

Approved: 3-8-93  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on February 23, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Darlene Cornfield, Excused  
Representative Rand Rock, Excused  
Representative Kathleen Sebelius, Excused

Committee staff present: Mary Galligan, Legislative Research Department  
Lynne Holt, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Rick Bowden  
Bob Runnels, Executive Director, Kansas Catholic Conference  
Kenneth McClintock, Chairman, Legislative Committee of Kansas Municipal Judges Association

Others attending: See attached list

The Chairperson stated the only order of business today would be to receive bill requests.

Representative Rick Bowden requested a bill amending the Kansas parimutuel racing act; concerning purses; amending K.S.A. 74-8820 and repealing the existing section. An amount equal to not more than 2% of the purse by the organization licensee and paid to the recognized horsemen's group for administrative and benevolent expenses unless the owner, lessor or lessee of a horse entitled to a purse under this section files a written instrument with the organization licensee requesting that the deduction not be made. (See Attachment #1).

Representative Cox moved and Representative Gilbert seconded to accept as a committee bill. The motion carried.

Bob Runnels, Executive Director, Kansas Catholic Conference, requested a bill that would allow children attending private schools the same opportunity to obtain books from their local public school district as children attending the public school in that district (books currently being used in the district schools). (See Attachment #2)

Representative Wilk moved and Representative Krehbiel seconded to accept as a committee bill. The motion carried.

Representative Steve Wiard introduced Judge Kenneth W. McClintock and Shirley McClintock, Council Grove.

Judge Kenneth W. McClintock, Chairman, Legislative Committee of Kansas Municipal Judges Association, requested legislation amending (1) driving in violation of restrictions, (2) driving under the influence of alcohol and (3) K.S.A. 8-2117 and K.S.A. 38-1602 to permit additional traffic-related offenses committed by juveniles to be prosecuted in District Court and Municipal Court. (See Attachment #3)

Representative Robinette moved and Representative Lahti seconded to accept as a committee bill. The motion carried.

Representative Wilk moved and Representative Cox seconded to approve the minutes of February 16, 17 and

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S  
Statehouse, at 1:30 p.m. on February 23, 1993.

18.

The Chairperson stated there would be hearings held on Wednesday, February 24 and it is unknown if the Committee will be meeting on Thursday, February 25. The Committee probably will not meet next week; if a meeting is necessary it will be held at the rail. The meeting adjourned at 1:50 PM.

The next meeting is scheduled for February 24, 1993.

Date: 2/23/93

## FEDERAL and STATE AFFAIRS COMMITTEE

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Rep. Beiden

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AN ACT amending the Kansas parimutuel racing act; concerning purses; amending K.S.A. 74-8820 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 74-8820 is hereby amended to read as follows: 74-8820. (a) An organization licensee shall be required to pay a minimum purse equal to at least 4/18 of the total takeout on all parimutuel pools from live greyhound races conducted by the licensee, computed weekly, and 6/18 of the total takeout on all parimutuel pools from live horse races conducted by the licensee, computed for the entire race meeting. Moneys paid for purses or stakes from breakage, from the Kansas horse breeding development fund, from the Kansas greyhound breeding development fund or from owners' payments in the form of nominations, entry fees, stakes payments or other payments by owners shall not be considered in calculating the minimum purse requirements of this section. The commission shall approve the amount of minimum purse which may be paid in stakes races during each race meeting. None of the minimum purse shall be used for any other purpose except as specified by this section.

(b) Nothing contained in this section shall be construed to limit the maximum purse to be paid.

(c) Purses shall be paid directly to the owner of a greyhound or, if a greyhound is leased, the purse shall be paid directly to the lessor and lessee as agreed in a written lease agreement on file with the organization licensee.

(d) Purses shall be paid directly to the owner of a horse or, if a horse is leased, the purse shall be paid directly to the lessor and lessee as agreed in a written lease agreement on file with the organization licensee.

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(e) An amount equal to not more than 2% of the purse for each horse race shall be deducted from such purse by the organization licensee and paid to the recognized horsemen's group for administrative and benevolent expenses unless the owner, lessor or lessee of a horse entitled to a purse under this section files a written instrument with the organization licensee requesting that the deduction not be made.

Sec. 2. K.S.A. 74-8820 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

## TESTIMONY

House Federal & State Affairs Committee  
Tuesday, February 23, 1993, 1:30 p.m.

By Bob Runnels, Executive Director  
KANSAS CATHOLIC CONFERENCE

Thank you Mr. Chairman and members of the Federal and State Affairs Committee. I come before you today asking that you give proper consideration to my request that you favorably consider legislation that would allow children attending private schools the same opportunity to obtain books from their local public school district as children attending the public school in that district (books currently being used in the district schools).

Parents of children attending private schools are continuing to find ever increasing costs as the schools of their choice attempt to keep pace with escalating salaries of teachers and the cost of books. Our children are required to pay a price as much as twice as high as public school children pay for the same books.

The great fear is that unless some recognition be given to the contributions that private schools make to our free competitive system that more and more school closings will occur.

I call your attention to a newspaper story that ran recently in our Dodge City Diocesan Newspaper "Parish School to Close in Liberal". This school has operated

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since 1964 and currently 74 students are enrolled. At around \$4500 per student this community will face a cost of at least \$333,000 next year.

Perhaps the availability of books on the same basis as other students are receiving would not have kept this school from closing, but I do feel that some incentive by the state will keep others in operation.

Our great concern is for private schools in rural areas and small towns.

Again I want to reiterate I have found that book costs are a major expense because of the small quantities in which they are purchased by our schools.

Most public school districts charge for the use of books ... but it is considerably less than what private school students pay.

I am asking for a bill from your committee be patterned after the Transportation Act where our children are picked up along the normal bus routes and dropped off near their schools.

I would be pleased to answer any questions the committee might have.

**SUMMARY OF ARGUMENTS FOR PROPOSED AMENDMENTS TO  
K.S.A. 8-291, 8-1567, 8-2117, AND 38-1602**

Submitted by Kenneth W. McClintock, Chairman  
Legislative Committee of Kansas Municipal Judges Association

(1) DRIVING IN VIOLATION OF RESTRICTIONS. K.S.A. 8-291 prohibits operation of a motor vehicle in violation of restriction upon a driver's license, and upon a first conviction the Court is required to suspend the person's driving privileges for not less than 30 days nor more than two years. Upon a subsequent conviction, the mandatory suspension is to be for not less than 90 days nor more than two years.

It is proposed that the suspension upon a first conviction be made optional, and that the mandatory suspension for subsequent convictions be reduced to a minimum period of 30 days. For some violations of restrictions, mandatory suspension seems inappropriate, such as for failure to wear eyeglasses, for example. When aggravating circumstances exist, such as violation of restrictions imposed as the result of a D.U.I. conviction, then suspensions may be appropriate, and should be within the Court's discretion.

(2) DRIVING UNDER THE INFLUENCE OF ALCOHOL. It is proposed that Subsection (k)(3) of K.S.A. 8-1567 be modified to clarify the previous convictions to be taken into account in determining minimum and maximum sentences. The present Statute provides that only convictions occurring in the immediately preceding five years are to be taken into account. Although Subsection (k)(4) states that it is irrelevant whether an offense occurs before or after a conviction for a previous offense, the Kansas Supreme Court and Court of Appeals have ruled that the conviction for a previous offense must precede the commission of a subsequent offense before the previous conviction can be counted for sentencing purposes. [See State vs. Wilson, 6 Kan. App. 2d 302, affirmed 230 Kan. 287, (1981), and State vs. Osoba, 234 Kan. 443, (1983).] Periodically, a person is arrested for a D.U.I. offense which has occurred subsequent to a previous arrest for D.U.I., but before a conviction has been had on the prior offense. As a result, for sentencing purposes, both offenses must be treated as first offenses for sentencing purposes.

The proposed amendment makes clear that for sentencing upon D.U.I. convictions, the sentences shall be enhanced in the event that a person has a prior D.U.I. conviction occurring within five years prior to the offense for which the person is being sentenced, or for offenses which occurred prior to the present offense, but for which a conviction was not had until subsequent to the present offense.

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Summary of Arguments -2-  
K.S.A. 8-291, 8-1567, 8-2117, & 38-1602

(3) It is requested that K.S.A. 8-2117 and K.S.A. 38-1602 be amended to permit additional traffic-related offenses committed by juveniles to be prosecuted in District Court and Municipal Court. At the present time, K.S.A. 8-2117, as it pertains to prosecution of juvenile traffic offenders, defines a "Traffic Offense" as a violation of the Uniform Act Regulating Traffic on Highways or a violation of a City Ordinance or County Resolution which relates to the regulation of traffic on the roads. A corresponding provision in the Juvenile Offenders Code, K.S.A. 38-1602, excludes from the definition of a "Juvenile Offender" a person 14 or more years of age who commits a traffic offense in violation of Chapter 8 of K.S.A.

In State vs. Frazier, 248 Kan. 963 (1991), the Kansas Supreme Court has ruled that driving on a suspended license, in violation of K.S.A. 8-262, not being a violation of the Uniform Act, was not excluded from coverage of the Juvenile Offenders Code. There also are other offenses which are traffic related, but which are not listed in K.S.A. Chapter 8, such as transportation of open containers of cereal malt beverages or alcoholic liquor, and failure to show proof of liability insurance; these could appropriately be handled by District Courts and Municipal Courts.

The proposed legislation will expand the list of traffic-related offenses which are excluded from the Juvenile Offenders Code, permitting them to be handled in Municipal Courts and District Courts. Presently, these offenses must be prosecuted as juvenile offenses, which entails considerably more work and expense, both for the prosecutor and the defendant.

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K.S.A.

- 8-1,129 Unlawful parking in accessible parking; blocking access ramp; penalties.
- 8-1,130a Unlawfully utilizing accessible parking I.D. device; penalties.
- 8-142 Unlawful acts. No license plate, etc.
- 8-235 Licenses required; city license, when; appeal from denial of license; vehicles registered under temporary permit; penalty.
- 8-244 Licenses to be carried and exhibited upon demand; defense.
- 8-245 Restrictions on licenses; suspension or revocation; misdemeanor.
- 8-260 Unlawful use of driver's license or nondriver's I.D. card; other unlawful acts relating thereto.
- 8-262 Driving while license cancelled, suspended or revoked; penalty; extension of time of suspension or revocation.
- 8-269 Uniformity of interpretation.
- 8-291 Violation of restrictions on driver's license or permit; misdemeanor.
- 8-292 Court imposition of driving privilege restrictions; duration; procedure; violation; penalty.
- 8-1012 Preliminary screening test of breath for alcohol concentration; request by officer, grounds; notice required; refusal to take test is traffic infraction; use of results of test; additional tests.
- 8-1017 Same; circumvention of ignition interlock device; penalty.
- 8-1335 Basic rule governing speed of vehicles.
- 8-1336 Maximum speed limits.
- 8-134 Renewal of registration of certain vehicles; registration and reregistration of passenger vehicles; monthly system; decals for license plates; rules and regulations.
- 40-3104 Motor vehicle liability insurance coverage required; prohibited vehicle operation; self insurance; display of proof of financial security; penalties for failure to maintain financial security; reinstatement fees.
- 41-804 Transportation of liquor in opened containers unlawful; exceptions; penalty.
- 41-2719 Transportation of cereal malt beverage in opened containers unlawful; exception; penalty.

Chapter 8  
Articles

- 14 Uniform Act Regulating Traffic; Definitions. 8-1401 to 8-1486.
- 15 Uniform Act Regulating Traffic; Rules of the Road. Obedience to and Effect of Traffic Laws. 8-1501 to 8-1506.
- 16 Uniform Act Regulating Traffic; Accidents and Accident Reports. 8-1601 to 8-1613.
- 17 Uniform Act Regulating Traffic; Equipment of Vehicles.  
Scope and Effect of Regulations. 8-1701, 8-1702.  
Lamps and Other Lighting Equipment. 8-1703 to 8-1733.  
Brakes. 8-1734 to 8-1737.  
Miscellaneous Equipment Requirements. 8-1738 to 8-1749c.  
Motor Vehicle Inspection. 8-1750 to 8-1760.
- 19 Uniform Act Regulating Traffic, Size, Weight and Load of Vehicles. 8-1901 to 8-1915.
- 20 Uniform Act Regulating Traffic; Powers of State and Local Authorities. 8-2001 to 8-2012.
- 21 Uniform Act Regulating Traffic; Parties, Arrests, Citations, Procedures and Penalties.  
General Provisions. 8-2101 to 8-2103.  
Arrests and Issuance of Citations. 8-2104 to 8-2111.  
Illegal Parking, Standing or Stopping. 8-2112 to 8-2114.  
Records. 8-2115.  
Penalties. 8-2116 to 8-2118.
- 22 Uniform Act Regulating Traffic; Application and Effect. 8-2201 to 8-2204.
- 25 Seat Belts. 8-2501 to 8-2507.

## BILL DRAFT--Municipal Judge Request

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 8-291 is hereby amended to read as follows:  
8-291.

(a) It is a misdemeanor for any person to operate a motor vehicle in violation of the restrictions on any driver's license or permit imposed pursuant to any statute.

(b) (1) Any person guilty of violating this section, upon the first conviction, shall be fined not to exceed \$250, and the court ~~shall~~ suspend such person's privilege to operate a motor vehicle for not less than 30 days and not more than two years.

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(2) Any person guilty of violating this section, upon a second or subsequent conviction, shall be fined not to exceed \$500, and the court shall suspend such person's privilege to operate a motor vehicle for not less than ~~90~~ days and not more than two years.

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(c) Nothing in this section shall limit a court in imposing penalties, conditions or restrictions authorized by any other statute arising from the same occurrence in addition to penalties and suspensions imposed under this section.

Sec. 2. K.S.A. 8-1567 is hereby amended to read as follows:  
8-1567:

(a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .10 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .10 or more;

(3) under the influence of alcohol;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

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) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to confinement at the end of each day in the work release program. Except as provided in subsection (g), the person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third or a subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. Except as provided in subsection (g), the person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(g) On a second or subsequent conviction of a violation of this section, the court may place the person convicted under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(h) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(i) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(j) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(k) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) ~~only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but~~ the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(4) ~~it is irrelevant whether an offense occurred before or after conviction for a previous offense.~~

only the following convictions shall be taken into account:

(a) Convictions had within five years immediately preceding the present offense; and

(b) convictions had subsequent to the present offense, but for offenses occurring within five years preceding the present offense; provided, however,

(l) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(m) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than nor exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance or resolution exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(n) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

(o) The alternatives set out in subsections (a)(1) (2) and (3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

(p) For the purpose of this section, "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

Sec. 3. K.S.A. 1992 Supp. 8-2117 is hereby amended to read as follows: 8-2117.

(a) Subject to the provisions of this section, a court of competent jurisdiction may hear prosecutions of traffic offenses involving any child 14 or more years of age but less than 18 years of age. The court hearing the prosecution may impose any fine authorized by law for a traffic offense, including a violation of K.S.A. 8-1567 and amendments thereto, and may order that the child be placed in a juvenile detention facility, as defined by K.S.A. 38-1602 and amendments thereto, for not more than 10 days. If the child is less than 18 years of age, the child shall not be incarcerated in a jail as defined by K.S.A. 38-1602

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and amendments thereto. If the statute under which the child is convicted requires a revocation or suspension of driving privileges, the court shall revoke or suspend such privileges in accordance with that statute. Otherwise, the court may suspend the license of any person who is convicted of a traffic offense and who was under 18 years of age at the time of commission of the offense. Suspension of a license shall be for a period not exceeding one year, as ordered by the court. Upon suspending any license pursuant to this section, the court shall require that the license be surrendered to the court and shall transmit the license to the division of vehicles with a copy of the court order showing the time for which the license is suspended. The court may modify the time for which the license is suspended, in which case it shall notify the division of vehicles in writing of the modification. After the time period has passed for which the license is suspended, the division of vehicles shall issue an appropriate license to the person whose license had been suspended, upon successful completion of the examination required by K.S.A. 8-241 and amendments thereto and upon proper application and payment of the required fee unless the child's driving privileges have been revoked, suspended or cancelled for another cause and the revocation, suspension or cancellation has not expired.

(b) Instead of suspending a driver's license pursuant to this section, the court may place restrictions on the child's driver's privileges pursuant to K.S.A. 8-292 and amendments thereto.

(c) Instead of the penalties provided in subsections (a) and (b), the court may place the child under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, and sentence the child to the same sentence as an adult traffic offender under K.S.A. 8-2116, and amendments thereto.

(d) As used in this section, "traffic offense" means a violation of the uniform act regulating traffic on highways or a violation of a city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind. A

including, but not limited to, the following offenses: K.S.A. 8-142; 8-1,129; 8-1,130a; 8-235; 8-244; 8-245; 8-260; 8-262; 8-264; 8-291; 8-292; 8-1012; 8-1017; 8-1335; 8-1336; 8-1348; 40-3104; 41-804; 41-2719; and K.S.A. chapter 8, Articles 14, 15, 16 17, 19, 20, 21, 22, 25, and amendments thereto.

Section 4. K.S.A. 8-291, 8-1567, and 1992 Supp. 8-2117 are hereby repealed.

Section 5. This act shall take effect and be in force from and after its publication in the statute book.