposed transaction, and has approved the transaction.

Your Rights

You may choose to consent to or reject the transfer of your policy to [ABC Insurance Company]. If you want your policy transferred, you may notify us in writing by signing and returning the enclosed pre-addressed, postage-paid card or by writing to us at:

[Insert name, address and facsimile number of contact person.]

Payment of your premium to the assuming company will also constitute acceptance of the transaction. However, a method will be provided to allow you to pay the premium while reserving the right to reject the transfer.

If you reject the transfer, you may keep your policy with us or exercise any option under your policy. If we do not receive a written rejection you will, as a matter of law, have consented to the transfer. However, before this consent is final you will be provided a second notice of the transfer 24 months from now. After the second notice is provided, you will have one month to reply. If you have paid your premium to the [ABC Insurance Company], without reserving your right to reject the transfer, you will not receive a second notice.

Effect of Transfer

If you accept this transfer, [ABC Insurance Company] will be your insurer. It will have direct responsibility to you for the payment of all claims, benefits and for all other policy obligations. We will no longer have any obligations to you.

If you accept this transfer, you should make all premium payments and claims submissions to [ABC Insurance Company] and direct all questions to [ABC Insurance Company].

If you have any further questions about this agreement, you may contact [XYZ Insurance] or [ABC Insurance].

Sincerely,

[XYZ Insurance Company  
111 No Street  
Smithville, USA  
555/555-5555]

[ABC Insurance Company  
222 No Street  
Jonesville, USA  
333/333-3333]

For your convenience, we have enclosed a pre-addressed postage-paid response card. Please take time now to read the enclosed notice and complete and return the response card to us.

[Notice Date]

RESPONSE CARD

\_\_\_\_\_ Yes, I accept the transfer of my policy from [name of transferring company] to [name of assuming company].

\_\_\_\_\_ No, I reject the proposed transfer of my policy from [name of transferring company] to [name of assuming company] and wish to retain my policy with [name of transferring company].

\_\_\_\_\_  
Date Signature  
Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

This section shall take effect on and after July 1, 2004.

New Sec. 15. (a) Sections 6 through 15, and amendments thereto, shall be known and may be cited as the assumption reinsurance agreement act.

(b) This act shall be administered by the commissioner.

(c) This section shall take effect on and after July 1, 2004.

Sec. 16. From and after July 1, 2004, K.S.A. 40-433 is hereby amended to read as follows: 40-433. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued by an insurance company organized under the laws of the state of Kansas on its employees and agents, which agents for the purpose of this act only shall be deemed employees, the beneficiaries under such policies to be persons designated by each insured, or a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, both subject to the following requirements: (a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless the proprietor or partner is actively engaged in and devotes a substantial part of their time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials. (b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. No policy shall be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees shall insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy shall cover at least three employees at date of issue. (d) The amounts of insurance under the policy shall be based upon some plan, precluding individual selection either by the employees or by the employer or trustees.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements: (a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. (b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges shall insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. (d) The amount of insurance on the life of any debtor shall at no time, under one or more policies, exceed the amount owed by that debtor which is repayable in installments to the creditor, or \$100,000, whichever is less. (e) The insurance shall be payable to the policy-

holder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements: (a) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy shall be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance shall insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy shall cover at least 25 members at date of issue.

(d) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the members or by the union.

(4) A policy issued to the trustees of a fund established in this state by two or more employers if a majority of the employees to be insured of each employer are located within the state, or to the trustees of a fund established by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements: (a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if any employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless the proprietor or partner is actively engaged in and devotes a substantial part of their time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. (b) The premium for the policy shall be paid by the trustees either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured employees. No policy shall be issued on which the entire premium is to be derived from funds contributed by the insured persons. The policy shall insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy shall cover at date of issue at least 100 persons and not less than an average of five persons per employer unit. (d) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or union.

*(e) The requirements of paragraphs (b) and (d) of this subsection governing employer contributions and amounts of insurance shall not apply to a voluntary term life insurance policy issued on a group basis.*

(5) A policy issued to an association which has been organized and is maintained for purposes other than that of obtaining insurance, insuring at least 25 members, employees, or employees of members of the association for the benefit of persons other than the association or its officers. The term "employees" as used herein shall be deemed to include

retired employees. The premiums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees of such members or any combination thereof. The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured person or by the association or by the member.

(6) Any policy issued pursuant to this section may be extended to insure the employees against loss due to the death of their spouses, their children, their grandchildren, their spouse's children, their spouse's grandchildren, their parents, their spouse's parents, or any class or classes thereof, subject to the following requirements:

(a) The premium for the insurance shall be paid by the policyholder, either from the employer's funds or from funds contributed by the insured employees, or from both. If any part of the premium is to be derived from funds contributed by the insured employees, the insurance with respect to spouses, their children, their grandchildren, their spouse's children, their spouse's grandchildren, their parents and their spouse's parents may be placed in force only if at least 75% of the then eligible employees, excluding any as to whose family members' evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees, all eligible employees, excluding any as to whose family members' evidence of insurability is not satisfactory to the insurer, shall be insured with respect to their spouses, their children, their grandchildren, their spouse's children, their spouse's grandchildren, their parents, their spouse's parents.

(b) The amounts of insurance shall be based upon some plan precluding individual selection either by the employees or by the policyholder, or employer and shall not exceed with respect to any spouse, child or parent 50% of the insurance on the life of such insured employee.

(c) Upon termination of the insurance with respect to the spouse of an employee by reason of the employee's termination of employment or death, the spouse insured pursuant to this section shall have the same conversion rights as to the insurance on such spouse's life as is provided for the employee under K.S.A. 40-434 and amendments thereto.

(d) Notwithstanding the provisions of K.S.A. 40-434 and amendments thereto only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

(e) *The requirements of paragraphs (a) and (b) of this subsection governing participation, contribution by an employer and amounts of insurance for dependents shall not apply to a voluntary term life insurance policy issued on a group basis.*

(7) A policy may be issued to any other group which the commissioner of insurance finds is the proper subject of a group life insurance policy or contract. Any such group shall be subject to any appropriate conditions or provisions relating thereto which the commissioner may establish or require, consistent with the provisions of this act, and such conditions and provisions shall be included in the policy or contract.

New Sec. 17. (a) Sections 17 through 29, and amendments thereto, shall be known as the standard nonforfeiture law for individual deferred annuities.

(b) For the purposes of this act, the term "commissioner" shall mean the commissioner of insurance.

(c) This section shall take effect on and after July 1, 2004.

New Sec. 18. This act shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the federal internal revenue code, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

This section shall take effect on and after July 1, 2004.

New Sec. 19. (a) Except as stated in section 18, and amendments thereto, in the case of any annuity contract issued on or after the operative date of this act as defined in section

29, and amendments thereto, no annuity contract, shall be delivered or issued for delivery in this state unless such annuity contract contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the holder of such annuity contract, upon cessation of payment of considerations under the annuity contract:

(1) That upon cessation of payment of considerations under an annuity contract, or upon the written request of the owner of an annuity contract, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 21, 22, 23, 24 and 26, and amendments thereto;

(2) if an annuity contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of such annuity contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 21, 22, 24 and 26 and amendments thereto. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the annuity contract after making a written request to and receiving written approval from the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the annuity contract, together with sufficient information to determine the amounts of the benefits; and

(4) a statement that any paid-up annuity, cash surrender or death benefits that may be available under the annuity contract are not less than the minimum benefits required by any statute of the state in which the annuity contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the annuity contract, any indebtedness to the company on the annuity contract or any prior withdrawals from or partial surrenders of the annuity contract.

(b) Notwithstanding the requirements of this section, a deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the annuity contract arising from prior consideration paid would be less than \$20 monthly, the company may, at its option, terminate the annuity contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis on the mortality table, if any, and interest rate specified in the annuity contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the annuity contract.

(c) This section shall take effect on and after July 1, 2004.

New Sec. 20. The minimum values as specified in sections 21, 22, 23, 24 and 26, and amendments thereto, of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section and amendments thereto.

(a) (1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in subsection (b) of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of subparagraphs (A) through (D) below:

(A) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (b).

(B) An annual contract charge of \$50, accumulated at rates of interest as indicated in subsection (b).

(C) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subsection (b).

(D) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to 87.5% of the gross considerations credited to the annuity contract during that contract year.

(b) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the annuity contract if the interest rate will be reset:

(1) The five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest  $\frac{1}{20}$ th of one percent, specified in the contract no longer than 15 months prior to the annuity contract's issue date or redetermination date of paragraph (4) of subsection (b) of section 20 and amendments thereto;

(2) reduced by 125 basis points;

(3) where the resulting interest rate is not less than one percent; and

(4) the interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the annuity contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(c) During the period or term that an annuity contract provides substantive participation in an equity indexed benefit, such annuity contract may increase the reduction described in paragraph (2) of subsection (b) above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the issue date of such annuity contract, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(d) The commissioner may adopt rules and regulations to implement the provisions of subsection (c) of section 20, and amendments thereto, and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for annuity contracts that provide substantive participation in an equity index benefit and for such other annuity contracts that the commissioner determines adjustments are justified.

(e) This section shall take effect on and after July 1, 2004.

New Sec. 21. Any paid-up annuity benefit available under an annuity contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Present value shall be computed using the mortality table, if any, and the interest rates specified in the annuity contract for determining the minimum paid-up annuity benefits guaranteed in such annuity contract.

This section shall take effect on and after July 1, 2004.

New Sec. 22. For annuity contracts that provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the annuity contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such annuity contracts shall at least equal to the cash surrender benefit.

This section shall take effect on and after July 1, 2004.

New Sec. 23. For annuity contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the annuity contract arising from considerations paid prior to the time the annuity contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the annuity contract for accumulating the net considerations to determine maturity value, and increased by any

additional amounts credited by the company to the annuity contract. For annuity contracts that do not provide any death benefits prior to the commencement of any annuity payments, present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

This section shall take effect on and after July 1, 2004.

New Sec. 24. For the purpose of determining the benefits calculated under sections 22 and 23, and amendments thereto, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the annuity contract, but shall not be deemed to be later than the anniversary of such annuity contract next following the annuitant's 70th birthday or the 10th anniversary of such annuity contract, whichever is later.

This section shall take effect on and after July 1, 2004.

New Sec. 25. Any annuity contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in such contract that such benefits are not provided.

This section shall take effect on and after July 1, 2004.

New Sec. 26. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any annuity contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the annuity contract occurs.

This section shall take effect on and after July 1, 2004.

New Sec. 27. For any annuity contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of sections 21, 22, 24 and 26, and amendments thereto, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this act. The inclusion of such benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

This section shall take effect on and after July 1, 2004.

New Sec. 28. The commissioner may adopt rules and regulations reasonably necessary to implement the provisions of this act.

This section shall take effect on and after July 1, 2004.

New Sec. 29. (a) After the effective date of this act, a company may elect to apply its provisions to annuity contracts on a contract form-by-contract form basis before the second anniversary of the effective date of this act.

(b) In all other instances, this act shall become operative with respect to all annuity contracts issued by the company on or after the second anniversary of this act.

(c) This section shall take effect on and after July 1, 2004.

Sec. 30. K.S.A. 2003 Supp. 40-2,105 is hereby repealed.

Sec. 31. From and after July 1, 2004, K.S.A. 8-173, 40-306, 40-409, 40-433 and 40-2202 are hereby repealed.

Sec. 32. On July 1, 2006, K.S.A. 2003 Supp. 40-428a is hereby repealed.

Sec. 33. This act shall take effect and be in force from and after its publication in the Kansas register.

In the title, in line 10, by striking all preceding the period and inserting “; relating to the assumption reinsurance agreements; relating to group life insurance; relating to motor vehicle insurance; relating to contracts of stock insurance companies; relating to required provisions of certain accident and health policies; relating to the effect of health savings accounts on certain types of coverage; amending K.S.A. 8-173, 40-306, 40-409, 40-433, 40-2202 and K.S.A. 2003 Supp. 40-2,105 and repealing the existing sections; also repealing K.S.A. 2003 Supp. 40-428a”; and the bill be passed as amended.

**HB 2597** be amended on page 1, in line 15, preceding “K.S.A.” by inserting “From and after July 1, 2004,”;

On page 3, in line 22, preceding “K.S.A.” by inserting “From and after July 1, 2004,”;

On page 5, in line 27, preceding “K.S.A.” by inserting “From and after July 1, 2004,”; in line 41, preceding “K.S.A.” by inserting “From and after July 1, 2004,”;

On page 7, by striking all in lines 25 through 28 and inserting the following:

“Sec. 5. From and after July 1, 2004, K.S.A. 40-216 is hereby amended to read as follows: 40-216. (a) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within 30 days of such filing, to the company proposing to issue such contract, showing wherein the form of such contract does not comply with the requirements of the laws of this state; but the failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.

Under such rules and regulations as the commissioner of insurance shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.

~~(b) Prior to the 2000 legislative session, the Kansas insurance department shall conduct a study and report to the Kansas legislature on the laws of other states governing rate filings and policy or contract forms for personal and commercial, including large commercial risks. The study shall also identify recent trends in regulation and the potential impact on consumers, carriers and agents. The commissioner of insurance shall allow any insurance company authorized to transact business in this state to deliver to any person in this state any contract of insurance or indemnity, including any explanatory materials, written in any language other than the English language under the following conditions:~~

~~(1) The insured or applicant for insurance who is given a copy of the same contract of insurance or indemnity or explanatory materials written in the English language;~~

~~(2) the English language version of the contract for insurance or indemnity or explanatory materials delivered shall be the controlling version; and~~

~~(3) any contract of insurance or indemnity or explanatory materials written in any language other than English shall contain a disclosure statement in 10 point boldface type, printed in both the English language and the other language used, stating the English version of the contract of insurance or indemnity is the official or controlling version and that the version is written in any language other than English is furnished for informational purposes only.~~

~~(c) All contracts of insurance or indemnity that are required to be filed with the commissioner of insurance shall be accompanied by any version of such contract of insurance or indemnity written in any language other than the English language.~~

(d) *Any insurance company or insurer, including any agent or employee thereof, who knowingly misrepresents the content of a contract of insurance or indemnity or explanatory materials written in a language other than the English language shall be deemed to have violated the unfair trade practice law.*

(e) *For the purposes of this section, the term "contract of insurance or indemnity" shall include any rider, endorsement or application pertaining to such contract of insurance or indemnity.*

Sec. 6. From and after July 1, 2004, K.S.A. 2003 Supp. 40-2404 is hereby amended to read as follows: 40-2404. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

(b) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

(d) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;

(e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(f) is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy;

(g) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) misrepresents any insurance policy as being shares of stock.

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

(3) *Defamation.* Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

(4) *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the business of insurance, or by any act of boycott, coercion or intimidation monopolizing or attempting to monopolize any part of the business of insurance.

(5) *False statements and entries.* (a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(b) Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

(6) *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and

profits as an inducement to insurance. Nothing herein shall prohibit the acts permitted by K.S.A. 40-232, and amendments thereto.

(7) *Unfair discrimination.* (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(c) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses such person's eyesight. However, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued.

(d) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available for accident and health and life insurance to an applicant who is the proposed insured or charge a different rate for the same coverage or excluding or limiting coverage for losses or denying a claim incurred by an insured as a result of abuse based on the fact that the applicant who is the proposed insured is, has been, or may be the subject of domestic abuse, except as provided in subpart (v). "Abuse" as used in this subsection (7)(d) means one or more acts defined in subsection (a) or (b) of K.S.A. 60-3102 and amendments thereto between family members, current or former household members, or current or former intimate partners.

(i) An insurer may not ask an applicant for life or accident and health insurance who is the proposed insured if the individual is, has been or may be the subject of domestic abuse or seeks, has sought or had reason to seek medical or psychological treatment or counseling specifically for abuse, protection from abuse or shelter from abuse.

(ii) Nothing in this section shall be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is, has been or has the potential to be the subject of abuse if the perpetrator of the abuse is the applicant or would be the owner of the insurance policy.

(iii) No insurer that issues a life or accident and health policy to an individual who is, has been or may be the subject of domestic abuse shall be subject to civil or criminal liability for the death or any injuries suffered by that individual as a result of domestic abuse.

(iv) No person shall refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual or charge a different rate for the same coverage solely because of physical or mental condition, except where the refusal, limitation or rate differential is based on sound actuarial principles.

(v) Nothing in this section shall be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if such condition has been caused by abuse, provided that:

(A) The person routinely underwrites or rates such condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

(B) the fact that an individual is, has been or may be the subject of abuse may not be considered a physical or mental condition; and

(C) such underwriting or rating is not used to evade the intent of this section or any other provision of the Kansas insurance code.

(vi) Any person who underwrites or rates a risk on the basis of preexisting physical or mental condition as set forth in subsection (7)(d)(v), shall treat such underwriting or rating as an adverse underwriting decision pursuant to K.S.A. 40-2,112, and amendments thereto.

(vii) The provisions of subsection (d) shall apply to all policies of life and accident and health insurance issued in this state after the effective date of this act and all existing contracts which are renewed on or after the effective date of this act.

(8) *Rebates.* (a) Except as otherwise expressly provided by law, knowingly permitting, offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon; paying, allowing, giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing or offering to give, sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in subsection (7) or (8)(a) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance. Any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(9) *Unfair claim settlement practices.* It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are: (A) Committed flagrantly and in conscious disregard of such provisions, or (B) committed with such frequency as to indicate a general business practice.

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(10) *Failure to maintain complaint handling procedures.* Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222, and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" means any written communication primarily expressing a grievance related to the acts and practices set out in this section.

(11) *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

(12) *Statutory violations.* Any violation of any of the provisions of K.S.A. 40-216, 40-276a, 40-2,155 and 40-1515 or ~~K.S.A. 40-2,155~~ and amendments thereto.

(13) *Disclosure of information relating to adverse underwriting decisions and refund of premiums.* Failing to comply with the provisions of K.S.A. 40-2,112, and amendments thereto, within the time prescribed in such section.

(14) *Rebates and other inducements in title insurance.* (a) No title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to obtaining any title insurance business, any rebate, reduction or abatement of any rate or charge made incident to the issuance of such insurance, any special favor or advantage not generally available to others of the same classification, or any money, thing of value or other consideration or material inducement. The words "charge made incident to the issuance of such insurance" includes, without limitations, escrow, settlement and closing charges.

(b) No insured named in a title insurance policy or contract nor any other person directly or indirectly connected with the transaction involving the issuance of the policy or contract, including, but not limited to, mortgage lender, real estate broker, builder, attorney or any officer, employee, agent representative or solicitor thereof, or any other person may knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement referred to in (14)(a).

(c) Nothing in this section shall be construed as prohibiting:

(i) The payment of reasonable fees for services actually rendered to a title insurance agent in connection with a title insurance transaction;

(ii) the payment of an earned commission to a duly appointed title insurance agent for services actually performed in the issuance of the policy of title insurance; or

(iii) the payment of reasonable entertainment and advertising expenses.

(d) Nothing in this section prohibits the division of rates and charges between or among a title insurance company and its agent, or one or more title insurance companies and one or more title insurance agents, if such division of rates and charges does not constitute an unlawful rebate under the provisions of this section and is not in payment of a forwarding fee or a finder's fee.

(e) No title insurer or title agent may accept any order for, issue a title insurance policy to, or provide services to, an applicant if it knows or has reason to believe that the applicant

was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed to the buyer, seller and lender the financial interest of the producer of title business or associate referring the title insurance business.

(f) No title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if: (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer or title agent, and (ii) 20% or more of the gross operating revenue of that title insurer or title agent during the six full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not apply to transactions involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.

(g) The commissioner shall adopt any regulations necessary to carry out the provisions of this act.

(15) *Disclosure of nonpublic personal information.* (a) No person shall disclose any non-public personal information contrary to the provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law 106-102). The commissioner may adopt rules and regulations necessary to carry out this section. Such rules and regulations shall be consistent with and not more restrictive than the model regulation adopted on September 26, 2000, by the national association of insurance commissioners entitled "Privacy of consumer financial and health information regulation".

(b) Any rules and regulations adopted by the commissioner which implement article V of the model regulation adopted on September 26, 2000, by the national association of insurance commissioners entitled "Privacy of consumer financial and health information regulation" shall become effective on and after February 1, 2002.

(c) Nothing in this paragraph (15) shall be deemed or construed to authorize the promulgation or adoption of any regulation which preempts, supersedes or is inconsistent with any provision of Kansas law concerning requirements for notification of, or obtaining consent from, a parent, guardian or other legal custodian of a minor relating to any matter pertaining to the health and medical treatment for such minor. and the bill be passed as amended.

Sec. 7. From and after July 1, 2004, K.S.A. 2003 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group which is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" mean the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, ~~2002~~ 2003.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

(1) An insurer's capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

(o) "Commissioner" means the commissioner of insurance.

Sec. 8. K.S.A. 40-2118 is hereby amended to read as follows: 40-2118. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Administering carrier" means the insurer or third-party administrator designated in K.S.A. 40-2120, and amendments thereto.

(b) "Association" means the Kansas health insurance association established in K.S.A. 40-2119, and amendments thereto.

(c) "Board" means the board of directors of the association.

(d) "Church plan" means a plan as defined under section 3(33) of the Employee Retirement Income Security Act of 1974.

(e) "Commissioner" means the commissioner of insurance.

(f) "Creditable coverage" means with respect to an individual, coverage of the individual under any of the following:

(1) A group health plan;

(2) health insurance coverage;

(3) part A or Part B of Title XVIII of the Social Security Act;

(4) title XIX of the Social Security Act, other than coverage consisting solely of benefit under Section 1928;

(5) chapter 55 of Title 10, United States Code;

(6) a medical care program of the Indian Health Service or of a tribal organization;

(7) a state health benefit risk pool;

(8) a health plan offered under Chapter 89 of Title 5, United States Code;

(9) a public health plan as defined under regulations promulgated by the secretary of health and human services; and

(10) a health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(d)).

(g) "Dependent" means a resident spouse or resident unmarried child under the age of 19 years, a child who is a student under the age of 23 years and who is financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent.

(h) "~~Federally defined eligible individual" means an individual:~~

~~(1) For whom, as of the date the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and whose most recent prior coverage was under a group health plan, government plan or church plan;~~

~~(2) who is not eligible for coverage under a group health plan, Part A or B of Title XVIII of the Social Security Act, or a state plan under Title XIX of the Social Security Act, or any successor program, and who does not have any other health insurance coverage;~~

~~(3) with respect to whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud; and~~

~~(4) who had been offered the option of continuation coverage under COBRA or under a similar program, who elected such continuation coverage, and who has exhausted such continuation coverage.~~

~~(i) "Excess loss" means the total dollar amount by which claims expense incurred for any issuer of a medicare supplement policy or certificate delivered or issued for delivery to persons in this state eligible for medicare by reason of disability and who are under age 65 exceeds 65% of the premium earned by such issuer during a calendar year.~~

~~(i) "Federally defined eligible individual" means an individual:~~

~~(1) For whom, as of the date the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and whose most recent prior coverage was under a group health plan, government plan or church plan;~~

~~(2) who is not eligible for coverage under a group health plan, Part A or B of Title XVII of the Social Security Act, or a state plan under Title XIX of the Social Security Act, or any successor program, and who does not have any other health insurance coverage;~~

~~(3) with respect to whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud; and~~

~~(4) who had been offered the option of continuation coverage under COBRA or under a similar program, who elected such continuation coverage, and who has exhausted such continuation coverage.~~

~~(j) "Federally defined eligible individuals for FTAA" means an individual who is:~~

~~(1) Legally domiciled in this state; and~~

~~(2) eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986.~~

~~(k) "FTAA" means federal trade adjustment assistance under the federal trade adjustment assistance reform act of 2002, public law 107-210.~~

~~(l) "Governmental plan" means a plan as defined under section 3(32) of the Employee Retirement Income Security Act of 1974 and any plan maintained for its employees by the government of the United States or by any agency or instrumentality of such government.~~

~~(m) "Group health plan" means an employee benefit plan as defined by section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides any hospital, surgical or medical expense benefits to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement or otherwise.~~

~~(n) "Health insurance" means any hospital or medical expense policy, health, hospital or medical service corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by an employer or any certificate issued under any such policies, contracts or plans. "Health insurance" does not include policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.~~

~~(o) "Health maintenance organization" means any organization granted a certificate of authority under the provisions of the health maintenance organization act.~~

~~(p) "Insurance arrangement" means any plan, program, contract or any other arrangement under which one or more employers, unions or other organizations provide to their employees or members, either directly or indirectly through a group-funded pool, trust or third-party administrator, health care services or benefits other than through an insurer.~~

~~(q) "Insurer" means any insurance company, fraternal benefit society, health maintenance organization and nonprofit hospital and medical service corporation authorized to transact health insurance business in this state.~~

~~(r) "Medicaid" means the medical assistance program operated by the state under title XIX of the federal social security act.~~

(¶)(s) “Medicare” means coverage under both parts A and B of title XVIII of the federal social security act, 42 USC 1395.

(¶)(t) “Medicare supplement policy” means a group or individual policy of accident and sickness insurance or a subscriber contract of hospitals and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal social security act (42 USC 1395 et seq.) or an issued policy under a demonstration project specified in 42 USC 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare.

(¶)(u) “Member” means all insurers and insurance arrangements participating in the association.

(¶)(v) “Plan” means the Kansas uninsurable health insurance plan created pursuant to this act.

(¶)(w) “Plan of operation” means the plan to create and operate the Kansas uninsurable health insurance plan, including articles, bylaws and operating rules, adopted by the board pursuant to K.S.A. 40-2119, and amendments thereto.

Sec. 9. K.S.A. 40-2122 is hereby amended to read as follows: 40-2122. (a) The following individuals shall be eligible for plan coverage provided they meet the criteria set forth in subsection (b):

- (1) Any person who has been a resident of this state for at least six months;
- (2) any person who is a legal domiciliary of this state who previously was covered under the high risk pool of another state, provided they apply for coverage under the plan within 63 days of losing such other coverage for reasons other than fraud or nonpayment of premiums; ¶

(3) any federally defined eligible individual who is a legal domiciliary of this state; *or*

(4) *any federally defined eligible individual for FTAA.*

(b) Those individuals who are eligible for plan coverage under subsection (a) must provide evidence satisfactory to the administering carrier that such person meets one of the following criteria:

(1) Such person has had health insurance coverage involuntarily terminated for any reason other than nonpayment of premium;

(2) such person has applied for health insurance and been rejected by two carriers because of health conditions;

(3) such person has applied for health insurance and has been quoted a premium rate which is in excess of the plan rate;

(4) such person has been accepted for health insurance subject to a permanent exclusion of a preexisting disease or medical condition; ¶

(5) such person is a federally defined eligible individual; *or*

(6) *such person is a federally defined eligible individual for FTAA.*

(c) Each resident dependent of a person who is eligible for plan coverage shall also be eligible for plan coverage.

(d) The following persons shall not be eligible for coverage under the plan:

(1) Any person who is eligible for medicare or is eligible for medicaid benefits;

(2) any person who has had coverage under the plan terminated less than 12 months prior to the date of the current application, except that this provision shall not apply with respect to an applicant who is a federally defined eligible individual;

(3) any person who has received accumulated benefits from the plan equal to or in excess of the lifetime maximum benefits under the plan prescribed by K.S.A. 40-2124 and amendments thereto;

(4) any person having access to accident and health insurance through an employer-sponsored group or self-insured plan, *including coverage under the consolidated omnibus budget reconciliation act (COBRA), except that the requirement for exhaustion of any available COBRA or state continuation is waived whenever such person:*

(A) *Is eligible for the credit for health care costs under section 35 of the internal revenue code of 1986; and*

(B) *has three months of prior creditable coverage as described in subsection (c) of K.S.A. 40-2124, and amendments thereto; or*

(5) any person who is eligible for any other public or private program that provides or indemnifies for health services.

(e) Any person who ceases to meet the eligibility requirements of this section may be terminated at the end of a policy period.

(f) All plan members, insurers and insurance arrangements shall notify in writing persons denied health insurance coverage, for any reason, of the availability of coverage through the Kansas health insurance association.

Sec. 10. K.S.A. 40-2124 is hereby amended to read as follows: 40-2124. (a) Coverage under the plan shall be subject to both deductible and coinsurance provisions set by the board. On and after January 1, 1998, the plan shall offer to current participants and new enrollees no fewer than four choices of deductible and copayment options. Coverage shall contain a coinsurance provision for each service covered by the plan, and such copayment requirement shall not be subject to a stop-loss provision. Such coverage may provide for a percentage or dollar amount of coinsurance reduction at specific thresholds of copayment expenditures by the insured.

(b) Coverage under the plan shall be subject to a maximum lifetime benefit of \$1,000,000 per covered individual.

(c) On and after May 1, 1994, coverage under the plan shall exclude charges or expenses incurred during the first 90 days following the effective date of coverage as to any condition: (1) Which manifested itself during the six-month period immediately prior to the application for coverage in such manner as would cause an ordinarily prudent person to seek diagnosis, care or treatment; or (2) for which medical advice, care or treatment was recommended or received in the six-month period immediately prior to the application for coverage. In succeeding years of operation of the plan, coverage of preexisting conditions may be excluded as determined by the board, except that no such exclusion shall exceed 180 calendar days, and no exclusion shall be applied to a federally defined eligible individual provided that application for coverage is made not later than 63 days following the applicant's most recent prior creditable coverage. *For any individual who is eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986, the preexisting conditions limitation will not apply whenever such individual has maintained creditable health insurance coverage for an aggregate period of three months, not counting any period prior to a 63 day break in coverage, as of the date on which such individual seeks to enroll in coverage provided by this act.*

(d) (1) Benefits otherwise payable under plan coverage shall be reduced by all amounts paid or payable through any other health insurance, or insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The association shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this section.

Sec. 11. From and after July 1, 2004, K.S.A. 40-2209 is hereby amended to read as follows: 40-2209. (a) (1) Group sickness and accident insurance is declared to be that form of sickness and accident insurance covering groups of persons, with or without one or more members of their families or one or more dependents. Except at the option of the employee or member and except employees or members enrolling in a group policy after the close of an open enrollment opportunity, no individual employee or member of an insured group and no individual dependent or family member may be excluded from eligibility or coverage under a policy providing hospital, medical or surgical expense benefits both with respect to policies issued or renewed within this state and with respect to policies issued or renewed outside this state covering persons residing in this state. For purposes of this section, an open enrollment opportunity shall be deemed to be a period no less favorable than a period beginning on the employee's or member's date of initial eligibility and ending 31 days thereafter.

(2) An eligible employee, member or dependent who requests enrollment following the open enrollment opportunity or any special enrollment period for dependents as specified

in subsection (3) shall be considered a late enrollee. An accident and sickness insurer may exclude a late enrollee, except during an open enrollment period. However, an eligible employee, member or dependent shall not be considered a late enrollee if:

(A) The individual:

(i) Was covered under another group policy which provided hospital, medical or surgical expense benefits or was covered under section 607(1) of the employee retirement income security act of 1974 (ERISA) at the time the individual was eligible to enroll;

(ii) states in writing, at the time of the open enrollment period, that coverage under another group policy which provided hospital, medical or surgical expense benefits was the reason for declining enrollment, but only if the group policyholder or the accident and sickness insurer required such a written statement and provided the individual with notice of the requirement for a written statement and the consequences of such written statement;

(iii) has lost coverage under another group policy providing hospital, medical or surgical expense benefits or under section 607(1) of the employee retirement income security act of 1974 (ERISA) as a result of the termination of employment, reduction in the number of hours of employment, termination of employer contributions toward such coverage, the termination of the other policy's coverage, death of a spouse or divorce or legal separation or was under a COBRA continuation provision and the coverage under such provision was exhausted; and

(iv) requests enrollment within 30 days after the termination of coverage under the other policy; or

(B) a court has ordered coverage to be provided for a spouse or minor child under a covered employee's or member's policy.

(3) (A) If an accident and sickness insurer issues a group policy providing hospital, medical or surgical expenses and makes coverage available to a dependent of an eligible employee or member and such dependent becomes a dependent of the employee or member through marriage, birth, adoption or placement for adoption, then such group policy shall provide for a dependent special enrollment period as described in subsection (3) (B) of this section during which the dependent may be enrolled under the policy and in the case of the birth or adoption of a child, the spouse of an eligible employee or member may be enrolled if otherwise eligible for coverage.

(B) A dependent special enrollment period under this subsection shall be a period of not less than 30 days and shall begin on the later of (i) the date such dependent coverage is made available, or (ii) the date of the marriage, birth or adoption or placement for adoption.

(C) If an eligible employee or member seeks to enroll a dependent during the first 30 days of such a dependent special enrollment period, the coverage of the dependent shall become effective: (i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received; (ii) in the case of the birth of a dependent, as of the date of such birth; or (iii) in the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(4) (A) No group policy providing hospital, medical or surgical expense benefits issued or renewed within this state or issued or renewed outside this state covering residents within this state shall limit or exclude benefits for specific conditions existing at or prior to the effective date of coverage thereunder. Such policy may impose a preexisting conditions exclusion, not to exceed 90 days following the date of enrollment for benefits for conditions whether mental or physical, regardless of the cause of the condition for which medical advice, diagnosis, care or treatment was recommended or received in the 90 days prior to the effective date of enrollment. Any preexisting conditions exclusion shall run concurrently with any waiting period.

(B) Such policy may impose a waiting period after full-time employment starts before an employee is first eligible to enroll in any applicable group policy.

(C) A health maintenance organization which offers such policy which does not impose any preexisting conditions exclusion may impose an affiliation period for such coverage, provided that: (i) such application period is applied uniformly without regard to any health status related factors and (ii) such affiliation period does not exceed two months. The affiliation period shall run concurrently with any waiting period under the plan.

(D) A health maintenance organization may use alternative methods from those described in this subsection to address adverse selection if approved by the commissioner.

(E) For the purposes of this section, the term "preexisting conditions exclusion" shall mean, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage whether or not any medical advice, diagnosis, care or treatment was recommended or received before such date.

(F) For the purposes of this section, the term "date of enrollment" means the date the individual is enrolled under the group policy or, if earlier, the first day of the waiting period for such enrollment.

(G) For the purposes of this section, the term "waiting period" means with respect to a group policy the period which must pass before the individual is eligible to be covered for benefits under the terms of the policy.

(5) Genetic information shall not be treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.

(6) A group policy providing hospital, medical or surgical expense benefits may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

(7) A group policy providing hospital, medical or surgical expense benefits may not impose any preexisting condition waiting period in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of a 30-day period beginning on the date of the adoption or placement for adoption, is covered by a policy specified in subsection (a). This subsection shall not apply to coverage before the date of such adoption or placement for adoption.

(8) Such policy shall waive such a preexisting conditions exclusion to the extent the employee or member or individual dependent or family member was covered by (A) a group or individual sickness and accident policy, (B) coverage under section 607(1) of the employees retirement income security act of 1974 (ERISA), (C) a group specified in K.S.A. 40-2222 and amendments thereto, (D) part A or part B of title XVIII of the social security act, (E) title XIX of the social security act, other than coverage consisting solely of benefits under section 1928, (F) a state children's health insurance program established pursuant to title XXI of the social security act, (G) chapter 55 of title 10 United States code, (H) a medical care program of the indian health service or of a tribal organization, (I) the Kansas uninsurable health plan act pursuant to K.S.A. 40-2217 *et seq.* and amendments thereto or a similar health benefits risk pool of another state, (J) a health plan offered under chapter 89 of title 5, United States code, (K) a health benefit plan under section 5(e) of the peace corps act (22 U.S.C. 2504(e)), or (L) a group subject to K.S.A. 12-2616 *et seq.* and amendments thereto which provided hospital, medical and surgical expense benefits within 63 days prior to the effective date of coverage with no gap in coverage. A group policy shall credit the periods of prior coverage specified in subsection (a)(7) without regard to the specific benefits covered during the period of prior coverage. Any period that the employee or member is in a waiting period for any coverage under a group health plan or is in an affiliation period shall not be taken into account in determining the continuous period under this subsection.

(b) (1) An accident and sickness insurer which offers group policies providing hospital, medical or surgical expense benefits shall provide a certification as described in subsection (b)(2): (A) At the time an eligible employee, member or dependent ceases to be covered under such policy or otherwise becomes covered under a COBRA continuation provision; (B) in the case of an eligible employee, member or dependent being covered under a COBRA continuation provision, at the time such eligible employee, member or dependent ceases to be covered under a COBRA continuation provision; and (C) on the request on behalf of such eligible employee, member or dependent made not later than 24 months after the date of the cessation of the coverage described in subsection (b)(1) (A) or (b)(1) (B), whichever is later.

(2) The certification described in this subsection is a written certification of (A) the period of coverage under a policy specified in subsection (a) and any coverage under such COBRA continuation provision, and (B) any waiting period imposed with respect to the eligible employee, member or dependent for any coverage under such policy.

(c) Any group policy may impose participation requirements, define full-time employees or members and otherwise be designed for the group as a whole through negotiations between the group sponsor and the insurer to the extent such design is not contrary to or inconsistent with this act.

(d) (1) An accident and sickness insurer offering a group policy providing hospital, medical or surgical expense benefits must renew or continue in force such coverage at the option of the policyholder or certificateholder except as provided in paragraph (2) below.

(2) An accident and sickness insurer may nonrenew or discontinue coverage under a group policy providing hospital, medical or surgical expense benefits based only on one or more of the following circumstances:

(A) If the policyholder or certificateholder has failed to pay any premium or contributions in accordance with the terms of the group policy providing hospital, medical or surgical expense benefits or the accident and sickness insurer has not received timely premium payments;

(B) if the policyholder or certificateholder has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of such coverage;

(C) if the policyholder or certificateholder has failed to comply with a material plan provision relating to employer contribution or group participation rules;

(D) if the accident and sickness insurer is ceasing to offer coverage in such group market in accordance with subsections (d)(3) or (d)(4);

(E) in the case of accident and sickness insurer that offers coverage under a policy providing hospital, medical or surgical expense benefits through an enrollment area, there is no longer any eligible employee, member or dependent in connection with such policy who lives, resides or works in the medical service enrollment area of the accident and sickness insurer or in the area for which the accident and sickness insurer is authorized to do business; or

(F) in the case of a group policy providing hospital, medical or surgical expense benefits which is offered through an association or trust pursuant to subsections (f)(3) or (f)(5), the membership of the employer in such association or trust ceases but only if such coverage is terminated uniformly without regard to any health status related factor relating to any eligible employee, member or dependent.

(3) In any case in which an accident and sickness insurer which offers a group policy providing hospital, medical or surgical expense benefits decides to discontinue offering such type of group policy, such coverage may be discontinued only if:

(A) The accident and sickness insurer notifies all policyholders and certificateholders and all eligible employees or members of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(B) the accident and sickness insurer offers to each policyholder who is provided such group policy providing hospital, medical or surgical expense benefits which is being discontinued the option to purchase any other group policy providing hospital, medical or surgical expense benefits currently being offered by such accident and sickness insurer; and

(C) in exercising the option to discontinue coverage and in offering the option of coverage under subparagraph (B), the accident and sickness insurer acts uniformly without regard to the claims experience of those policyholders or certificateholders or any health status related factors relating to any eligible employee, member or dependent covered by such group policy or new employees or members who may become eligible for such coverage.

(4) If the accident and sickness insurer elects to discontinue offering group policies providing hospital, medical or surgical expense benefits or group coverage to a small employer pursuant to K.S.A. 40-2209f and amendments thereto, such coverage may be discontinued only if:

(A) The accident and sickness insurer provides notice to the insurance commissioner, to all policyholders or certificateholders and to all eligible employees and members covered by such group policy providing hospital, medical or surgical expense benefits at least 180 days prior to the date of the discontinuation of such coverage;

(B) all group policies providing hospital, medical or surgical expense benefits offered by such accident and sickness insurer are discontinued and coverage under such policies are not renewed; and

(C) the accident and sickness insurer may not provide for the issuance of any group policies providing hospital, medical or surgical expense benefits in the discontinued market during a five year period beginning on the date of the discontinuation of the last such group policy which is nonrenewed.

(e) An accident and sickness insurer offering a group policy providing hospital, medical or surgical expense benefits may not establish rules for eligibility (including continued eligibility) of any employee, member or dependent to enroll under the terms of the group policy based on any of the following factors in relation to the eligible employee, member or dependent: (A) Health status, (B) medical condition, including both physical and mental illness, (C) claims experience, (D) receipt of health care, (E) medical history, (F) genetic information, (G) evidence of insurability, including conditions arising out of acts of domestic violence, or (H) disability. This subsection shall not be construed to require a policy providing hospital, medical or surgical expense benefits to provide particular benefits other than those provided under the terms of such group policy or to prevent a group policy providing hospital, medical or surgical expense benefits from establishing limitations or restrictions on the amount, level, extent or nature of the benefits or coverage for similarly situated individuals enrolled under the group policy.

(f) Group accident and health insurance may be offered to a group under the following basis:

(1) Under a policy issued to an employer or trustees of a fund established by an employer, who is the policyholder, insuring at least two employees of such employer, for the benefit of persons other than the employer. The term "employees" shall include the officers, managers, employees and retired employees of the employer, the partners, if the employer is a partnership, the proprietor, if the employer is an individual proprietorship, the officers, managers and employees and retired employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, employees and retired employees of individuals and firms, the business of which and of the insured employer is under common control through stock ownership contract, or otherwise. The policy may provide that the term "employees" may include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) Under a policy issued to a labor union which shall have a constitution and bylaws insuring at least 25 members of such union.

(3) Under a policy issued to the trustees of a fund established by two or more employers or business associations or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be the policyholder, to insure employees of the employers or members of the union or members of the association for the benefit of persons other than the employers or the unions or the associations. The term "employees" shall include the officers, managers, employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements: (a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. (b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both.

(5) A policy issued to an association which has been organized and is maintained for the purposes other than that of obtaining insurance, insuring at least 25 members, employees, or employees of members of the association for the benefit of persons other than the association or its officers. The term "employees" shall include retired employees. The pre-

miums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees of such members or any combination thereof.

(6) Under a policy issued to any other type of group which the commissioner of insurance may find is properly subject to the issuance of a group sickness and accident policy or contract.

(g) Each such policy shall contain in substance: (1) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or the insured's beneficiary.

(2) A provision setting forth the conditions under which an individual's coverage terminates under the policy, including the age, if any, to which an individual's coverage under the policy shall be limited, or, the age, if any, at which any additional limitations or restrictions are placed upon an individual's coverage under the policy.

(3) Provisions setting forth the notice of claim, proofs of loss and claim forms, physical examination and autopsy, time of payment of claims, to whom benefits are payable, payment of claims, change of beneficiary, and legal action requirements. Such provisions shall not be less favorable to the individual insured or the insured's beneficiary than those corresponding policy provisions required to be contained in individual accident and sickness policies.

(4) A provision that the insurer will furnish to the policyholder, for the delivery to each employee or member of the insured group, an individual certificate approved by the commissioner of insurance setting forth in summary form a statement of the essential features of the insurance coverage of such employee or member, the procedure to be followed in making claim under the policy and to whom benefits are payable. Such certificate shall also contain a summary of those provisions required under paragraphs (2) and (3) of this subsection (g) in addition to the other essential features of the insurance coverage. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(h) No group disability income policy which integrates benefits with social security benefits, shall provide that the amount of any disability benefit actually being paid to the disabled person shall be reduced by changes in the level of social security benefits resulting either from changes in the social security law or due to cost of living adjustments which become effective after the first day for which disability benefits become payable.

(i) A group policy of insurance delivered or issued for delivery or renewed which provides hospital, surgical or major medical expense insurance, or any combination of these coverages, on an expense incurred basis, shall provide that an employee or member or such employee's or member's covered dependents whose insurance under the group policy has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy or under any group policy providing similar benefits which it replaces for at least three months immediately prior to termination, shall be entitled to have such coverage nonetheless continued under the group policy for a period of six months and have issued to the employee or member or such employee's or member's covered dependents by the insurer, at the end of such six-month period of continuation, a policy of health insurance which conforms to the applicable requirements specified in this subsection. This requirement shall not apply to a group policy which provides benefits for specific diseases or for accidental injuries only or a group policy issued to an employer subject to the continuation and conversion obligations set forth at title 1, subtitle B, part 6 of the employee retirement income security act of 1974 or at title XXII of the public health service act, as each act was in effect on January 1, 1987 to the extent federal law provides the employee or member or such employee's or member's covered dependents with equal or greater continuation or conversion rights; or an employee or member or such employee's or member's covered dependents shall not be entitled to have such coverage continued or a converted policy issued to the employee or member or such employee's or member's covered dependents if termination of the insurance under the group policy occurred because:

(1) The employee or member or such employee's or member's covered dependents failed to pay any required contribution after receiving reasonable notice of such required contribution from the insurer in accordance with rules and regulations adopted by the commissioner of insurance; (2) any discontinued group coverage was replaced by similar group coverage within 31 days; (3) the employee or member is or could be covered by medicare (title XVIII of the United States social security act as added by the social security amendments of 1965 or as later amended or superseded); ~~or~~ (4) the employee or member is or could be covered to the same extent by any other insured or lawful self-insured arrangement which provides expense incurred hospital, surgical or medical coverage and benefits for individuals in a group under which the person was not covered prior to such termination; *or (5) coverage for the employee or member, or any covered dependent thereof, was terminated for cause as permitted by the group policy or certificate of coverage approved by the commissioner.* In the event the group policy is terminated and not replaced the insurer may issue an individual policy or certificate in lieu of a conversion policy or the continuation of group coverage required herein if the individual policy or certificate provides substantially similar coverage for the same or less premium as the group policy. In any event, the employee or member shall have the option to be issued a conversion policy which meets the requirements set forth in this subsection in lieu of the right to continue group coverage.

(j) The continued coverage and the issuance of a converted policy shall be subject to the following conditions:

(1) Written application for the converted policy shall be made and the first premium paid to the insurer not later than 31 days after termination of coverage under the group policy or not later than 31 days after notice is received pursuant to paragraph 20 of this subsection.

(2) The converted policy shall be issued without evidence of insurability.

(3) The terminated employee or member shall pay to the insurer the premium for the six-month continuation of coverage and such premium shall be the same as that applicable to members or employees remaining in the group. Failure to pay such premium shall terminate coverage under the group policy at the end of the period for which the premium has been paid. The premium rate charged for converted policies issued subsequent to the period of continued coverage shall be such that can be expected to produce an anticipated loss ratio of not less than 80% based upon conversion, morbidity and reasonable assumptions for expected trends in medical care costs. In the event the group policy is terminated and is not replaced, converted policies may be issued at self-sustaining rates that are not unreasonable in relation to the coverage provided based on conversion, morbidity and reasonable assumptions for expected trends in medical care costs. The frequency of premium payment shall be the frequency customarily required by the insurer for the policy form and plan selected, provided that the insurer shall not require premium payments less frequently than quarterly.

(4) The effective date of the converted policy shall be the day following the termination of insurance under the group policy.

(5) The converted policy shall cover the employee or member and the employee's or member's dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

(6) The insurer shall not be required to issue a converted policy covering any person if such person is or could be covered by medicare (title XVIII of the United States social security act as added by the social security amendments of 1965 or as later amended or superseded). Furthermore, the insurer shall not be required to issue a converted policy covering any person if:

(A) (i) Such person is covered for similar benefits by another hospital, surgical, medical or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program, or

(ii) such person is eligible for similar benefits (whether or not covered therefor) under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis, or

(iii) similar benefits are provided for or available to such person, pursuant to or in accordance with the requirements of any state or federal law, and

(B) the benefits provided under the sources referred to in clause (A) (i) above for such person or benefits provided or available under the sources referred to in clauses (A) (ii) and (A) (iii) above for such person, together with the benefits provided by the converted policy, would result in over-insurance according to the insurer's standards. The insurer's standards must bear some reasonable relationship to actual health care costs in the area in which the insured lives at the time of conversion and must be filed with the commissioner of insurance prior to their use in denying coverage.

(7) A converted policy may include a provision whereby the insurer may request information in advance of any premium due date of such policy of any person covered as to whether:

(A) Such person is covered for similar benefits by another hospital, surgical, medical or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program;

(B) such person is covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or

(C) similar benefits are provided for or available to such person, pursuant to or in accordance with the requirements of any state or federal law.

(8) The converted policy may provide that the insurer may refuse to renew the policy and the coverage of any person insured for the following reasons only:

(A) Either the benefits provided under the sources referred to in clauses (A) (i) and (A) (ii) of paragraph 6 for such person or benefits provided or available under the sources referred to in clause (A) (iii) of paragraph 6 for such person, together with the benefits provided by the converted policy, would result in over-insurance according to the insurer's standards on file with the commissioner of insurance, or the converted policyholder fails to provide the requested information;

(B) fraud or material misrepresentation in applying for any benefits under the converted policy; or

(C) other reasons approved by the commissioner of insurance.

(9) An insurer shall not be required to issue a converted policy which provides coverage and benefits in excess of those provided under the group policy from which conversion is made.

(10) If the converted policy provides that any hospital, surgical or medical benefits payable may be reduced by the amount of any such benefits payable under the group policy after the termination of the individual's insurance or the converted policy includes provisions so that during the first policy year the benefits payable under the converted policy, together with the benefits payable under the group policy, shall not exceed those that would have been payable had the individual's insurance under the group policy remained in force and effect, the converted policy shall provide credit for deductibles, copayments and other conditions satisfied under the group policy.

(11) Subject to the provisions and conditions of this act, if the group insurance policy from which conversion is made insures the employee or member for major medical expense insurance, the employee or member shall be entitled to obtain a converted policy providing catastrophic or major medical coverage under a plan meeting the following requirements:

(A) A maximum benefit at least equal to either, at the option of the insurer, paragraphs (i) or (ii) below:

(i) The smaller of the following amounts:

The maximum benefit provided under the group policy or a maximum payment of \$250,000 per covered person for all covered medical expenses incurred during the covered person's lifetime.

(ii) The smaller of the following amounts:

The maximum benefit provided under the group policy or a maximum payment of \$250,000 for each unrelated injury or sickness.

(B) Payment of benefits at the rate of 80% of covered medical expenses which are in excess of the deductible, until 20% of such expenses in a benefit period reaches \$1,000, after which benefits will be paid at the rate of 100% during the remainder of such benefit

period. Payment of benefits for outpatient treatment of mental illness, if provided in the converted policy, may be at a lesser rate but not less than 50%.

(C) A deductible for each benefit period which, at the option of the insurer, shall be (i) the sum of the benefits deductible and \$100, or (ii) the corresponding deductible in the group policy. The term "benefits deductible," as used herein, means the value of any benefits provided on an expense incurred basis which are provided with respect to covered medical expenses by any other hospital, surgical, or medical insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan, or any other plan or program whether on an insured or uninsured basis, or in accordance with the requirements of any state or federal law and, if pursuant to the conditions of paragraph (13), the converted policy provides both basic hospital or surgical coverage and major medical coverage, the value of such basic benefits.

If the maximum benefit is determined by clause (a)(ii) of this paragraph, the insurer may require that the deductible be satisfied during a period of not less than three months if the deductible is \$100 or less, and not less than six months if the deductible exceeds \$100.

(D) The benefit period shall be each calendar year when the maximum benefit is determined by clause (A)(i) of this paragraph or 24 months when the maximum benefit is determined by clause (A)(ii) of this paragraph.

(E) The term "covered medical expenses," as used above, shall include at least, in the case of hospital room and board charges 80% of the average semiprivate room and board rate for the hospital in which the individual is confined and twice such amount for charges in an intensive care unit. Any surgical schedule shall be consistent with those customarily offered by the insurer under group or individual health insurance policies and must provide at least a \$1,200 maximum benefit.

(12) The conversion privilege required by this act shall, if the group insurance policy insures the employee or member for basic hospital or surgical expense insurance as well as major medical expense insurance, make available the plans of benefits set forth in paragraph 11. At the option of the insurer, such plans of benefits may be provided under one policy.

The insurer may also, in lieu of the plans of benefits set forth in paragraph (11), provide a policy of comprehensive medical expense benefits without first dollar coverage. The policy shall conform to the requirements of paragraph (11). An insurer electing to provide such a policy shall make available a low deductible option, not to exceed \$100, a high deductible option between \$500 and \$1,000, and a third deductible option midway between the high and low deductible options.

(13) The insurer, at its option, may also offer alternative plans for group health conversion in addition to those required by this act.

(14) In the event coverage would be continued under the group policy on an employee following the employee's retirement prior to the time the employee is or could be covered by medicare, the employee may elect, in lieu of such continuation of group insurance, to have the same conversion rights as would apply had such person's insurance terminated at retirement by reason of termination of employment or membership.

(15) The converted policy may provide for reduction of coverage on any person upon such person's eligibility for coverage under medicare (title XVIII of the United States social security act as added by the social security amendments of 1965 or as later amended or superseded) or under any other state or federal law providing for benefits similar to those provided by the converted policy.

(16) Subject to the conditions set forth above, the continuation and conversion privileges shall also be available:

(A) To the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or, if the group policy provides for continuation of dependents' coverage following the employee's or member's death, at the end of such continuation;

(B) to the spouse of the employee or member upon termination of coverage of the spouse, while the employee or member remains insured under the group policy, by reason of ceasing to be a qualified family member under the group policy, with respect to the

spouse and such children whose coverage under the group policy terminates at the same time; or

(C) to a child solely with respect to such child upon termination of such coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

(17) The insurer may elect to provide group insurance coverage which complies with this act in lieu of the issuance of a converted individual policy.

(18) A notification of the conversion privilege shall be included in each certificate of coverage.

(19) A converted policy which is delivered outside this state must be on a form which could be delivered in such other jurisdiction as a converted policy had the group policy been issued in that jurisdiction.

(20) The insurer shall give the employee or member and such employee's or member's covered dependents: (A) Reasonable notice of the right to convert at least once during the six-month continuation period; or (B) for persons covered under 29 U.S.C. 1161 et seq., notice of the right to a conversion policy required by this subsection (d) shall be given at least 30 days prior to the end of the continuation period provided by 29 U.S.C. 1161 et seq. or from the date the employer ceases to provide any similar group health plan to any employee. Such notices shall be provided in accordance with rules and regulations adopted by the commissioner of insurance.

(k) (1) No policy issued by an insurer to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(2) Violation of this subsection shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

(l) The commissioner is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this section.

New Sec. 12. (a) The committee on surety bonds and insurance is hereby authorized to negotiate and enter into contracts with qualified insurers and sureties for the purpose of purchasing insurance, surety coverage and similar coverages, including the purchase of insurance, surety coverage and similar coverage for any state agency authorized by law to make such purchase, and the acquisition of consulting and other services necessary therefor. The committee shall advertise for proposals, shall negotiate with parties submitting proposals, and shall select from among those submitting proposals the firm or other contracting party to contract with for the purpose of entering into contracts. The division of purchases shall: (1) Maintain records of the requests for proposals; (2) handle the receipt of proposals; and (3) assist the committee in negotiating procedures and the award of contracts.

(b) The provisions of K.S.A. 75-4317 through 75-4320a, and amendments thereto, shall not apply to meetings of the committee when the committee meets solely for the purpose of discussing and preparing strategies for negotiations for such contracts.

(c) Contracts entered into pursuant to this section, shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740, inclusive, and amendments thereto. Such contracts may be for terms of not more than three years and may be renegotiated and renewed. All such contracts shall be subject to the limits of appropriations made or available therefor and subject to the provisions of appropriations acts relating thereto.

(d) The provisions of this section shall be a complete alternative to other procurement procedures available to the committee pursuant to law.

(e) This section shall take effect on and after July 1, 2004.

Sec. 13. From and after July 1, 2004, K.S.A. 75-4105 is hereby amended to read as follows: 75-4105. ~~At~~ *Except as provided in section 12*, 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. 14. From and after July 1, 2004, 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 12, and amendments thereto*, or specifically required by other Kansas statutes or appropriations.

Sec. 15. K.S.A. 40-2118, 40-2122 and 40-2124 are hereby repealed.

Sec. 16. From and after July 1, 2004, K.S.A. 40-216, 40-241, 40-246b, 40-246f, 40-2,131, 40-2209, 40-4503, 75-4105 and 75-4109 and K.S.A. 2003 Supp. 40-2c01 and 40-2404 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the Kansas register.”;

In the title, in line 10, by striking all following the semicolon; by striking all in lines 11 and 12 and inserting “relating to the issuance of insurance policies in a foreign language; relating to risk-based capital requirements; relating to the Kansas uninsurable health insurance plan; relating to the purchase of insurance by state agencies; relating to group health insurance; amending K.S.A. 40-216, 40-241, 40-246b, 40-2,131, 40-2118, 40-2122, 40-2124, 40-2209, 40-4503, 75-4105 and 75-4109 and K.S.A. 2003 Supp. 40-2c01 and 40-2404 and repealing the existing sections; also repealing K.S.A. 40-246f.”; and the bill be passed as amended.

Committee on **Natural Resources** recommends **HB 2557**, as amended by House Committee, be amended on page 1, in line 32, by striking “Free State” and inserting “Menninger Memorial”; in line 35, by striking “Free State” and inserting “Menninger Memorial”; in line 37, by striking “Free State” and inserting “Menninger Memorial”; following line 38 by inserting the following:

“(d) The department of wildlife and parks shall report to the house committee on tourism and parks and to the senate committee on natural resources on or before March 1, 2005, regarding the terms and conditions of the contract for the proposed donation of land to be used for Menninger Memorial state park”; and the bill be passed as amended.

Also, **HB 2573**, as amended by House Committee, be amended on page 1, in line 33, after the period, by inserting: “The permitholder shall accompany into the field and be in

close proximity to the person designated by the permitholder. The person designated by the permitholder shall not have a fishing, hunting or furharvesting license suspended, restricted or revoked during the time such person is aiding the permitholder.”; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **HB 2760**, as amended by House Committee, be passed.

Also, **Substitute for HB 2698** be amended on page 1, in line 32, by striking all after “(f)”;

by striking all in lines 33 through 38; in line 39, by striking “(g)”;

And by relettering subsections accordingly;

On page 2, by striking all in lines 17 through 20 and inserting in lieu thereof the following:

“(n) This section shall take effect on and after July 1, 2005.”;

On page 3, after line 2, by inserting the following:

“(e) This section shall take effect on and after July 1, 2005.”;

Also on page 3, in line 3, by striking all after “from”; in line 4, by striking “and”; in line 6, by striking all after “(b)”;

by striking all in lines 7, 8 and 9; in line 10, by striking “technologist” and inserting “a person issued a postgraduate permit by the board or students while in actual attendance in an accredited health care educational program for radiography and under the supervision of a qualified instructor”;

in line 20, by striking “or” and inserting a comma; also in line 20, by striking the comma and inserting “or an unlicensed person performing radiography services who is (1)”;

in line 21, by striking the comma and inserting “or a person designated by a hospital licensed pursuant to K.S.A. 65-425 et seq., and amendments thereto, and (2)”;

after line 27, by inserting the following:

“(g) This section shall take effect on and after July 1, 2005.”;

On page 4, in line 15, by striking the comma and inserting “or”;

also in line 15, by striking “or experience”;

in line 24, by striking “12” and inserting “11”;

by striking all in lines 25 through 30 and inserting in lieu thereof the following:

“(f) This section shall take effect on and after July 1, 2005.”;

On page 5, in line 5, by striking the semicolon; by striking all in lines 6 through 13; in line 14, by striking all before the period; after line 14, by inserting the following:

“(c) This section shall take effect on and after July 1, 2005.”;

Also on page 5, by striking all in lines 15 through 43 and inserting in lieu thereof the following:

“Sec. 7. (a) Licenses issued under this act shall expire on the date of expiration established by rules and regulations of the board unless renewed in the manner prescribed by the board. The request for renewal shall be accompanied by the license renewal fee established pursuant to section 11 and amendments thereto.

(b) At least 30 days before the expiration of a licensee’s license, the board shall notify the licensee of the expiration by mail addressed to the licensee’s last mailing address as noted upon the office records. If the licensee fails to submit an application for renewal on a form provided by the board, or fails to pay the renewal fee by the date of expiration, the board shall give a second notice to the licensee that the license has expired and the license may be renewed only if the application for renewal, the renewal fee, and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, the license shall be deemed canceled by operation of law and without further proceedings.

(c) The board may require any licensee, as a condition of renewal, to submit with the application for renewal evidence of satisfactory completion of a program of continuing education required by rules and regulations of the board.

(d) Any license canceled for failure to renew may be reinstated upon recommendation of the board. An application for reinstatement shall be on a form provided by the board, and shall be accompanied by payment of the reinstatement fee and evidence of completion of any applicable continuing education requirements. The board may adopt rules and regulations establishing appropriate education requirements for reinstatement of a license that has been canceled for failure to renew.

(e) This section shall take effect on and after July 1, 2005.”;

On page 6, in line 14, by striking all after the period; by striking all in line 15; in line 16, by striking all after “(b)”;

in line 17, by striking all before “shall” and inserting “The members

appointed by the governor shall be appointed for terms of four years except that of the members first appointed, one"; in line 18, by striking "two" and inserting "one"; in line 29, by striking "board's" and inserting "council's";

On page 7, in line 6, by striking "(a)"; in line 8, by striking "(1)" and inserting "(a)"; in line 10, by striking "or register"; in line 11, by striking "or registered"; in line 12, by striking "(2)" and inserting "(b)"; in line 15, by striking "(3)" and inserting "(c)"; in line 17, after the semicolon, by inserting "and"; in line 18, by striking "(4)" and inserting "(d)"; in line 19, by striking the semicolon; by striking all in lines 20 through 30; in line 31, by striking "licenses"; by striking all in lines 32 through 36;

On page 8, after line 2, by inserting the following:  
 "Revoked license reinstatement fee ..... \$200";

Also on page 8, after line 8, by inserting the following:  
 "(c) This section shall take effect on and after July 1, 2005.";

Also on page 8, in line 35, by striking "for a fee while unlicensed" and inserting "to a patient"; after line 42, by inserting the following:

"(c) A person whose license is suspended shall not engage in any conduct or activity in violation of the order by which the license was suspended.

(d) This section shall take effect on and after July 1, 2005.";

Also on page 8, in line 43, before "When" by inserting "(a)";  
 On page 9, after line 5, by inserting the following:

"(b) This section shall take effect on and after July 1, 2005.";

Also on page 9, in line 6, before "The" by inserting "(a)"; after line 16, by inserting the following:

"(b) This section shall take effect on and after July 1, 2005.";

Also on page 9, in line 17, by striking "Any" and inserting "On and after July 1, 2005, any";

On page 1, in line 10, by striking "and x-ray operators; establishing a registry of x-ray operators"; and the substitute bill be passed as amended.

Committee on **Transportation** recommends **HB 2235**, as amended by House Committee, be not passed.

Committee on **Ways and Means** recommends **SB 537** be amended on page 2, in line 6, by striking "\$7,000,000" and inserting "\$227,635"; in line 39, by striking "\$170,000" and inserting "\$175,000"; by striking all in line 40 and inserting in lieu thereof the following:

"Roberts Building roof replacement ..... \$85,000  
 Key card entry system ..... \$112,000";

On page 21, after line 6, by inserting the following:  
 "Veterans' home repair and rehabilitation projects ..... \$100,000";

On page 26, by striking all in lines 39 through 42;

On page 27, in line 3, by striking all after "(a)"; by striking all in lines 4 and 5; in line 6, by striking all before "the" and inserting "Notwithstanding"; in line 12, by striking "research"; in line 13, by striking "corporation bond revenues account of the"; also in line 13, by striking "of the state" where it appears for the last time; in line 14, by striking "board of regents"; also in line 14, by striking "one or more state"; in line 15, by striking all before "the" the second place it appears in said line; in line 16, by striking the comma; after line 31, by inserting the following:

"(d) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2005, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures other than refunds authorized by law shall not exceed the following:

Research bond debt service fund ..... No limit";

On page 29, following line 18, by inserting:  
 "Sec. 32. (a) As used in this section:

(1) "University real property" means: A tract of land being part of Lots 113 through 122, MUEHLEBACH PLACE, a subdivision in Kansas City, Wyandotte county, Kansas and part of vacated Eaton Street adjoining the West line of said Lot 122 and part of vacated Olathe Boulevard adjoining the South line of Lots 113 through 122, all being more particularly described as follows: Beginning at the intersection of the South right-of-way line of said

vacated Olathe Boulevard with the West right-of-way line of Cambridge Street, as said vacated boulevard and street are now established; thence South 89°31'57" West, along the South line of said vacated Olathe Boulevard and its Westerly prolongation, a distance of 305.16 feet; thence North 00°08'56" East, departing said prolongation, a distance of 193.44 feet; thence North 89°43'53" East, a distance of 304.47 feet, to a point on the West right-of-way line of said Cambridge Street; thence South 00°03'18" East, along said West right-of-way line and its Southerly prolongation, a distance of 192.38 feet, to the Point of Beginning, containing 58,800 square feet, more or less; and

(2) "Association real property" means: A tract of land being all of Lots 165 through 174 and Lots 189 through 192, MUEHLEBACH PLACE, a subdivision in Kansas City, Wyandotte county, Kansas, and the East 11.27 feet of vacated Eaton Street adjoining the West line of said Lots 164, 191 and 192, all being more particularly described as follows: Beginning at the Northeast corner of said Lot 174, said corner also being the point of intersection of the South right-of-way line of vacated Olathe Boulevard with the West right-of-way line of Cambridge Street, as said vacated boulevard and street are now established; thence South 00°03'18" East, along the West right-of-way line of said Eaton Street, a distance of 206.92 feet, to the Southeast corner of said Lot 190, said corner also being on the South line of said MUEHLEBACH PLACE; thence South 89°25'42" West, along said South line, a distance of 283.45 feet, to a point 11.27 feet West of the Southwest corner of said Lot 191; thence North 00°15'39" West, along a line 11.27 feet West of and parallel with the East right-of-way line of said vacated Eaton Street, a distance of 207.43 feet, to a point on the Westerly prolongation of the South right-of-way line of vacated Olathe Boulevard, said point being 11.27 feet West of the Northwest corner of said Lot 165; thence North 89°31'57" East, along said prolongation and along said South right-of-way line, a distance of 284.19 feet, to the Point of Beginning, containing 58,800 square feet, more or less.

(b) The state board of regents, for and on behalf of the university of Kansas is hereby authorized to exchange and convey the university real property to the Kansas university endowment association in consideration for the conveyance by the Kansas university association of the association real property to the university of Kansas and to accept such association real property.

(c) The exchange and conveyance of the university real property by the state board of regents under this section shall be executed in the name of the state board of regents by the chairperson and executive officer, and shall be delivered upon receipt of a good and sufficient warranty deed from the Kansas university endowment association conveying the association real property. Before any such real property is exchanged and conveyed, the attorney general shall approve the instruments of conveyance of the state board of regents to the Kansas university endowment association and the instruments of conveyance of the Kansas university endowment association to the university of Kansas and shall approve the title to the association real property exchanged and conveyed by the Kansas university endowment association.

(d) The exchange and conveyance of university real property and association real property pursuant to this section is incidental to and in facilitation of the capital improvement project approved for the university of Kansas medical center to construct parking facility #4.;

And by renumbering the remaining section accordingly;  
and the bill be passed as amended.

#### **REPORT ON ENGROSSED BILLS**

**SB 405** reported correctly engrossed March 18, 2004.

#### **REPORT ON ENROLLED BILLS**

**SR 1827, SR 1828** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 18, 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 Journey in the chair.

On motion of Senator Journey the following report was adopted:

Recommended **SB 557**; **HB 2732**, **HB 2756** be passed.

**SB 534**; **HB 2312**, **HB 2731** be amended by adoption of the committee amendments, and the bills be passed as amended.

**HB 2617** be amended by motion of Senator Taddiken as amended by House Committee, on page 1, in line 20, following "landowner", by inserting "and person in possession"; in line 21, by striking "landowner" and inserting " person in possession".

Senator Huelskamp amended the bill as amended by House Committee, on page 1, in line 18, after "survey" by inserting "for the purposes of determining property boundaries"; in line 26, after "surveys" by inserting "for the purposes of determining property boundaries", and **HB 2617** be passed as amended.

Senator Haley moved to amend **HB 2621** on page 2, after line 7 by inserting the following: "Sec. 2. K.S.A. 2003 Supp. 21-4310 is hereby amended to read as follows: 21-4310. (a) Cruelty to animals is:

(1) Intentionally killing, ~~injuring~~, maiming, torturing, burning or mutilating or causing serious physical injury to any animal;

(2) abandoning or leaving any animal in any place without making provisions for its proper care;

(3) having physical custody of any animal and failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal; ~~or~~

(4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;

(5) causing any physical injury other than serious physical injury to any animal.

(b) The provisions of this section shall not apply to:

(1) Normal or accepted veterinary practices;

(2) bona fide experiments carried on by commonly recognized research facilities;

(3) killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated;

(4) rodeo practices accepted by the rodeo cowboys' association;

(5) the humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;

(6) ~~with respect to farm animals~~, normal or accepted practices of animal husbandry;

(7) the killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(8) an animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods; or

(9) laying an equine down for medical or identification purposes.

(c) As used in this section, "equine" means a horse, pony, mule, jenny, donkey or hinny.

(d) (1) Cruelty to animals as described in subsection (a)(1) is a severity level 9, nonperson felony.

(2) Cruelty to animals as described in subsections (a)(2), (a)(3), (a)(4) and (a)(5) is a class A nonperson misdemeanor.;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 8, after "Supp." by inserting "21-4310 and"; also in line 8, by striking "is" and inserting "are";

On page 1, in the title, in line 9, after “concerning” by inserting “crimes and punishment;”; also in line 9, after the semicolon by inserting “cruelty to animals;”; in line 10, after “Supp.” by inserting “21-4310 and”; in line 11, by striking “section” and inserting “sections”

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

On roll call, the vote was: Yeas 28, Nays 7, Present and Passing 4, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barone, Betts, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Lee, Lyon, O'Connor, Pugh, Salmans, Steineger, Teichman, Tyson, Umbarger.

Nays: Brownlee, Brungardt, Kerr, Oleen, Schmidt, Taddiken, Vratil.

Present and Passing: Barnett, Goodwin, Morris, Schodorf.

Absent or Not Voting: Wagle.

The motion carried and the amendment was adopted.

The Committee recommended **HB 2621** be passed as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote “no” on this amendment, which would elevate from a misdemeanor to a felony the crime of cruelty to animals. I have worked for two years to make endangering a child a felony instead of a misdemeanor. When that succeeds, I will then be prepared to consider making it a felony to harm an animal.—DEREK SCHMIDT

#### FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a  $\frac{2}{3}$  constitutional majority, and **SB 534, SB 557; HB 2312, HB 2617, HB 2621, HB 2731, HB 2732, HB 2756** were advanced to Final Action and roll call.

**SB 534**, An act concerning real estate brokers and salespersons; relating to certain commercial real estate transactions; amending K.S.A. 2003 Supp. 58-3062 and repealing the existing section.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**SB 557**, An act concerning the attorney general; authorizing transfers between certain funds.

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

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

Absent or Not Voting: Wagle.

The bill passed.

**HB 2312**, An act concerning criminal procedure; relating to a prompt trial; amending K.S.A. 22-3402 and repealing the existing section.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2617**, An act concerning land surveyors; relating to trespassing; amending K.S.A. 2003 Supp. 21-3721 and repealing the existing section.

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

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

Nays: Huelskamp, Pugh, Salmans, Tyson.

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2621**, An act concerning crimes and punishment; inflicting harm, disability or death to certain dogs; cruelty to animals; amending K.S.A. 2003 Supp. 21-4310 and 21-4318 and repealing the existing sections.

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

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

Nays: Brungardt, Buhler, Corbin, Goodwin, Kerr, Vratil.

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2731**, An act concerning hunting; relating to voluntary contributions to Kansas Farmers and Hunters Feeding the Hungry; amending K.S.A. 32-980 and repealing the existing section.

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

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

Absent or Not Voting: Wagle.

The bill passed, as amended.

**HB 2732**, An act amending the Kansas commemorative coin design concept act; amending K.S.A. 2003 Supp. 73-2501, 73-2502 and 73-2503 and repealing the existing sections.

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

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

Absent or Not Voting: Wagle.

The bill passed.

**HB 2756**, An act concerning a public safety communication system; authorizing the secretary of transportation to purchase certain equipment and lease such equipment or access to such equipment to certain entities; authorizing the issuance of revenue bonds.

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

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

Absent or Not Voting: Wagle.

The bill passed.

On motion of Senator Oleen the Senate adjourned until 9:00 a.m., Friday, March 19, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

