

# Journal of the Senate

SEVENTY-EIGHTH DAY

---

SENATE CHAMBER, TOPEKA, KANSAS  
Tuesday, June 2, 2015, 10:00 a.m.

The Senate was called to order by Vice President Jeff King.

The roll was called with 39 senators present.

Senator Arpke was excused.

Invocation by Reverend Cecil T. Washington:

Heavenly Father,

In Exodus 3:7, You told Moses that You could surely see the significant problems the people were facing. You told him that You heard the people's cries for help and that You were aware of their distress. As we come to You today, we know You see what we're facing and You hear our cries for help. Then in verse 8, You gave Moses some real encouraging words. You said You had come to the rescue and would bring them into a land of plenty. But in verse 10, Your words seemed to take a turn. After telling Moses what You were going to do for the people, You told him with his human limitations to go and do it. Lord, like Moses, we're mere human beings, charged with the responsibility of leading the people into a place of plenty. The magnitude of what we're facing and the responsibility of it, in view of our finiteness and our differing opinions, is so overwhelming that it often feels like it's too much for us. But to relieve Moses' concern over the heaviness of his charge, the promising words You spoke to him were "I'LL BE WITH YOU." And Lord, that's what we really need to remember. In view of the gravity of what we're trying to accomplish, remind us to rest on Your promise in Hebrews 13:5, that even during times of financial struggle, we can be content that You'll never leave us nor forsake us. Thank You Lord for Your Words of assurance. In Jesus name. Amen

The Pledge of Allegiance was led by Vice President Jeff King.

On motion of Senator Bruce, the Senate recessed until 1:00 p.m.

---

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

## MESSAGE FROM THE HOUSE

The House announced the appointment of Reps. Ryckman, Schwartz and Henry to replace Reps. Barker, Macheers and Carmichael as conferees on **H Sub SB 112**.

The House announced the appointment of Reps. Barker, Macheers and Carmichael to replace Reps. Rubin, Gonzalez and Highberger as conferees on **HB 2048**.

On motion of Senator Bruce, the Senate recessed until 2:30 p.m.

---

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

#### MESSAGE FROM THE HOUSE

The House adopts the Conference Committee Report on **HB 2331**.

The House adopts the Conference Committee Report on **S Sub HB 2353**.

The House adopts the Conference Committee Report to agree to disagree on **H Sub SB 112**, and has appointed Representatives Ryckmen, Schwartz and Henry as Second conferees on the part of the House.

The House announced the appointment of Rep. Ward to replace Rep. Houston as a conferee on **HB 2142**.

#### CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 112** submits the following report:

Your committee on conference agrees to disagree and recommends that a new conference committee be appointed;

And your committee on conference recommends the adoption of this report.

RON RYCKMAN, JR.

SHARON SCHWARTZ

JERRY HENRY

*Conferees on part of House*

TY MASTERSON

JIM DENNING

LAURA KELLY

*Conferees on part of Senate*

On motion of Senator Masterson the Senate adopted the conference committee report on **H Sub SB 112**, and requested a new conference be appointed.

The President appointed Senators Masterson, Denning and Kelly as a second Conference Committee on the part of the Senate on **H Sub SB 112**.

#### COMMITTEE OF THE WHOLE

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

**S Sub HB 2109** be further amended by motion of Senator LaTurner, As Further Amended by Senate Committee of the Whole, on page 109, following line 31, by inserting:

"Sec. 11. K.S.A. 2014 Supp. 79-2925b, as amended by section 76 of 2015 House Substitute for Senate Bill No. 7, is hereby amended to read as follows: 79-2925b. (a) Without a majority vote so providing, the governing body of any municipality shall not approve any appropriation or budget, as the case requires, which may be funded by revenue produced from property taxes, and which provides for funding with such revenue in an amount exceeding that of the next preceding year, adjusted to reflect

changes in the consumer price index for all urban consumers as published by the United States department of labor for the preceding calendar year. If the total tangible property valuation in any municipality increases from the next preceding year due to increases in the assessed valuation of existing tangible property and such increase exceeds changes in the consumer price index, the governing body shall lower the amount of ad valorem tax to be levied to the amount of ad valorem tax levied in the next preceding year, adjusted to reflect changes in the consumer price index. This subsection shall not apply to ad valorem taxes levied under K.S.A. 76-6b01 and 76-6b04 and section 11 of 2015 House Substitute for Senate Bill No. 7, and amendments thereto, and any other ad valorem tax levy which was previously approved by the voters of such municipality. Except as provided in subsection (g), notwithstanding the requirements of this subsection, nothing herein shall prohibit a municipality from increasing the amount of ad valorem tax to be levied if the municipality approves the increase with a majority vote of the governing body by the adoption of a resolution and publishes such vote as provided in subsection (c).

(b) Revenue that, in the current year, is produced and attributable to the taxation of:

- (1) New improvements to real property;
- (2) increased personal property valuation, other than increased valuation of oil and gas leaseholds and mobile homes;
- (3) property located within added jurisdictional territory; or
- (4) property which has changed in use shall not be considered when determining whether revenue produced from property has increased from the next preceding year.

(c) In the event the governing body votes to approve any appropriation or budget, as the case requires, which may be funded by revenue produced from property taxes, and which provides for funding with such revenue in an amount exceeding that of the next preceding year as provided in subsection (a), notice of such vote shall be published in the official county newspaper of the county where such municipality is located.

(d) The provisions of this section shall be applicable to all fiscal and budget years commencing on and after the effective date of this act.

(e) The provisions of this section shall not apply to revenue received from property tax levied for the sole purpose of repayment of the principal of and interest upon bonded indebtedness, temporary notes and no-fund warrants.

(f) For purposes of this section, "municipality" means any political subdivision of the state which levies an ad valorem tax on property and includes, but is not limited to, any county, township, municipal university, school district, community college, drainage district or other taxing district. "Municipality" shall not include any such political subdivision or taxing district which receives \$1,000 or less in revenue from property taxes in the current year.

(g) In the case of cities and counties, a resolution authorizing the adoption of any appropriation or budget under subsection (a) shall not become effective unless such resolution has been submitted to and approved by a majority of the qualified electors of the city or county voting at an election called and held thereon. The election shall be held at the next regularly scheduled election. Nothing in this subsection shall prevent any city or county from holding more than one election in any year."

Also on page 109, in line 33, after the first comma by inserting "79-2925b, as amended by section 76 of 2015 House Substitute for Senate Bill No. 7,";

And by renumbering sections accordingly;

On page 1, in the title, in line 14, after "exemptions" by inserting "; increase limitation, election requirement"; in line 18, after the first comma by inserting "79-2925b, as amended by section 76 of 2015 House Substitute for Senate Bill No. 7,"

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

On roll call, the vote was: Yeas 29; Nays 9; Present and Passing 1; Absent or Not Voting 1.

Yeas: Abrams, Bruce, Denning, Faust-Goudeau, Fitzgerald, Haley, Hensley, Holland, Holmes, Kelly, Kerschen, Knox, LaTurner, Longbine, Love, Lynn, Masterson, Melcher, O'Donnell, Olson, Ostmeyer, Petersen, Pilcher-Cook, Powell, Pyle, Smith, Tyson, Wagle, Wilborn.

Nays: Baumgardner, Bowers, Donovan, Francisco, Hawk, McGinn, Pettey, Schmidt, Wolf.

Present and Passing: King.

Absent or Not Voting: Arpke.

The amendment was adopted.

**S Sub HB 2109** be further amended by motion of Senator King, As Further Amended by Senate Committee of the Whole, on page 48, in line 9, after "allowed" by inserting "for: (a)"; in line 13, after "purposes" by inserting "; or (b)"; in line 15, after "claimed" by inserting ", except that this provision shall not apply for an individual whose spouse possesses a valid social security number for the entire taxable year and whose filing status for income tax purposes is married filing jointly";

On page 98, by striking all in lines 26 through 43;

By striking all on page 99 through 108;

On page 109, by striking all in lines 1 through 31;

And by striking section 12, K.S.A. 2014 Supp. 79-32,110, of the amendment designated fa\_2015\_hb2109\_s\_2395 adopted by the Senate Committee of the Whole on June 1, 2015, and by adjusting the repealer and title accordingly;

Also on page 109, in line 33, by striking the last comma; by striking all in line 34; in line 35, by striking "Bill No. 2155," and inserting "and"; also in line 35, by striking ", 79-3620, 79-3703 and 79-3710";

And by renumbering sections accordingly;

On page 1, in the title, in line 16, by striking all after "taxation;" in line 18, by striking ", 79-"; by striking all in line 19; in line 20, by striking "Bill No. 2155," and inserting "and"; also in line 20, by striking ",79-3620, 79-3703 and 79-3710"

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

On roll call, the vote was: Yeas 21; Nays 17; Present and Passing 1; Absent or Not Voting 1.

Yeas: Baumgardner, Bowers, Bruce, Denning, Donovan, Holmes, Kerschen, King, Knox, LaTurner, Longbine, Love, Masterson, O'Donnell, Olson, Ostmeyer, Petersen, Powell, Tyson, Wagle, Wilborn.

Nays: Abrams, Faust-Goudeau, Fitzgerald, Haley, Hawk, Hensley, Holland, Kelly, Lynn, McGinn, Melcher, Pettey, Pilcher-Cook, Pyle, Schmidt, Smith, Wolf.

Present and Passing: Francisco.

Absent or Not Voting: Arpke.

The amendment was adopted.

## EXPLANATION OF VOTE

Mr. Chair: I Vote "No" on the amendment offered by the Senator from Montgomery. This amendment basically strips out of the bill much of the debate and the hard work of the Senate which has occurred over the last twelve days. It makes a waste of precious time of almost two weeks. Many of my constituents (many of our constituents, Mr. Chair), actually expect us to come to the Senate to represent them and their opinions, reflect their voices, by our amendments and our votes through debate and legislation. That is precisely what we have all attempted to do here over these last, soon, thirteen days of "overtime;" past the ninety days accorded every "regular" session. With this amendment, the decisions of this crucial, time consuming and tax payer expensive, bill will be left in the hands of only six (actually FOUR) conference committee legislators. This is pure, simple abdication of our individual and collective elected responsibilities as Kansas Senators. Again, the only truly responsible vote for this amendment is "No." Accordingly, I do.—DAVID HALEY

Senator Faust-Goudeau requests the record to show she concurs with the "Explanation of Vote" offered by Senator Haley on **S Sub HB 2109**.

**S Sub HB 2109** be further amended by motion of Senator Francisco, As Further Amended by Senate Committee of the Whole, on page 103, in line 34, by striking "and"; in line 38, after "section" by inserting "; and

(x) commencing January 1, 2016, and thereafter, the gross receipts from the sale of food and food ingredients shall be taxed at the rate of 5.7%";

On page 105, in line 15, after "(5)" by inserting "(A)"; also in line 15, by striking "14.565%" and inserting "17.600%"; following line 19, by inserting:

"(B) On January 1, 2016, the state treasurer shall credit 17.600% of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rates of 5.95% and 5.7%, and deposited as provided by subsection (d), in the state highway fund."; in line 21, by striking "14.610%" and inserting "17.743%"; in line 22, by striking "rate" and inserting "rates"; also in line 22, after "5.95%" by inserting "and 5.7%";

On page 106, in line 36, before the period, by inserting ", except that such rate shall be 5.7% on and after January 1, 2016, upon food and food ingredients, as defined in K.S.A. 79-3602, and amendments thereto";

On page 108, in line 17, after "(5)" by inserting "(A)"; also in line 17, by striking "14.565%" and inserting "17.600%"; following line 21, by inserting:

"(B) On January 1, 2016, the state treasurer shall credit 17.600% of the revenue collected and received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rates of 5.95% and 5.7%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund."; in line 23, by striking "14.610%" and inserting "17.743%"; in line 24, by striking "rate" and inserting "rates"; also in line 24, after "5.95%" by inserting "and 5.7%";

On page 109, following line 31, by inserting:

"Sec. 11. K.S.A. 2014 Supp. 79-3602 is hereby amended to read as follows: 79-3602. Except as otherwise provided, as used in the Kansas retailers' sales tax act:

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

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

(c) "Alcoholic beverages" means beverages that are suitable for human consumption and contain 0.05% or more of alcohol by volume.

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

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

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

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

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

(i) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing. Delivery charges shall not include charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

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

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

(l) "Educational institution" means any nonprofit school, college and university that offers education at a level above the ~~twelfth~~ 12<sup>th</sup> grade, and conducts regular classes and courses of study required for accreditation by, or membership in, the North Central Association of Colleges and Schools, the state board of education, or that otherwise qualify as an "educational institution," as defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall include: (1) A group of educational institutions that operates exclusively for an educational purpose; (2) nonprofit endowment associations and foundations organized and operated exclusively to receive, hold, invest and administer moneys and property as a permanent fund for the support and sole benefit of an educational institution; (3) nonprofit trusts, foundations and other entities organized and operated principally to hold and own receipts from intercollegiate sporting events and to disburse such receipts, as well as grants and gifts, in the interest of collegiate and intercollegiate athletic programs for the support and sole benefit of an educational institution; and (4) nonprofit trusts, foundations and other entities organized and operated for the primary purpose of encouraging, fostering and conducting

scholarly investigations and industrial and other types of research for the support and sole benefit of an educational institution.

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

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

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

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

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

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

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

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

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

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

(q) "Isolated or occasional sale" means the nonrecurring sale of tangible personal property, or services taxable hereunder by a person not engaged at the time of such sale in the business of selling such property or services. Any religious organization which makes a nonrecurring sale of tangible personal property acquired for the purpose of resale shall be deemed to be not engaged at the time of such sale in the business of

selling such property. Such term shall include: (1) Any sale by a bank, savings and loan institution, credit union or any finance company licensed under the provisions of the Kansas uniform consumer credit code of tangible personal property which has been repossessed by any such entity; and (2) any sale of tangible personal property made by an auctioneer or agent on behalf of not more than two principals or households if such sale is nonrecurring and any such principal or household is not engaged at the time of such sale in the business of selling tangible personal property.

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

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

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

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

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

(3) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et seq., and amendments thereto, or other provisions of federal, state or local law.

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

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

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

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

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

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

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

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

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

(aa) "Political subdivision" means any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state. Such term also shall include any public building commission, housing, airport, port, metropolitan transit or similar authority established pursuant to law and the horsethief reservoir benefit district established pursuant to K.S.A. 82a-2201, and amendments thereto.

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

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

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

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

(B) electricity, gas and water; and

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

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

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

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

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

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

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

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

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

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

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

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

(D) delivery charges; and

(E) installation charges.

(2) "Sales or selling price" includes consideration received by the seller from third parties if:

(A) The seller actually receives consideration from a party other than the purchaser

and the consideration is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(D) one of the following criteria is met:

(i) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(ii) the purchaser identifies to the seller that the purchaser is a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(iii) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(3) "Sales or selling price" shall not include:

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

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

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

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

(E) commencing on July 1, 2006, and ending on June 30, 2009, cash rebates granted by a manufacturer to a purchaser or lessee of a new motor vehicle if paid directly to the retailer as a result of the original sale.

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

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

(oo) "Sourcing rules" means the rules set forth in K.S.A. 2014 Supp. 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments thereto, which shall apply to identify and determine the state and local taxing jurisdiction sales or use taxes to pay, or collect and remit on a particular retail sale.

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

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

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

(ss) "Entity-based exemption" means an exemption based on who purchases the

product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(tt) "Over-the-counter" drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The over-the-counter drug label includes: (1) A drug facts panel; or (2) a statement of the active ingredients with a list of those ingredients contained in the compound, substance or preparation. Over-the-counter drugs do not include grooming and hygiene products such as soaps, cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan lotions and screens.

(uu) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service and voice mail services.

(vv) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(ww) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(xx) "Directory assistance" means an ancillary service of providing telephone number information or address information, or both.

(yy) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(zz) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(aaa) "Telecommunications service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between or among points. The term telecommunications service includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmissions, conveyance or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. Telecommunications service does not include:

(1) Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(2) installation or maintenance of wiring or equipment on a customer's premises;

(3) tangible personal property;

(4) advertising, including, but not limited to, directory advertising;

(5) billing and collection services provided to third parties;

(6) internet access service;

(7) radio and television audio and video programming services, regardless of the

medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

(8) ancillary services; or

(9) digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ring tones.

(bbb) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800, 855, 866, 877 and 888 toll-free calling, and any subsequent numbers designated by the federal communications commission.

(ccc) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include the charge for collection services provided by the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the federal communications commission.

(ddd) "Value-added non-voice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

(eee) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

(fff) "Interstate" means a telecommunications service that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

(ggg) "Intrastate" means a telecommunications service that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

(hhh) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

(iii) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(jjj) (1) "Prepared food" means any of the following:

(A) Food sold in a heated state or heated by the seller;

(B) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(C) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(2) "Prepared food" does not include:

(A) Food that is only cut, repackaged or pasteurized by the seller;

(B) eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States food and drug administration, in chapter 3, part 401.11 of its food code, so as to prevent foodborne illnesses;

(C) if sold without eating utensils provided by the seller, bakery items, including breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas; or

(D) food sold by a seller whose primary North American industry classification system, United States, 2002 edition, classification is manufacturing in sector 311, except subsector 3118.

(III) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products; soy, rice or similar milk substitutes; or greater than 50% of vegetable or fruit juice by volume.

(mmm) "Dietary supplement" shall have the same meaning ascribed to it as in K.S.A. 79-3606(jjj), and amendments thereto.";

Also on page 109, in line 33, after "79-32,265," by inserting "79-3602,";

And by renumbering sections accordingly;

On page 1, in the title, in line 15, after "exemptions" by inserting ", food"; in line 18, after "79-32,265," by inserting "79-3602,"

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

On roll call, the vote was: Yeas 24; Nays 11; Present and Passing 1; Absent or Not Voting 4.

Yeas: Abrams, Baumgardner, Bowers, Faust-Goudeau, Fitzgerald, Francisco, Haley, Hawk, Hensley, Holland, Kelly, LaTurner, Longbine, Love, Lynn, McGinn, O'Donnell, Petersen, Pettey, Pyle, Schmidt, Tyson, Wilborn, Wolf.

Nays: Bruce, Denning, Holmes, Kerschen, Knox, Masterson, Ostmeyer, Pilcher-Cook, Powell, Smith, Wagle.

Present and Passing: Donovan.

Absent or Not Voting: Arpke, King, Melcher, Olson.

The Committee rose and reported progress.

On motion of Senator Bruce, the Senate adjourned until 10:00 a.m., Wednesday, June 3, 2015.

ROSE MARIE GLATT, CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks*.  
COREY CARNAHAN, *Secretary of the Senate*.

□