

STATE OF KANSAS

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SENATE CHAMBER

MADAM PRESIDENT:

I move to amend **SB 355**, as amended by Senate Committee, on page 1, in line 6, before "Section" by inserting "New";

On page 2, following line 20, by inserting:

"New Sec. 2. (a) The court shall issue an order requiring the defendant to relinquish all firearms in the defendant's custody, control or possession and any concealed carry license issued to the defendant upon:

(1) The court's issuance of a qualifying protection order against such defendant; or

(2) the conviction of the defendant for domestic battery as described in K.S.A. 2019 Supp. 21-5414, and amendments thereto, or any misdemeanor for a domestic violence offense as defined in K.S.A. 2019 Supp. 21-6301, and amendments thereto.

(b) A defendant subject to a relinquishment order issued pursuant to this section shall:

(1) Relinquish all firearms in the defendant's custody, control or possession to the sheriff of the county in which the court issuing such relinquishment order is located or to a licensed federal firearms dealer; and

(2) relinquish any concealed carry license issued to the defendant to the sheriff of the county in which the court issuing such relinquishment order is located.

(c) (1) If the defendant is physically present in court at the time a relinquishment order is entered against the defendant, the defendant shall comply with the provisions of subsection (b) within 24 hours after such relinquishment order is entered.

(2) If the defendant is not physically present in court at the time a relinquishment order is

entered against the defendant, such order shall be personally served on the defendant by a law enforcement officer or, if personal service by a law enforcement officer is not possible, in accordance with K.S.A. 60-301 et seq., and amendments thereto.

(3) If the order is personally served on the defendant, the law enforcement officer serving such order shall require that the defendant immediately surrender all firearms in the defendant's custody, control or possession and any concealed carry license issued to the defendant. The law enforcement officer shall conduct any search of the defendant permitted by law for such firearms or license. The law enforcement officer shall take possession of any such firearms and license that are relinquished, in plain sight or discovered pursuant to a lawful search.

(4) The defendant shall relinquish, in accordance with subsection (b), any firearms in the defendant's custody, control or possession and any concealed carry license issued to the defendant that are not relinquished to or removed by a law enforcement officer at the time of service within 24 hours after service of the order.

(d) A law enforcement officer or licensed federal firearms dealer who takes possession of a firearm or concealed carry license pursuant to this section shall issue a proof of relinquishment or removal to the defendant. The proof of relinquishment or removal shall include:

- (1) The name of the defendant;
- (2) the date such firearm or concealed carry license was relinquished or removed;
- (3) the identification number of any relinquished or removed concealed carry license; and
- (4) the make, model and serial number of any relinquished or removed firearm.

(e) Within 48 hours after issuance of a relinquishment order pursuant to subsection (a), a defendant subject to such order shall:

(1) File one or more proofs of relinquishment or removal showing that all firearms previously in the defendant's custody, control or possession and any concealed carry license issued to the

defendant were relinquished or removed by a law enforcement officer pursuant to subsection (c), and attest to the court that the defendant does not currently have any firearms in the defendant's custody, control or possession and does not currently possess a concealed carry license; or

(2) attest to the court that:

(A) At the time the relinquishment order was issued, the defendant did not have any firearms in the defendant's custody, control or possession and did not possess any concealed carry license; and

(B) the defendant does not currently have any firearms in the defendant's custody, control or possession and does not currently possess a concealed carry license.

(f) If the defendant fails to file any proofs of relinquishment or removal or any attestations as required under subsection (e) within 48 hours from the issuance of a relinquishment order, the clerk of the court that issued such order shall notify the sheriff of the county in which the court is located that the defendant has failed to make any such filings with the court. Upon receipt of such notification, the sheriff shall make a good faith effort to determine whether there is evidence that the defendant has failed to relinquish any firearm in the defendant's custody, control or possession or any concealed carry license issued to the defendant, as required under the relinquishment order.

(g) A relinquishment order shall be effective either for the duration of the qualifying protective order issued against the defendant or for that period of time during which it is unlawful for the defendant to possess a firearm under K.S.A. 2019 Supp. 21-6301 or 21-6304, and amendments thereto.

(h) At any point while a relinquishment order is in effect, the plaintiff, the district attorney or county attorney, or a law enforcement officer may file an affidavit with the court that issued the order alleging that the defendant subject to such order has a firearm in the defendant's custody, control or possession or possesses a concealed carry license. Upon the filing of such affidavit, the court shall determine whether probable cause exists to believe that the defendant has a firearm in the defendant's

custody, control or possession or possesses a concealed carry license. If the court finds that such probable cause exists, the court shall issue a search warrant for such firearm or concealed carry license in accordance with K.S.A. 22-2502, and amendments thereto.

(i) Except as provided in subsection (j), upon expiration or termination of a relinquishment order and at the request of the defendant, any items that were relinquished or removed by the sheriff shall be returned to the defendant, provided the sheriff conducts a state and national criminal history records check that conforms to applicable federal standards, including an inquiry of the national instant criminal background check system, and confirms that the defendant is not currently prohibited from possessing or receiving a firearm under state or federal law.

(j) A sheriff may dispose of any firearms relinquished by a defendant pursuant to a relinquishment order issued under subsection (a)(2) only after the defendant is notified of the pending disposal of any such firearm, and the proceeds from the disposal of any such firearm, less the cost to the sheriff for taking possession of, storing and disposing of any such firearm, shall be paid to the defendant.

(k) If a person other than a defendant claims title to a firearm relinquished to or removed by the sheriff, and such person is determined by the sheriff to be the lawful owner of such firearm, the sheriff shall return the firearm to the lawful owner if: (1) The lawful owner agrees to maintain, keep or store such firearm in a manner such that no person who is prohibited from possessing or receiving firearms under state or federal law shall have access to or control of such firearm; and (2) the sheriff conducts a state and national criminal history records check that conforms to applicable federal standards, including an inquiry of the national instant criminal background check system, to confirm that the lawful owner is not currently prohibited from possessing or receiving a firearm under state or federal law.

(l) As used in this section:

(1) "Concealed carry license" means a license to carry concealed handguns issued pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto, or by any other jurisdiction.

(2) "Defendant" means:

(A) A person subject to a qualifying protection order; or

(B) a person convicted of domestic battery as described in K.S.A. 2019 Supp. 21-5414, and amendments thereto, or any misdemeanor for a domestic violence offense as defined in K.S.A. 2019 Supp. 21-6301, and amendments thereto.

(3) "Intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, an individual who cohabitates or has cohabitated with the person or an individual with whom the person is involved or has been involved in a dating relationship as defined in K.S.A. 2019 Supp. 21-5111, and amendments thereto.

(4) "Plaintiff" means a person who successfully petitions for a qualifying protection order.

(5) "Qualifying protection order" means an order issued under the protection from abuse act, K.S.A. 60-3101 et seq., and amendments thereto, or the protection from stalking, sexual assault or human trafficking act, K.S.A. 60-31a01 et seq., and amendments thereto, and that:

(A) Was issued after a hearing, of which the defendant received actual notice, and at which the defendant had an opportunity to participate;

(B) restrains the defendant from harassing, stalking or threatening an intimate partner of the defendant, or a child of the defendant or such intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child; and

(C) (i) Includes a finding that the defendant represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

New Sec. 3. (a) It shall be unlawful for a person to possess a firearm or concealed carry license issued to such person while there is a relinquishment order issued pursuant to section 2, and amendments thereto, in effect against such person.

(b) Violation of this section is a severity level 8, nonperson felony.

(c) It is not a violation of this section if the person is possessing, carrying or otherwise transporting a firearm or a concealed carry license for the sole purpose of relinquishing such firearm or concealed carry license in accordance with section 2(b) or (c), and amendments thereto, if:

(1) The person is in possession of a written relinquishment order issued by a court and such order was issued within the previous 24 hours;

(2) any firearm being transported is unloaded; and

(3) the person transports the firearm or concealed carry license directly to the sheriff of the county in which the court that issued the relinquishment order is located or, in the case of a firearm, directly to a licensed federal firearms dealer.

(d) As used in this section, the term "concealed carry license" the same as in section 2, and amendments thereto.

(e) The provisions of this section shall be a part of and supplemental to the Kansas criminal code.

Sec. 4. K.S.A. 2019 Supp. 22-3426 is hereby amended to read as follows: 22-3426. (a) When judgment is rendered or sentence of imprisonment is imposed, upon a plea or verdict of guilty, a record thereof shall be made upon the journal of the court, reflecting, if applicable, conviction or other judgment, the sentence if imposed, and the commitment, which record among other things shall contain a statement of the crime charged, and under what statute; the plea or verdict and the judgment rendered

or sentence imposed, and under what statute, and a statement that the defendant was duly represented by counsel naming such counsel, or a statement that the defendant has stated on the record or in writing that the defendant did not want representation of counsel.

(b) If defendant is sentenced to the custody of the secretary of corrections the journal entry shall record, in a judgment form, if used, all the information required under K.S.A. 2019 Supp. 21-6711, and amendments thereto, unless such section is not applicable.

(c) It shall be the duty of the court personally to examine the journal entry and to sign the same.

(d) For felony convictions for crimes committed on or after July 1, 1993, in addition to the provisions of subsections (a) through (c), the journal entry shall contain the following information:

- (1) Court case number;
- (2) Kansas bureau of investigation number;
- (3) case transaction number;
- (4) court O.R.I. number;
- (5) the type of counsel;
- (6) type of trial, if any;
- (7) pretrial status of the offender;
- (8) the date of the sentencing hearing;
- (9) a listing of offenses for which the defendant is convicted;
- (10) the criminal history classification;
- (11) the sentence imposed for each offense including postrelease or probation supervision durations;
- (12) whether the sentences run concurrently or consecutively;
- (13) amount of credit for time spent incarcerated;

- (14) period ordered in county jail as a condition of probation;
- (15) a listing of offenses in which a departure sentence is imposed;
- (16) type of departure sentence; and
- (17) factors cited as a basis for departure sentence.

The journal entry shall be recorded on a form approved by the Kansas sentencing commission.

(e) For convictions of domestic battery as described in K.S.A. 2019 Supp. 21-5414, and amendments thereto, and any misdemeanor for a domestic violence offense as defined in K.S.A. 2019 Supp. 21-6301, and amendments thereto, in addition to the provisions of subsections (a) through (d), the court shall issue a relinquishment order against the defendant pursuant to section 2, and amendments thereto.

Sec. 5. K.S.A. 2019 Supp. 60-3107 is hereby amended to read as follows: 60-3107. (a) The court may approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

(1) Restraining the defendant from abusing, molesting or interfering with the privacy or rights of the plaintiff or of any minor children of the parties. Such order shall contain a statement that if such order is violated, such violation may constitute assault as defined in ~~subsection (a)~~ of K.S.A. 2019 Supp. 21-5412(a), and amendments thereto, battery as defined in ~~subsection (a)~~ of K.S.A. 2019 Supp. 21-5413(a), and amendments thereto, domestic battery as defined in K.S.A. 2019 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto.

(2) Granting possession of the residence or household to the plaintiff to the exclusion of the defendant, and further restraining the defendant from entering or remaining upon or in such residence or household, subject to the limitation of subsection (d). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as defined in ~~subsection (a)(1)~~

~~(C)~~ of K.S.A. 2019 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the defendant from cancelling utility service to the residence or household.

(3) Requiring defendant to provide suitable, alternate housing for the plaintiff and any minor children of the parties.

(4) Awarding temporary custody and residency and establishing temporary parenting time with regard to minor children.

(5) Ordering a law enforcement officer to evict the defendant from the residence or household.

(6) Ordering support payments by a party for the support of a party's minor child, if the party is the father or mother of the child, or the plaintiff, if the plaintiff is married to the defendant. Such support orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court may extend the effect of such order for 12 months.

(7) Awarding costs and attorney fees to either party.

(8) Making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary.

(9) Requiring any person against whom an order is issued to seek counseling to aid in the cessation of abuse.

(10) Ordering or restraining any other acts deemed necessary to promote the safety of the plaintiff or of any minor children of the parties.

(b) No protection from abuse order shall be entered against the plaintiff unless:

(1) The defendant properly files a written cross or counter petition seeking such a protection

order;

(2) the plaintiff had reasonable notice of the written cross or counter petition by personal service as provided in ~~subsection (d)~~ of K.S.A. 60-3104(d), and amendments thereto; and

(3) the issuing court made specific findings of abuse against both the plaintiff and the defendant and determined that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

(c) Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or repeal, ~~or~~ article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 2019 Supp. 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 2019 Supp. 23-3201 through 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 2019 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in

its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242, and amendments thereto. Any custody or parenting time order, or order relating to the best interests of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order involving the same child issued under the protection from abuse act, until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated. Any inconsistent custody or parenting order issued in the revised Kansas code for care of children case or the revised Kansas juvenile justice code case shall be specific in its terms, reference any preexisting protection from abuse order and the custody being modified, and a copy of such order shall be filed in the preexisting protection from abuse case.

(d) If the parties to an action under the protection from abuse act are not married to each other and one party owns the residence or household, the court shall not have the authority to grant possession of the residence or household under subsection (a)(2) to the exclusion of the party who owns it.

(e) Subject to the provisions of subsections (b), (c) and (d), a protective order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except as provided in ~~subsection~~ subsections (e)(1) and (e)(2).

(1) Upon motion of the plaintiff, such period may be extended for one additional year.

(2) Upon verified motion of the plaintiff and after the defendant has been personally served with a copy of the motion and has had an opportunity to present evidence and cross-examine witnesses at a hearing on the motion, if the court determines by a preponderance of the evidence that the defendant has violated a valid protection order or: (A) Has previously violated a valid protection order;

or (B) has been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household, the court shall extend a protective order for not less than two additional years and may extend the protective order up to the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection.

(f) The court may amend its order or agreement at any time upon motion filed by either party.

(g) No order or agreement under the protection from abuse act shall in any manner affect title to any real property.

(h) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as defined in ~~subsection (a)(1)(C) of~~ K.S.A. 2019 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as defined in ~~subsection (a) of~~ K.S.A. 2019 Supp. 21-5412(a), and amendments thereto, battery as defined in ~~subsection (a) of~~ K.S.A. 2019 Supp. 21-5413(a), and amendments thereto, domestic battery as defined in K.S.A. 2019 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto.

(i) (1) Upon the issuance of a qualifying protection from abuse order against a defendant, the court shall issue a relinquishment order against such defendant pursuant to section 2, and amendments thereto.

(2) As used in this subsection, the term "qualifying protection from abuse order" means a protection from abuse order that:

(A) Was issued after a hearing, of which the defendant received actual notice, and at which the defendant had an opportunity to participate;

(B) restrains the defendant from harassing, stalking or threatening an intimate partner of the defendant, or a child of the defendant or such intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child; and

(C) (i) Includes a finding that the defendant represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Sec. 6. K.S.A. 2019 Supp. 60-31a06 is hereby amended to read as follows: 60-31a06. (a) The court may issue a protection from stalking, sexual assault or human trafficking order granting any one or more of the following orders:

(1) Restraining the defendant from following, harassing, telephoning, contacting or otherwise communicating with the victim. The order shall contain a statement that, if the order is violated, the violation may constitute stalking as defined in K.S.A. 2019 Supp. 21-5427, and amendments thereto, and violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto.

(2) Restraining the defendant from abusing, molesting or interfering with the privacy rights of the victim. The order shall contain a statement that, if the order is violated, the violation may constitute stalking as defined in K.S.A. 2019 Supp. 21-5427, and amendments thereto, assault as defined in K.S.A. 2019 Supp. 21-5412(a), and amendments thereto, battery as defined in K.S.A. 2019 Supp. 21-5413(a), and amendments thereto, and violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto.

(3) Restraining the defendant from entering upon or in the victim's residence or the immediate vicinity thereof. The order shall contain a statement that, if the order is violated, the violation shall

constitute criminal trespass as defined in K.S.A. 2019 Supp. 21-5808(a)(1)(C), and amendments thereto, and violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto.

(4) Restraining the defendant from committing or attempting to commit a sexual assault upon the victim. The order shall contain a statement that, if the order is violated, the violation shall constitute violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto. The order shall also contain a statement that, if the order is violated, the violation may constitute a sex offense under article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and the accused may be prosecuted, convicted of and punished for such sex offense.

(5) Restraining the defendant from following, harassing, telephoning, contacting, recruiting, harboring, transporting, or committing or attempting to commit human trafficking upon the human trafficking victim, or otherwise communicating with the human trafficking victim. The order shall contain a statement that, if the order is violated, the violation shall constitute violation of a protective order as defined in K.S.A. 2019 Supp. 21-5924, and amendments thereto. The order shall also contain a statement that, if the order is violated, the violation may constitute an offense under chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and the accused may be prosecuted, convicted of and punished for such offense.

(6) Any other order deemed necessary by the court to carry out the provisions of this act.

(b) A protection from stalking, sexual abuse or human trafficking order shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year except as provided in subsections (c) and (d).

(c) Upon motion of the plaintiff the court may extend the order for an additional year.

(d) Upon verified motion of the plaintiff and after the defendant has been personally served with a copy of the motion and has had an opportunity to present evidence and cross-examine witnesses

at a hearing on the motion, the court shall extend a protective order for not less than two additional years and up to a period of time not to exceed the lifetime of the defendant, if the court determines by a preponderance of the evidence that the defendant has:

(1) Violated a valid protection order;

(2) previously violated a valid protection order; or

(3) been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household.

No service fee shall be required for a motion filed pursuant to this subsection.

(e) The court may amend its order at any time upon motion filed by either party.

(f) The court shall assess costs against the defendant and may award attorney fees to the victim in any case in which the court issues a protection from stalking, sexual assault or human trafficking order pursuant to this act. The court may award attorney fees to the defendant in any case where the court finds that the petition to seek relief pursuant to this act is without merit.

(g) A no contact or restraining provision in a protective order issued pursuant to this section shall not be construed to prevent:

(1) Contact between the attorneys representing the parties;

(2) a party from appearing at a scheduled court or administrative hearing; or

(3) a defendant or defendant's attorney from sending the plaintiff copies of any legal pleadings filed in court relating to civil or criminal matters presently relevant to the plaintiff.

(h) (1) Upon the issuance of a qualifying protection from stalking, sexual assault or human trafficking order against a defendant, the court shall issue a relinquishment order against such defendant pursuant to section 2, and amendments thereto.

(2) As used in this subsection:

(A) "Intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person or an individual who cohabitates or has cohabitated with the person.

(B) "Qualifying protection from stalking, sexual assault or human trafficking order" means a protection from stalking, sexual assault or human trafficking order that:

(i) Was issued after a hearing, of which the defendant received actual notice, and at which the defendant had an opportunity to participate;

(ii) restrains the defendant from harassing, stalking or threatening an intimate partner of the defendant, or a child of the defendant or such intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child; and

(iii) (a) Includes a finding that the defendant represents a credible threat to the physical safety of such intimate partner or child; or

(b) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Sec. 7. K.S.A. 2019 Supp. 22-3426, 60-3107 and 60-31a06 are hereby repealed.";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after "crimes" by inserting "; firearms; relinquishment thereof pursuant to certain court orders; criminal penalties; amending K.S.A. 2019 Supp. 22-3426, 60-3107 and 60-31a06 and repealing the existing sections"

Senator \_\_\_\_\_