

Journal of the House

SEVENTY-FIFTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Monday, May 13, 2002, 11:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Aurand in the chair.

The roll was called with 119 members present.

Rep. O'Brien was excused on verified illness.

Reps. Gordon, Henderson, Mayans, Neufeld and O'Neal were excused on excused absence by the Speaker.

Present later: Reps. Henderson and O'Neal.

Prayer by Chaplain Chamberlain:

Wise and wonderful Lord, Giver of wisdom and grace; what should we pray for this day?

Should we pray that others would realize why they're wrong?

Should we pray that other would finally see things our way?

Should we pray that we wouldn't have to cast a vote that makes life difficult for us even if it makes life better for others?

Should we pray that it would just be over, whatever the outcome, so we could all go home?

Lord, what should we pray today?

Should we pray that we understand as much as we seek to be understood?

Should we pray for the revelation of the weakness or partisanship of our own arguments?

Should we pray that when we are done, your children will have been served faithfully?

Should we pray that we would be worthy of our responsibility to make difficult decisions?

Lord, each heart holds a prayer this day. Hear the prayers. Sort the wheat from the chaff. Answer the prayers that accord with your will and touch the others with the abundance of your grace.

Let our collective prayer today be for the prayers of every other person and that our prayer be enveloped in your grace. Amen.

The Pledge of Allegiance was led by Rep. Owens.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to committee as indicated:

Committee of the Whole: **HB 3041**.

MESSAGE FROM THE SENATE

The Senate adopts conference committee report on **SB 69**.

The Senate adopts conference committee report on **SB 436**.

The Senate adopts conference committee report on **Sub. SB 508**.

The Senate adopts conference committee report on **HB 2727**.

The Senate accedes to the request of the House for a conference on **H. Sub. for SB 9** and has appointed Senators Vratil, Schmidt and Haley as second conferees on the part of the Senate.

The Senate accedes to the request of the House for a conference on **SB 39** and has appointed Senators Corbin, Jenkins and Lee as third conferees on the part of the Senate.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Weber, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2030**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 551**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments, as follows:

On page 2, by striking all in line 40 and inserting:

“Sec. 2. K.S.A. 2001 Supp. 72-7108 is hereby amended to read as follows: 72-7108. (a) Transfers of territory from one unified district to another unified district shall be made only as follows: ~~(a)~~

(1) Upon the written agreement of any two boards approved by the state board of education; or ~~(b)~~

(2) upon order of the state board after petition therefor by one board and a public hearing thereon conducted by the state board of education.

(b) The effective date of any such transfer shall be the date of approval thereof or order therefor issued by the state board of education or the July 1 following.

(c) Notice of the public hearing on such a petition shall be given by publication by the state board of education for two consecutive weeks in a newspaper of general circulation in the unified district from which territory is to be transferred, the last publication to be not more than 10 nor less than three days prior to the date of the hearing. The notice shall state the time and place of the hearing and shall give a summary description of the territory proposed to be transferred.

(d) *Prior to issuing an order, the state board shall consider the following:*

(1) *City boundaries and the area within three miles surrounding any city with more than one district in the area;*

(2) *available capacity of districts involved in the territory transfer to serve existing or additional students;*

(3) *condition and age of buildings and physical plant;*

(4) *overall costs including renovation of existing buildings versus construction;*

(5) *cost of bussing;*

(6) *food service;*

(7) *administration and teachers;*

(8) *areas of interest including access and distances for parents to travel to participate in student activities;*

(9) *matters of commerce, including regular shopping areas, meeting places, community activities and youth activities;*

(10) *districts that are landlocked with changing demographics that cause declining enrollment; and*

(11) *effect on students living in the area.*

The foregoing shall not be deemed to limit the factors which the state board of education may consider.

(e) Within 90 days after receiving an agreement or, if a public hearing is held, within 90 days after the hearing, the state board of education shall issue its order either approving or disapproving such transfer petition or agreement, or approving the same with such amendments as it deems appropriate.

(f) Whenever a petition for transfer of territory has been denied by the state board of education, no petition for transfer of substantially the same territory shall be received or considered by the state board of education for a period of two years.

Sec. 3. K.S.A. 12-105b is hereby amended to read as follows: 12-105b. (a) All claims against a municipality must be presented in writing with a full account of the items, and no claim shall be allowed except in accordance with the provisions of this section. A claim may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information.

(b) Claims for salaries or wages of officers or employees need not be signed by the officer or employee if a payroll claim is certified to by the administrative head of a department or group of officers or employees or an authorized representative that the salaries or wages stated therein were contracted or incurred for the municipality under authority of law, that the amounts claimed are correct, due and unpaid and that the amounts are due as salaries and wages for services performed by the person named.

Nothing in this subsection shall be construed as prohibiting the payment of employment incentive or retention bonuses authorized by section 5, and amendments thereto.

(c) No costs shall be recovered against a municipality in any action brought against it for any claims allowed in part unless the recovery shall be for a greater sum than the amount allowed, with the interest due. Subject to the terms of applicable insurance contracts, judgments and settlements obtained for claims recoverable pursuant to the Kansas tort claims act shall be presented for payment in accordance with this section or in such manner as the governing body may designate.

(d) Any person having a claim against a municipality which could give rise to an action brought under the Kansas tort claims act shall file a written notice as provided in this subsection before commencing such action. The notice shall be filed with the clerk or governing body of the municipality and shall contain the following: (1) The name and address of the claimant and the name and address of the claimant's attorney, if any; (2) a concise statement of the factual basis of the claim, including the date, time, place and circumstances of the act, omission or event complained of; (3) the name and address of any public officer or employee involved, if known; (4) a concise statement of the nature and the extent of the injury claimed to have been suffered; and (5) a statement of the amount of monetary damages that is being requested. In the filing of a notice of claim, substantial compliance with the provisions and requirements of this subsection shall constitute valid filing of a claim. The contents of such notice shall not be admissible in any subsequent action arising out of the claim. Once notice of the claim is filed, no action shall be commenced until after the claimant has received notice from the municipality that it has denied the claim or until after 120 days has passed following the filing of the notice of claim, whichever occurs first. A claim is deemed denied if the municipality fails to approve the claim in its entirety within 120 days unless the interested parties have reached a settlement before the expiration of that period. No person may initiate an action against a municipality unless the claim has been denied in whole or part. Any action brought pursuant to the Kansas tort claims act shall be commenced within the time period provided for in the code of civil procedure or it shall be forever barred, except that, if compliance with the provisions of this subsection would otherwise result in the barring of an action, such time period shall be extended by the time period required for compliance with the provisions of this subsection.

(e) Claims against a municipality which provide for a discount for early payment or for the assessment of a penalty for late payment may be authorized to be paid in advance of approval thereof by the governing body in accordance with the provisions of this subsection. The governing body may designate and authorize one or more of its officers or employees to pay any such claim made against the municipality in advance of its presentation to and approval by the governing body if payment of the amount of such claim is required before the next scheduled regular meeting of the governing body in order for the municipality to benefit from the discount provided for early payment or to avoid assessment of the penalty for late payment. Any officer or employee authorized to pay claims under this subsection shall keep an accurate record of all moneys paid and the purpose for which expended, and shall submit the record to the governing body at the next meeting thereof. Payments of claims by an officer or employee of the municipality under authority of this subsection are valid to the same extent as if the claims had been approved and ordered to be paid by the governing body.

(f) When an employee is required to travel on behalf of a municipality, the employee shall be entitled, upon complying with the provisions of the municipality's policies and regulations on employee travel, to timely payment of subsistence allowances and reimbursement for transportation and other related travel expenses incurred by the employee while on an approved travel status. When reimbursement through the regular claims approval process of the municipality will require more than 15 days from the date the reimbursement claim is filed, the claim may be authorized to be paid in advance of approval thereof by the governing body in accordance with the provisions of this subsection. The governing body may designate and authorize one or more of its officers or employees to pay any such claim made against the municipality in advance of its presentation to and approval by the governing body if payment of the amount of such claim is required before the next scheduled regular meeting of the governing body. Any officer or employee authorized to pay claims under this subsection shall keep an accurate record of all moneys paid and the purpose for which expended, and shall submit the record to the governing body at the next meeting thereof. Payments of claims by an officer or employee of the municipality under authority of this subsection are valid to the same extent as if the claims had been approved and ordered to be paid by the governing body.

(g) Claims submitted by members of a municipality's self-insured health plan may be authorized to be paid in advance of approval thereof by the governing body. Such claims shall be submitted to the administrative officer of such insurance plan.

(h) Claims against a school district for the purchase of food or gasoline while students are on a co-curricular or extra-curricular activity outside of the school boundaries may be paid in advance of approval thereof by the governing body in accordance with the provisions of this subsection. The governing body may designate and authorize one or more of its officers or employees to pay any such claim made against the school district in advance of its presentation to and approval by the governing body.

(i) Except as otherwise provided, before any claim is presented to the governing body or before any claim is paid by any officer or employee of the municipality under subsection (e) or (f), it shall be audited by the clerk, secretary, manager, superintendent, finance committee or finance department or other officer or officers charged by law to approve claims affecting the area of government concerned in the claim, and thereby approved in whole or in part as correct, due and unpaid.

Sec. 4. K.S.A. 72-5413 is hereby amended to read as follows: 72-5413. As used in this act and in acts amendatory thereof or supplemental thereto:

(a) The term "persons" includes one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(b) "Board of education" means the board of education of any school district, the board of control of any area vocational-technical school, and the board of trustees of any community college.

(c) "Professional employee" means any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity, but shall not mean any such person who is an administrative employee.

(d) "Administrative employee" means, in the case of a school district, any person who is employed by a board of education in an administrative capacity and who is fulfilling duties for which an administrator's certificate is required under K.S.A. 72-7513, and amendments thereto; and, in the case of an area vocational-technical school or community college, any person who is employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the board of control or the board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(e) "Professional employees' organizations" means any one or more organizations, agencies, committees, councils or groups of any kind in which professional employees participate,

and which exist for the purpose, in whole or part, of engaging in professional negotiation with boards of education with respect to the terms and conditions of professional service.

(f) "Representative" means any professional employees' organization or any person it authorizes or designates to act in its behalf or any person a board of education authorizes or designates to act in its behalf.

(g) "Professional negotiation" means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service.

(h) "Mediation" means the effort through interpretation and advice by an impartial third party to assist in reconciling a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation between a board of education or its representatives and representatives of the recognized professional employees' organization.

(i) "Fact-finding" means the investigation by an individual or board of a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation, and the submission of a report by such individual or board to the parties to such dispute which includes a determination of the issues involved, findings of fact regarding such issues, and the recommendation of the fact-finding individual or board for resolution of the dispute.

(j) "Strike" means an action taken for the purpose of coercing a change in the terms and conditions of professional service or the rights, privileges or obligations thereof, through any failure by concerted action with others to report for duty including, but not limited to, any work stoppage, slowdown, or refusal to work.

(k) "Lockout" means action taken by a board of education to provoke interruptions of or prevent the continuity of work normally and usually performed by the professional employees for the purpose of coercing professional employees into relinquishing rights guaranteed by this act and the act of which this section is amendatory.

(l) (1) "Terms and conditions of professional service" means ~~(A)~~ (A) salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedure; including binding arbitration of grievances; disciplinary procedure; resignations; termination and nonrenewal of contracts; reemployment of professional employees; terms and form of the individual professional employee contract; probationary period; professional employee appraisal procedures; each of the foregoing being a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; ~~and (2) (B)~~ matters which relate to privileges to be granted the recognized professional employees' organization including, but not limited to, voluntary payroll deductions; use of school or college facilities for meetings; dissemination of information regarding the professional negotiation process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit, the use of bulletin boards on or about the facility, and the use of the school or college mail system to the extent permitted by law; reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit; any of the foregoing privileges which are granted the recognized professional employees' organization through the professional negotiation process shall not be granted to any other professional employees' organization; and ~~(3) (C)~~ (C) such other matters as the parties mutually agree upon as properly related to professional service *including, but not limited to, employment incentive or retention bonuses authorized under section 5, and amendments thereto.*

(2) Nothing in this act, ~~or acts amendatory thereof or supplemental and amendments thereto,~~ shall authorize the diminution of any right, duty or obligation of either the professional employee or the board of education which have been fixed by statute or by the constitution of this state. Except as otherwise expressly provided in this subsection (1), the fact that any matter may be the subject of a statute or the constitution of this state does not

preclude negotiation thereon so long as the negotiation proposal would not prevent the fulfillment of the statutory or constitutional objective.

(3) Matters which relate to the duration of the school term, and specifically to consideration and determination by a board of education of the question of the development and adoption of a policy to provide for a school term consisting of school hours, are not included within the meaning of terms and conditions of professional service and are not subject to professional negotiation.

(m) "Secretary" means the secretary of human resources or a designee thereof.

(n) "Statutory declaration of impasse date" means June 1 in the current school year.

(o) "Supplemental contracts" means contracts for employment duties other than those services covered in the principal or primary contract of employment of the professional employee and shall include, but not be limited to, such services as coaching, supervising, directing and assisting extracurricular activities, chaperoning, ticket-taking, lunchroom supervision, and other similar and related activities.

New Sec. 5. (a) As used in this section:

(1) "Teacher" means teachers, supervisors, principals, superintendents and any other professional employees who are required to hold a teacher's or school administrator's certificate in any public school.

(2) "Board of education" means the board of education of any public school district.

(b) The board of education may pay employment incentive or retention bonuses to teachers.

New Sec. 6. (a) As used in this section, "school building" means any building or structure operated or maintained by the board of education of a unified school district.

(b) The board of education of any unified school district, by adoption of a resolution, may close any school building at any time the board determines that the building should be closed to improve the school system of the unified school district. The board of education may close more than one school building in one resolution. A resolution adopted pursuant to this section shall require a majority vote of the members of the board of education and shall require no other approval.

(c) Prior to adopting a resolution closing any school building, the board of education shall call and hold a hearing on the proposal. The notice of such hearing shall include the reasons for the proposed closing, the name of any affected building and the name of any school building to which the involved pupils shall be reassigned. Such notice also shall include the time, date and place of the public hearing to be held on the proposal. Such notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the school district. The last publication shall be at least 10 but not more than 20 days prior to the date of the public hearing.

At such hearing, the board shall hear testimony as to the advisability of the proposed closing, and a representative of the board shall present the board's proposal for such closing. Following the public hearing, or any continuation of such hearing, and after considering all of the testimony and evidence presented or submitted at the public hearing, the board shall determine whether the school building should be closed to improve the school system of the unified school district.

Sec. 7. K.S.A. 2001 Supp. 72-8233 is hereby amended to read as follows: 72-8233. (a) In accordance with the provisions of this section, the boards of education of any two or more unified school districts may make and enter into agreements providing for the attendance of pupils residing in one school district at school in kindergarten or any of the grades one through 12 maintained by any such other school district. The boards of education may also provide by agreement for the combination of enrollments for kindergarten or one or more grades, courses or units of instruction.

(b) Prior to entering into any agreement under authority of this section, the board of education shall adopt a resolution declaring that it has made a determination that such an agreement should be made and that the making and entering into of such an agreement would be in the best interests of the educational system of the school district. Any such agreement is subject to the following conditions:

(1) The agreement may be for any term not exceeding a term of five years.

(2) The agreement shall be subject to change or termination by the legislature.

(3) Within the limitations provided by law, the agreement may be changed or terminated by mutual agreement of the participating boards of education.

(4) The agreement shall make provision for transportation of pupils to and from the school attended on every school day, for payment or sharing of the costs and expenses of pupil attendance at school, and for the authority and responsibility of the participating boards of education.

(c) Provision by agreements entered into under authority of this section for the attendance of pupils at school in a school district of nonresidence of such pupils shall be deemed to be compliance with the kindergarten, grade, course and units of instruction requirements of law.

(d) The board of education of any school district which enters into an agreement under authority of this section for the attendance of pupils at school in another school district may discontinue kindergarten or any or all of the grades, courses and units of instruction specified in the agreement for attendance of pupils enrolled in kindergarten or any such grades, courses and units of instruction at school in such other school district. Upon discontinuing kindergarten or any grade, course or unit of instruction under authority of this subsection, the board of education may close any school building or buildings operated or used for attendance by pupils enrolled in such discontinued kindergarten, grades, courses or units of instruction. The closing of any school building under authority of this subsection shall require a majority vote of the members of the board of education and shall require no other procedure or approval. ~~The provisions of this subsection shall be deemed alternative to the provisions of K.S.A. 72-8213, and amendments thereto, and the procedure and authorization for the closing of school buildings under this subsection shall not be limited by the provisions of such cited statutory section.~~

(e) Pupils attending school in a school district of nonresidence of such pupils in accordance with an agreement made and entered into under authority of this section shall be counted as regularly enrolled in and attending school in the school district of residence of such pupils for the purpose of computations under the school district finance and quality performance act.

(f) Pupils who satisfactorily complete grade 12 while in attendance at school in a school district of nonresidence of such pupils in accordance with the provisions of an agreement entered into under authority of this section shall be certified as having graduated from the school district of residence of such pupils unless otherwise provided for by the agreement.

New Sec. 8. (a) The state board of education shall provide for a community service program to be offered to all accredited high schools in this state.

(b) As used in this section, the term "community service" means a service performed by a high school student, without monetary compensation or remuneration, for the purpose of benefiting the student's community. The service performed may include, but not by way of limitation, mentoring or tutoring elementary school pupils, assisting in a nursing home or adult care center, providing lawn care or performing other tasks for senior citizens or disabled persons, assisting in a homeless shelter or a soup kitchen, organizing or assisting in fund raisers for disaster victims and other needy persons, assisting community-based nonprofit agencies that provide programs and services for low-income people, the disabled and the elderly, assisting fraternal organizations in charitable activities.

Sec. 9. K.S.A. 12-105b, 72-5413 and 72-8213 and K.S.A. 2001 Supp. 72-6445, 72-7108 and 72-8233 are hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, by striking all in lines 14, 15 and 16 and inserting:

“AN ACT concerning schools and school districts; relating to powers and duties of the governing body thereof; relating to consolidation of districts and the transfer of territory; relating to community service programs; amending K.S.A. 12-105b and 72-5413 and K.S.A. 2001 Supp. 72-6445, 72-7108 and 72-8233; also repealing K.S.A. 72-8213.”;

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

RALPH M. TANNER

KATHE LLOYD

Conferees on part of House

DWAYNE UMBARGER
 JOHN VRATIL
 CHRISTINE DOWNEY
Conferees on part of Senate

On motion of Rep. Tanner to adopt the conference committee report on **SB 551**, Rep. Reardon offered a substitute motion to not adopt the conference committee report and asked that a new conference committee be appointed. The substitute motion did not prevail.

The question then reverted back to the original motion of Rep. Tanner and the conference committee report was adopted.

On roll call, the vote was: Yeas 87; Nays 32; Present but not voting: 0; Absent or not voting: 6.

Yeas: Aday, Aurand, Ballard, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cook, Cox, Dahl, DeCastro, Dreher, Edmonds, Faber, Freeborn, Garner, Gatewood, Glasscock, Goering, Hayzlett, Henry, Hermes, Holmes, Horst, Huebert, Huff, Humerickhouse, Huy, Johnson, Kauffman, Krehbiel, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, Osborne, Ostmeyer, Owens, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Pyle, Ray, Schwartz, Showalter, Shultz, Sloan, Stone, Storm, Tafanelli, Tanner, Thimesch, R. Toelkes, Toplikar, Weber, Wilk, D. Williams, J. Williams.

Nays: Ballou, Barnes, Burroughs, Crow, Dillmore, DiVita, Feuerborn, Findley, Flaharty, Flora, Gilbert, Grant, Howell, Hutchins, Kirk, Klein, Kuether, M. Long, Powers, Reardon, Rehorn, Ruff, Sharp, Shriver, Spangler, Swenson, Tomlinson, Vickrey, Wells, Welshimer, Wilson, Wimm.

Present but not voting: None.

Absent or not voting: Gordon, Henderson, Mayans, Neufeld, O'Brien, O'Neal.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 643**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as House Substitute for Senate Bill No. 643, as follows:

On page 3, in line 2, by striking "paragraphs" and inserting "paragraph";

On page 10, in line 1, by striking "45" and inserting "450";

On page 21, after line 5, by inserting:

"Sec. 11. K.S.A. 65-1925 is hereby amended to read as follows: 65-1925. (a) The board may adopt rules and regulations to implement this act. The board, after consultation with the secretary of health and environment, shall adopt rules and regulations relating to the safe functioning of tanning devices. Pursuant to K.S.A. 65-1,148, and amendments thereto, the secretary of health and environment shall adopt sanitation standards for tanning facilities.

(b) An authorized agent shall have access at all reasonable times to any tanning facility to inspect the facility to determine compliance with this act.

(c) If an authorized agent finds that a person has violated, or is violating or threatening to violate this act and that the violation or threat of violation creates an immediate threat to the health and safety of the public, the authorized agent may petition the district court for a temporary restraining order to restrain the violation or threat of violation.

(d) If a person has violated, or is violating or threatening to violate this act or rules and regulations adopted by the board or by the secretary of health and environment, as provided by this section, the board, after a hearing in accordance with the administrative procedure act, may suspend the license of a tanning facility until such time that the tanning facility can demonstrate to the board that it has corrected deficiencies and is in compliance with this act and rules and regulations adopted pursuant to this act.

(e) On application for injunctive relief and a finding that a person is violating or threatening to violate this act *or rules and regulations adopted by the board or by the secretary of health and environment, as provided by this section*, the district court shall grant any injunctive relief warranted by the facts.

Sec. 12. K.S.A. 2001 Supp. 65-1926 is hereby amended to read as follows: 65-1926. (a) ~~On and after January 1, 1993;~~ A person ~~may~~ shall not operate a tanning facility without a valid license issued by the board.

(b) The license shall be displayed in a conspicuous place in the tanning facility.

(c) On application, on forms provided by the board, and on receipt of the appropriate fee, a license shall be renewed by the board.

(d) The board may adopt a system under which licenses expire on various dates during the year. As part of this system the annual renewal fee may be prorated on a monthly basis to reflect the actual number of months the license is valid.

(e) The board may revoke, cancel, suspend or place on probation a license to operate a tanning facility for any of the following reasons:

(1) A failure to pay a license fee or an annual renewal fee for a license;

(2) the applicant obtained or attempted to obtain a license by fraud or deception;

(3) a violation of any of the provisions of this act; or

(4) a violation of ~~a regulation of the board adopted under this act~~ *any rules and regulations adopted by the board or by the secretary of health and environment, as provided by K.S.A. 65-1925, and amendments thereto.*

(f) The board shall establish appropriate licensure and renewal fees, not to exceed \$100 per year for each tanning facility, by adoption of rules and regulations. The board may establish the fees based upon the number of beds used for tanning which the facility maintains. In addition to the fee for licensure and the fee for renewal of a license, the board may establish a fee not to exceed \$150 for delinquent renewal of a license and a fee not to exceed \$200 for reinstatement of a license.

(g) The executive director of the board shall remit all moneys received from fees under this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the manner specified under K.S.A. 74-2704, and amendments thereto.”;

Also on page 21, by renumbering sections 11 and 12 accordingly; in lines 8 and 9, by striking “under this act” and inserting “by the board or by the secretary of health and environment, as provided by K.S.A. 65-1925, and amendments thereto,”; by striking all in lines 26 through 43;

By striking all on pages 22 through 28;

On page 29, by striking all in lines 1 through 27 and inserting:

“Sec. 15. K.S.A. 2001 Supp. 65-1946 is hereby amended to read as follows: 65-1946. Licensed practicing permanent color technicians and tattoo artists and persons who are licensed to perform body piercing shall meet the following standards and any others the board may adopt by rules and regulations:

(a) ~~Tattooing and body piercing instruments shall be sterilized in accordance with methods approved by rules and regulations of the board and such rules and regulations shall be approved by the secretary before adoption or amendment~~ *Permanent color technicians and tattoo artists, persons performing body piercing, tattoo facilities and body piercing facilities shall comply with all applicable sanitation standards adopted by the secretary pursuant to K.S.A. 65-1,148, and amendments thereto;*

(b) practicing permanent color technicians and tattoo artists and persons licensed to perform body piercing shall be equipped with appropriate sterilizing equipment, with availability of hot and cold running water and a covered waste receptacle; and

(c) case history cards shall be kept for each client for a period of five years.”;

By renumbering section 26 accordingly;

Also on page 29, in line 35, after the last “members” by inserting “shall be licensed under the provisions of K.S.A. 65-1901 through 65-1912, and amendments thereto, at least two of whom”; in line 36, by striking “prior to July 1, 2003,”; in line 40, after “board” by inserting “or a person who is engaged in the day-to-day operation of a school licensed by the board”;

On page 30, after line 24, by inserting:

“Sec. 17. K.S.A. 65-1,148 is hereby amended to read as follows: 65-1,148. (a) As used in this section, “sanitation standards” means standards for personal and environmental sanitation and for the prevention of infectious and contagious diseases.

(b) The secretary of health and environment shall adopt rules and regulations establishing sanitation standards for professions, shops, salons, *facilities*, clinics, schools and colleges regulated by the state board of barber examiners or the state board of cosmetology.

New Sec. 18. (a) Not later than January 1, 2003, the secretary of health and environment shall review all rules and regulations related to methods of and procedures for tattooing, permanent color technology and body piercing. Not later than the first day of the 2003 legislative session, the secretary of health and environment shall report the results of the review pursuant to this subsection to the appropriate standing committees of the house and senate.

(b) All rules and regulations of the Kansas state board of cosmetology in effect on the effective date of this act which establish sanitation standards, as defined in K.S.A. 65-1,148, and amendments thereto, for tanning facilities, tattoo facilities, body piercing facilities, permanent color technicians and tattoo artists and persons performing body piercing shall continue to be effective and shall be deemed to be rules and regulations of the secretary of health and environment under K.S.A. 65-1,148, and amendments thereto, until revised, amended, revoked or nullified by the secretary of health and environment, or otherwise, pursuant to law.”;

Also on page 30, by renumbering section 27 accordingly; in line 41, by striking “and” and inserting a comma; in line 42, before “65-1927” by inserting “65-1,148, 65-1925 and”;

On page 31, in line 1, before “65-1955” by inserting “65-1926, 65-1946,”; by striking all in lines 2, 3 and 4; by renumbering section 29 accordingly;

In the title, in line 11, before “65-1927” by inserting “65-1,148, 65-1925 and”; in line 13, by striking all after the first comma; in line 14, by striking all before “and” and inserting “65-1926, 65-1946”; in line 32, by striking “and” and inserting a comma; in line 33, after “Kansas” by inserting “and K.S.A. 2001 Supp. 65-1955”;

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

DOUG MAYS
BECKY HUTCHINS
L. CANDY RUFF
Conferees on part of House

SUSAN WAGLE
SANDY PRAEGER
DAVID HALEY
Conferees on part of Senate

On motion of Rep. Mays, the conference committee report on **H. Sub. for SB 643** was adopted.

On roll call, the vote was: Yeas 117; Nays 3; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goering, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, Osborne, Ostmeyer, Owens, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Burroughs, Cook, Spangler.

Present but not voting: None.

Absent or not voting: Gordon, Mayans, Neufeld, O'Brien, O'Neal.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 647**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments, as follows:

On page 12, by striking all in lines 42 and 43;

By striking all on pages 13 and 14;

On page 15, by striking all in lines 1 through 30 and inserting:

“Sec. 10. K.S.A. 46-247 is hereby amended to read as follows: 46-247. The following individuals shall file written statements of substantial interests, as provided in K.S.A. 46-248 to 46-252, inclusive, and amendments thereto:

(a) Legislators and candidates for nomination or election to the legislature;

(b) Individuals holding an elected office in the executive branch of this state, and candidates for nomination or election to any such office;

(c) State officers, employees and members of boards, councils and commissions under the jurisdiction of the head of any state agency who are listed as designees by the head of a state agency pursuant to K.S.A. 46-285, and amendments thereto;

(d) Individuals whose appointment to office is subject to confirmation by the senate whether or not such individual is a state officer or employee;

(e) General counsels for state agencies irrespective of how compensated;

(f) The administrator or executive director of the education commission of the states, the interstate compact on agricultural grain marketing, the Mo-Kan metropolitan development district and agency compact, the Kansas City area transportation district and authority compact, the midwest nuclear compact, the central interstate low-level radioactive waste compact, the multistate tax compact, the Kansas-Oklahoma Arkansas river basin compact, the Kansas-Nebraska Big Blue river compact, and the multistate lottery;

(g) Private consultants under contract with any agency of the state of Kansas to evaluate bids for public contracts or to award public contracts.

(h) *From and after January 1, 2003, any faculty member or other employee of a postsecondary educational institution as defined by K.S.A. 2001 Supp. 74-3201b, and amendments thereto, who provides consulting services and who, on behalf of or for the benefit of the person for which consulting services are provided:*

(1) *Promotes or opposes action or nonaction by any federal agency, any state agency as defined by K.S.A. 46-224, and amendments thereto, or any political subdivision of the state or any agency of such political subdivision or a representative of such state agency, political subdivision or agency; or*

(2) *promotes or opposes action or nonaction relating to the expenditure of public funds of the federal government, the state or political subdivision of the state or agency of the federal government, state or political subdivision of the state.*

By renumbering sections accordingly;

Also on page 15, in line 31, before “K.S.A.” by inserting “K.S.A. 46-247 and”;

In the title, in line 14, by striking “, and”; in line 15, by striking all before “K.S.A.” and inserting “; relating to employees thereof; amending K.S.A. 46-247 and”;

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

LISA BENLON
CARL C. KREHBIEL
SUE STORM
Conferees on part of House

DWAYNE UMBARGER
JOHN VRATIL
CHRISTINE DOWNEY
Conferees on part of Senate

On motion of Rep. Benlon, the conference committee report on **SB 647** was adopted.

On roll call, the vote was: Yeas 73; Nays 47; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aday, Aurand, Ballard, Ballou, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cox, Dahl, DeCastro, Dreher, Edmonds, Faber, Findley, Freeborn, Glasscock, Hayzlett, Henry, Hermes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Kauffman, Klein, Krehbiel, Landwehr, Lane, Larkin, Light, Lloyd, P. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Novascone, Osborne, Ostmeyer, Owens, Palmer, Patterson, Phelps, Pottorff, L. Powell, T. Powell, Ray, Rehorn, Sharp, Shultz, Sloan, Stone, Storm, Tafanelli, Tanner, Tomlinson, Weber, Wells, Welshimer, Wilk, D. Williams, Winn.

Nays: Barnes, Burroughs, Cook, Crow, Dillmore, DiVita, Feuerborn, Flaharty, Flora, Garner, Gatewood, Gilbert, Goering, Grant, Henderson, Holmes, Howell, Huy, Johnson, Kirk, Kuether, Levinson, Lightner, Loganbill, M. Long, McClure, Merrick, Miller, Nichols, Pauls, E. Peterson, J. Peterson, Powers, Pyle, Reardon, Ruff, Schwartz, Showalter, Shriver, Spangler, Swenson, Thimesch, R. Toelkes, Toplikar, Vickrey, J. Williams, Wilson.

Present but not voting: None.

Absent or not voting: Gordon, Mayans, Neufeld, O'Brien, O'Neal.

EXPLANATIONS OF VOTE

MR. SPEAKER: I vote no on **SB 647**. I know many College and University presidents across Kansas have lobbied in favor of this measure which would allow the state Board of Regents allocation authority for the 36 institutions of Higher Education in Kansas. I would suggest to these individuals, that they are going to get exactly what they have asked for. We will be revisiting this measure when their tune has changed to a song of sadness for the impending inequity of funding for our small schools and regional universities. Keep in mind, **SB 345** has not yet been funded.—R.J. WILSON

MR. SPEAKER: I cannot in good conscience vote for this bill because it will ultimately undermine the local control of our community colleges and make them completely dependent upon state-wide funding. It seems that history is repeating. Have we learned nothing from the chaos and inequities resulting from the K-12 education funding formula that has been in place since 1992? Why would we now apply that model of funding and governance to our community colleges? It is a mistake to do so, and I cannot support it. I vote no on **SB 647**.—KAREN DIVITA-JOHNSON

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2718**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 4, in line 16, by striking "65-2409" and inserting "65-2409a"; in line 21, by striking "65-2409" and inserting "65-2409a";

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

SUSAN WAGLE
JIM BARNETT
DAVID HALEY
Conferees on part of Senate

GARRY BOSTON
JIM MORRISON
JUDY SHOWALTER
Conferees on part of House

On motion of Rep. Boston, the conference committee report on **HB 2718** was adopted.

On roll call, the vote was: Yeas 119; Nays 1; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cook, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goering, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, Osborne, Ostmeyer, Owens, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Wimm.

Nays: Spangler.

Present but not voting: None.

Absent or not voting: Gordon, Mayans, Neufeld, O'Brien, O'Neal.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2746**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 2, after line 22, by inserting:

“New Sec. 3. (a) As used in this section:

(1) “Electric public utility” has the meaning provided by K.S.A. 66-101a, and amendments thereto.

(2) “Renewable attributes” means tradeable renewable energy credits (with or without other features), tradeable emissions credits, emission offsets or other market instruments created or obtained by use of renewable energy resources or technologies.

(3) “Renewable resources or technologies” means wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration and landfill gas resources or technologies located in Kansas.

(b) Upon application of an electric public utility, the state corporation commission may authorize such utility to:

(1) Retain 65% of the utility’s net revenues from wholesale off-system sales of electricity generated from renewable resources or technologies or from sales of renewable attributes if such electricity or attributes are purchased by the utility at not less than the average price paid by such utility for electricity or renewable attributes purchased pursuant to contracts of five or more years’ duration; and

(2) retain 50% of the utility’s net revenues from all other wholesale off-system sales of purchased electricity generated from renewable resources or technologies or from sales of purchased renewable attributes from renewable energy procured or constructed principally to serve Kansas retail customers.”;

By renumbering the remaining sections;

In the title, in line 12, by striking all after “concerning” and inserting “electricity; relating to retail electric service and station power; relating to revenues from certain sales of electricity generated from renewable resources or technologies and certain sales of renewable attributes.”;

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

STAN CLARK

JIM BARONE

JAY SCOTT EMLER

Conferees on part of Senate

CARL DEAN HOLMES
 TOM SLOAN
 LAURA MCCLURE
Conferees on part of House

On motion of Rep. Holmes, the conference committee report on **HB 2746** was adopted.

On roll call, the vote was: Yeas 120; Nays 0; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cook, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goering, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, Osborne, Ostmeyer, Owens, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Spangler, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: None.

Present but not voting: None.

Absent or not voting: Gordon, Mayans, Neufeld, O'Brien, O'Neal.

MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. Edmonds, the House nonconcurred in Senate amendments to **HB 2030** and asked for a conference.

Speaker pro tem Aurand thereupon appointed Reps. Edmonds, Huff and Larkin as conferees on the part of the House.

On motion of Rep. Weber, the House recessed until 2:30 p.m.

AFTERNOON SESSION

The House met pursuant to recess with Speaker pro tem Aurand in the chair.

MESSAGE FROM THE SENATE

The Senate accedes to the request of the House for a conference on **HB 2030** and has appointed Senators Corbin, Jenkins and Hensley as conferees on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 39**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 20 through 43;

By striking all on pages 2 through 4 and by inserting the following:

“Section. 1. On and after June 1, 2002, K.S.A. 79-3310 is hereby amended to read as follows: 79-3310. There is imposed a tax upon all cigarettes sold, distributed or given away within the state of Kansas. The rate of such tax shall be ~~\$.24~~ \$.89 on each 20 cigarettes or fractional part thereof or ~~\$.30~~ \$1.1125 on each 25 cigarettes, as the case requires. Such tax shall be collected and paid to the director as provided in this act. Such tax shall be paid only once and shall be paid by the wholesale dealer first receiving the cigarettes as herein provided.

The taxes imposed by this act are hereby levied upon all sales of cigarettes made to any department, institution or agency of the state of Kansas, and to the political subdivisions thereof and their departments, institutions and agencies.

New Sec. 2. On or before June 30, 2002, each wholesale dealer, retail dealer and vending machine operator shall file a report with the director in such form as the director may prescribe showing cigarettes, cigarette stamps and meter imprints on hand at 12:01 a.m. on June 1, 2002. A tax of \$.65 on each 20 cigarettes or fractional part thereof or \$.8125 on each 25 cigarettes, as the case requires and \$.65 or \$.8125, as the case requires upon all tax stamps and all meter imprints purchased from the director and not affixed to cigarettes prior to June 1, 2002, is hereby imposed and shall be due and payable in equal installments on or before June 30, 2002, on or before September 30, 2002, and on or before December 30, 2002. The tax imposed upon such cigarettes, tax stamps and meter imprints shall be imposed only once under this act. The director shall remit all moneys collected pursuant to this section to the state treasurer who shall credit the entire amount thereof to the state general fund.

Sec. 3. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3311 is hereby amended to read as follows: 79-3311. The director shall design and designate indicia of tax payment to be affixed to each package of cigarettes as provided by this act. The director shall sell water applied stamps only to licensed wholesale dealers in the amounts of 1,000 or multiples thereof. Stamps applied by the heat process shall be sold only in amounts of 30,000 or multiples thereof, except that such stamps which are suitable for packages containing 25 cigarettes each shall be sold in amounts prescribed by the director. Meter imprints shall be sold only in amounts of 10,000 or multiples thereof. Water applied stamps in amounts of 10,000 or multiples thereof and stamps applied by the heat process and meter imprints shall be supplied to wholesale dealers at a discount of ~~2.65%~~ 0.71% from the face value thereof, and shall be deducted at the time of purchase or from the remittance therefor as hereinafter provided. Any wholesale cigarette dealer who shall file with the director a bond, of acceptable form, payable to the state of Kansas with a corporate surety authorized to do business in Kansas, shall be permitted to purchase stamps, and remit therefor to the director within 30 days after each such purchase, up to a maximum outstanding at any one time of 85% of the amount of the bond. Failure on the part of any wholesale dealer to remit as herein specified shall be cause for forfeiture of such dealer's bond. All revenue received from the sale of such stamps or meter imprints shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall first credit such amount as the director shall order to the cigarette tax refund fund and shall credit the remaining balance to the state general fund. A refund fund designated the cigarette tax refund fund not to exceed \$10,000 at any time shall be set apart and maintained by the director from taxes collected under this act and held by the state treasurer for prompt payment of all refunds authorized by this act. Such cigarette tax refund fund shall be in such amount as the director shall determine is necessary to meet current refunding requirements under this act.

The wholesale cigarette dealer shall affix to each package of cigarettes stamps or tax meter imprints required by this act prior to the sale of cigarettes to any person, by such dealer or such dealer's agent or agents, within the state of Kansas. The director is empowered to authorize wholesale dealers to affix revenue tax meter imprints upon original packages of cigarettes and is charged with the duty of regulating the use of tax meters to secure payment of the proper taxes. No wholesale dealer shall affix revenue tax meter imprints to original packages of cigarettes without first having obtained permission from the director to employ this method of affixation. If the director approves the wholesale dealer's application for permission to affix revenue tax meter imprints to original packages of cigarettes, the director shall require such dealer to file a suitable bond payable to the state of Kansas executed by a corporate surety authorized to do business in Kansas. The director may, to assure the proper collection of taxes imposed by the act, revoke or suspend the privilege of imprinting tax meter imprints upon original packages of cigarettes. All meters shall be under the direct control of the director, and all transfer assignments or anything pertaining thereto must first be authorized by the director. All inks used in the stamping of cigarettes must be of a special

type devised for use in connection with the machine employed and approved by the director. All repairs to the meter are strictly prohibited except by a duly authorized representative of the director. Requests for service shall be directed to the director. Meter machine ink imprints on all packages shall be clear and legible. If a wholesale dealer continuously issues illegible cigarette tax meter imprints, it shall be considered sufficient cause for revocation of such dealer's permit to use a cigarette tax meter.

A licensed wholesale dealer may, for the purpose of sale in another state, transport cigarettes not bearing Kansas indicia of tax payment through the state of Kansas provided such cigarettes are contained in sealed and original cartons.

Sec. 4. On and after June 1, 2002, K.S.A. 79-3312 is hereby amended to read as follows: 79-3312. The director shall redeem any unused stamps or meter imprints that any wholesale dealer presents for redemption within six months after the purchase thereof, at the face value less ~~2.65%~~ 0.71% thereof if such stamps or meter imprints have been purchased from the director. The director shall prepare a voucher showing the net amount of such refund due, and the director of accounts and reports shall draw a warrant on the state treasurer for the same. Wholesale dealers shall be entitled to a refund of the tax paid on cigarettes which have become unfit for sale upon proof thereof less ~~2.65%~~ 0.71% of such tax.

New Sec. 5. (a) In addition to the tax imposed by the Kansas estate tax act, a tax is hereby imposed on the privilege of succeeding to the ownership of any property, corporeal or incorporeal, and any interest therein within the jurisdiction of this state by any relative, or stranger in the blood, of a decedent other than the spouse, brothers and sisters, lineal ancestors, lineal descendants, step-parents, step-children, adopted children, lineal descendants of any adopted child or step-child, the spouse or surviving spouse of a son or daughter, or the spouse or surviving spouse of an adopted child or step-child of the decedent. In the case of an adopted child or step-child, a spouse or surviving spouse of an adopted child or step-child or the lineal descendant of an adopted child or step-child of the decedent, such person shall file with the department of revenue an affidavit setting forth the relationship of such person to the decedent. Such affidavit shall be sufficient proof of the adoptive or step-child relationship in question, and the department, or any officer or employee thereof, shall not require any additional proof of such relationship. As used in this paragraph, "step-child" means a child of a spouse or former spouse of the decedent or the brothers and sisters of the decedent.

(b) The tax shall be charged upon the value of the property succeeded to and shall be in an amount equal to a percentage of such value as follows: On any amount up to \$100,000, 10%; or any amount in excess of \$100,000 and up to \$200,000, 12%; on all sums in excess of \$200,000, 15%.

(c) All moneys collected pursuant to the provisions of this section shall be remitted to the state treasurer who shall credit the entire amount thereof to the state general fund.

(d) The provisions of this section shall be deemed supplemental to the Kansas estate tax act.

Sec. 6. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3603 is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of ~~4.9%~~ 5.3% on and after June 1, 2002, and before June 1, 2004, 5.2% on and after June 1, 2004, and before June 1, 2005, and 5% on and after June 1, 2005, and, within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or (B) originate outside this state and terminate

within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges; (C) any value-added nonvoice service in which computer processing applications are used to act on the form, content, code or protocol of the information to be transmitted; (D) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (E) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of 1986, as in effect on January 1, 2001. For the purposes of this subsection the term gross receipts does not include purchases of telephone, telegraph or telecommunications using a prepaid telephone calling card or prepaid authorization number. As used in this subsection, a prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, with the prepaid value measured in minutes or other time units, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed; and (3) the gross receipts from the provision of services taxable under this subsection which are billed on a combined basis with nontaxable services, shall be accounted for and the tax remitted as follows: The taxable portion of the selling price of those combined services shall include only those charges for taxable services if the selling price for the taxable services can be readily distinguishable in the retailer's books and records from the selling price for the nontaxable services. Otherwise, the gross receipts from the sale of both taxable and nontaxable services billed on a combined basis shall be deemed attributable to the taxable services included therein. Within 90 days of billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the secretary identifying the methodology to be used in determining the taxable portion of the selling price of those combined services. The burden of proving that any receipt or charge is not taxable shall be upon the retailer. Upon request from the customer, the retailer shall disclose to the customer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on a combined basis;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated;

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto;

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other

personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon;

(i) the gross receipts from the rendering of dry cleaning, pressing, dyeing and laundry services except laundry services rendered through a coin-operated device whether automatic or manually operated;

(j) the gross receipts from the rendering of the services of washing and waxing of vehicles;

(k) the gross receipts from cable, community antennae and other subscriber radio and television services;

(l) (1) except as otherwise provided by paragraph (2), the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen for use by them in erecting structures, or building on, or otherwise improving, altering, or repairing real or personal property.

(2) Any such contractor, subcontractor or repairman who maintains an inventory of such property both for sale at retail and for use by them for the purposes described by paragraph (1) shall be deemed a retailer with respect to purchases for and sales from such inventory, except that the gross receipts received from any such sale, other than a sale at retail, shall be equal to the total purchase price paid for such property and the tax imposed thereon shall be paid by the deemed retailer;

(m) the gross receipts from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and (2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from: (1) Dues charged by any organization exempt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or (2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. In determining the base for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.

For the purposes of this subsection:

(1) "Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;

(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and

(4) "residence" shall mean only those enclosures within which individuals customarily live;

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property, except computer software described in subsection (s), which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) the gross receipts received from the sale of computer software, and the sale of the services of modifying, altering, updating or maintaining computer software. As used in this subsection, "computer software" means information and directions loaded into a computer which dictate different functions to be performed by the computer. Computer software includes any canned or prewritten program which is held or existing for general or repeated sale, even if the program was originally developed for a single end user as custom computer software. The sale of computer software or services does not include: (1) The initial sale of any custom computer program which is originally developed for the exclusive use of a single end user; or (2) those services rendered in the modification of computer software when the modification is developed exclusively for a single end user only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements and other billing documents provided to the end user. The services of modification, alteration, updating and maintenance of computer software shall only include the modification, alteration, updating and maintenance of computer software taxable under this subsection whether or not the services are actually provided;

(t) the gross receipts received for telephone answering services, ~~including mobile phone~~ *mobile telecommunication services, beeper services and other similar services. On and after August 1, 2002, the provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002, shall be applicable to all sales of mobile telecommunication services taxable pursuant to this subsection. The secretary of revenue is hereby authorized and directed to perform any act deemed necessary to properly implement such provisions;*

(u) the gross receipts received from the sale of prepaid telephone calling cards or prepaid authorization numbers and the recharge of such cards or numbers. A prepaid telephone calling card or prepaid authorization number means the right to exclusively make telephone calls, paid for in advance, with the prepaid value measured in minutes or other time units, that enables the origination of calls using an access number or authorization code or both, whether manually or electronically dialed. If the sale or recharge of such card or number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address; if there is no item shipped then it shall be the customer's billing address; and

(v) the gross receipts received from the sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701, *et seq.*, and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701 *et seq.*, and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

Sec. 7. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3620 is hereby amended to read as follows: 79-3620. (a) All revenue collected or received by the director of taxation from the taxes imposed by this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury, less amounts withheld as provided in subsection (b) and amounts credited as provided in subsection (c) and (d), to the credit of the state general fund.

(b) A refund fund, designated as "sales tax refund fund" not to exceed \$100,000 shall be set apart and maintained by the director from sales tax collections and estimated tax collections and held by the state treasurer for prompt payment of all sales tax refunds including refunds authorized under the provisions of K.S.A. 79-3635, and amendments thereto. Such fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act. In the event such fund as established by this section is, at any time, insufficient to provide for the payment of refunds due claimants thereof, the director shall certify the amount of additional funds required to the director of accounts and reports who shall promptly transfer the required amount from the state general fund to the sales tax refund fund, and notify the state treasurer, who shall make proper entry in the records.

(c) (1) The state treasurer shall credit $\frac{5}{100}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 4.9%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(2) *The state treasurer shall credit $\frac{5}{104}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.2%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.*

(3) *The state treasurer shall credit $\frac{5}{106}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5.3%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.*

(4) *The state treasurer shall credit $\frac{1}{20}$ of the revenue collected and received from the tax imposed by K.S.A. 79-3603, and amendments thereto, at the rate of 5%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.*

(d) The state treasurer shall credit all revenue collected or received from the tax imposed by K.S.A. 79-3603, and amendments thereto, as certified by the director, from taxpayers doing business within that portion of a redevelopment district occupied by a redevelopment project that was determined by the secretary of commerce and housing to be of statewide as well as local importance or will create a major tourism area for the state as defined in K.S.A. 12-1770a, and amendments thereto, to the city bond finance fund, which fund is hereby created. The provisions of this subsection shall expire when the total of all amounts credited hereunder and under subsection (d) of K.S.A. 79-3710, and amendments

thereto, is sufficient to retire the special obligation bonds issued for the purpose of financing all or a portion of the costs of such redevelopment project.

Sec. 8. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3635 is hereby amended to read as follows: 79-3635. (a) (1) A claimant shall be entitled to a refund of retailers' sales taxes paid upon food during the calendar year 1998 and each year thereafter in the amount hereinafter provided. There shall be allowed for each member of a household of a claimant having income of \$12,500 or less, an amount equal to \$60. There shall be allowed for each member of a household of a claimant having income of more than \$12,500 but not more than \$25,000, an amount equal to \$30. There shall be allowed for a claimant who qualifies for an additional personal exemption amount pursuant to K.S.A. 79-32,121, and amendments thereto, an additional amount of \$30 or \$60, as the case requires. All such claims shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation or by a person or persons designated by the director.

(2) As an alternative to the procedure described by paragraph 1, for all taxable years commencing after December 31, 1997, there shall be allowed as a credit against the tax liability of a resident individual imposed under the Kansas income tax act an amount equal to \$60 or \$30, as the case requires, for each member of a household. There shall be allowed for a claimant who qualifies for an additional personal exemption amount pursuant to K.S.A. 79-32,121, and amendments thereto, an additional amount of \$30 or \$60, as the case requires. If the amount of such tax credit exceeds the claimant's income tax liability for such taxable year, such excess amount shall be refunded to the claimant.

(b) A head of household shall make application for refunds for all members of the same household upon a common form provided for the making of joint claims. All claims paid to members of the same household shall be paid as a joint claim by means of a single warrant.

(c) No claim for a refund of taxes under the provisions of K.S.A. 79-3632 *et seq.* shall be paid or allowed unless such claim is actually filed with and in the possession of the department of revenue on or before April 15 of the year next succeeding the year in which such taxes were paid. The director of taxation may: (1) Extend the time for filing any claim under the provisions of this act when good cause exists therefor; or (2) accept a claim filed after the deadline for filing in the case of sickness, absence or disability of the claimant if such claim has been filed within four years of such deadline.

(d) *In the case of all tax years commencing after December 31, 2001, the threshold income amounts prescribed in this section and subsection (c) of K.S.A. 79-3633, and amendments thereto, shall be increased by an amount equal to such threshold amount multiplied by the cost-of-living adjustment determined under section 1 (f)(3) of the federal internal revenue code for the calendar year in which the taxable year commences.*

Sec. 9. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3703 is hereby amended to read as follows: 79-3703. There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using, storing, or consuming within this state any article of tangible personal property. Such tax shall be levied and collected in an amount equal to the consideration paid by the taxpayer multiplied by the rate of ~~4.9%~~ 5.3% on and after June 1, 2002, and before June 1, 2004, 5.2% on and after June 1, 2004, and before June 1, 2005, and 5% on and after June 1, 2005. Within a redevelopment district established pursuant to K.S.A. 2001 Supp. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax of 2% until the earlier of: (1) The date the bonds issued to finance or refinance the redevelopment project undertaken in the district have been paid in full; or (2) the final scheduled maturity of the first series of bonds issued to finance the redevelopment project. All property purchased or leased within or without this state and subsequently used, stored or consumed in this state shall be subject to the compensating tax if the same property or transaction would have been subject to the Kansas retailers' sales tax had the transaction been wholly within this state.

Sec. 10. On and after June 1, 2002, K.S.A. 2001 Supp. 79-3710 is hereby amended to read as follows: 79-3710. (a) All revenue collected or received by the director under the provisions of this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury, less amounts set apart

as provided in subsection (b) and amounts credited as provided in subsection (c) and (d), to the credit of the state general fund.

(b) A revolving fund, designated as "compensating tax refund fund" not to exceed \$10,000 shall be set apart and maintained by the director from compensating tax collections and estimated tax collections and held by the state treasurer for prompt payment of all compensating tax refunds. Such fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act.

(c) (1) The state treasurer shall credit $\frac{5}{98}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 4.9%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.

(2) *The state treasurer shall credit $\frac{5}{104}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 5.2%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.*

(3) *The state treasurer shall credit $\frac{5}{106}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 5.3%, and deposited as provided in subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.*

(4) *The state treasurer shall credit $\frac{1}{20}$ of the revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, at the rate of 5%, and deposited as provided by subsection (a), exclusive of amounts credited pursuant to subsection (d), in the state highway fund.*

(d) The state treasurer shall credit all revenue collected or received from the tax imposed by K.S.A. 79-3703, and amendments thereto, as certified by the director, from taxpayers doing business within that portion of a redevelopment district occupied by a redevelopment project that was determined by the secretary of commerce and housing to be of statewide as well as local importance or will create a major tourism area for the state as defined in K.S.A. 12-1770a, and amendments thereto, to the city bond finance fund created by subsection (d) of K.S.A. 79-3620, and amendments thereto. The provisions of this subsection shall expire when the total of all amounts credited hereunder and under subsection (d) of K.S.A. 79-3620, and amendments thereto, is sufficient to retire the special obligation bonds issued for the purpose of financing all or a portion of the costs of such redevelopment project.

Sec. 11. K.S.A. 2001 Supp. 79-32,206 is hereby amended to read as follows: 79-32,206. For all taxable years commencing after December 31, ~~1997~~ 2001, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, the premiums tax upon insurance companies imposed pursuant to K.S.A. 40-252, and amendments thereto, and the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, an amount equal to 15% of the property tax levied for property tax ~~year 1998~~ years 2002, 2003 and 2004, 20% of the property tax levied for property tax years 2005 and 2006, and 25% of the property tax levied for property tax years 2007, and all such years thereafter, actually and timely paid during an income or privilege taxable year upon commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (5) or (6) of class 2 ~~and~~ machinery and equipment classified for such purposes in subclass (2) of class 2 ~~and railroad machinery and equipment classified for such purposes in subclass (3) of class 2~~. If the amount of such tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company.

Sec. 12. K.S.A. 79-3271 is hereby amended to read as follows: 79-3271. As used in this act, unless the context otherwise requires: (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations, except that for taxable years commencing after December 31, 1995, a taxpayer may elect that all income derived from the acquisition, management, use or disposition of tangible or intangible property constitutes business income. The election shall be effective and irrevocable for the taxable year of the election and the following nine taxable years. The election shall be binding on all members of a unitary group of corporations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, ~~investment company~~, or any type of insurance company, but such term shall not be deemed to include any business entity, other than those hereinbefore enumerated, whose primary business activity is making consumer loans or purchasing retail installment contracts from one or more sellers.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

(g) "Original return" means the first return filed to report the income of a taxpayer for a taxable year or period, irrespective of whether such return is filed on a single entity basis or a combined basis.

~~(g)~~ (h) "Sales" means all gross receipts of the taxpayer not allocated under K.S.A. 79-3274 through 79-3278, and amendments thereto.

~~(h)~~ (i) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

~~(i)~~ (j) "Telecommunications company" means any business entity or unitary group of entities whose primary business activity is the transmission of communications in the form of voice, data, signals or facsimile communications by wire or fiber optic cable.

~~(j)~~ (k) "Distressed area taxpayer" means a corporation which: (1) Is located in a county which has a population of not more than 45,000 persons and which, as certified by the department of commerce *and housing*, has sustained an adverse economic impact due to the closure of a state hospital in such county pursuant to the recommendations of the hospital closure commission; and (2) which has a total annual payroll of \$20,000,000 or more for employees employed within such county.

(l) *For the purposes of this subsection and subsection (b)(5) of K.S.A. 79-3279, and amendments thereto, the following terms are defined:*

(1) "Administration services" include clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for an investment company;

(2) "distribution services" include the services of advertising, servicing, marketing, underwriting or selling shares of an investment company, but, in the case of advertising, servicing or marketing shares, only where such service is performed by a person who is, or in the case of a closed end company, was, either engaged in the services of underwriting or selling investment company shares or affiliated with a person who is engaged in the service of underwriting or selling investment company shares. In the case of an open end company, such service of underwriting or selling shares must be performed pursuant to a contract entered into pursuant to 15 U.S.C. §80a-15(b), as in effect on the effective date this act;

(3) "investment company", means any person registered under the federal Investment Company Act of 1940, as in effect on the effective date of this act, or a company which

would be required to register as an investment company under such act except that such person is exempt to such registration pursuant to §80a-3(c)(1) of such act;

(4) "investment funds service corporation" includes any corporation or S corporation headquartered in and doing business in this state which derives more than 50% of its gross income from the provision of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company;

(5) "management services" include the rendering of investment advice to an investment company making determinations as to when sales and purchases of securities are to be made on behalf of the investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed:

(A) Pursuant to a contract with the investment company entered into pursuant to 15 U.S.C. §80a-15(a), in effect on the effective date of this act; or

(B) for a person that has entered into such contract with the investment company;

(6) "qualifying business income" is business income derived from the provision of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company; and

(7) "residence" is the fund shareholder's primary residence address.

Sec. 13. K.S.A. 79-3279 is hereby amended to read as follows: 79-3279. (a) All business income of railroads and interstate motor carriers of persons or property for-hire shall be apportioned to this state by multiplying the business income by a fraction, in the case of railroads, the numerator of which is the freight car miles in this state and the denominator of which is the freight car miles everywhere, and, in the case of interstate motor carriers, the numerator of which is the total number of miles operated in this state and the denominator of which is the total number of miles operated everywhere.

(b) All business income of any other taxpayer shall be apportioned to this state by one of the following methods:

(1) By multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three; or

(2) at the election of a qualifying taxpayer, by multiplying the business income by a fraction, the numerator of which is the property factor plus the sales factor, and the denominator of which is two.

(A) For purposes of this subsection (b)(2), a qualifying taxpayer is any taxpayer whose payroll factor for a taxable year exceeds 200% of the average of the property factor and the sales factor. Whenever two or more corporations are engaged in a unitary business and required to file a combined report, the ~~percentage fraction~~ comparison provided by this subsection (b)(2) shall be calculated by using the payroll factor, property factor and sales factor of the combined group of unitary corporations.

(B) An election under this subsection (b)(2) shall be made by including a statement with the original tax return indicating that the taxpayer elects to apply the apportionment method under this subsection (b)(2). The election shall be effective and irrevocable for the taxable year of the election and the following nine taxable years. The election shall be binding on all members of a unitary group of corporations. Notwithstanding the above, the secretary of revenue may upon the request of the taxpayer, grant permission to terminate the election under this subsection (b)(2) prior to expiration of the ten-year period.

(3) At the election of a qualifying telecommunications company, by multiplying the business income by a fraction, the numerator of which is the information carrying capacity of wire and fiber optic cable available for use in this state, and the denominator of which is the information carrying capacity of wire and fiber optic cable available for use everywhere during the tax year.

(A) For purposes of this subsection (b)(3), a qualifying telecommunications company is a telecommunications company that is a qualifying taxpayer under paragraph (A) of subsection (b)(2).

(B) A qualifying telecommunications company shall make the election under this subsection (b)(3) in the same manner as provided under paragraph (B) of subsection (b)(2).

(4) At the election of a distressed area taxpayer, by multiplying the business income by the sales factor. The election shall be made by including a statement with the original tax return indicating that the taxpayer elects to apply this apportionment method. The election may be made only once, it must be made on or before December 31, 1999 and it shall be effective for the taxable year of the election and the following nine taxable years for so long as the taxpayer maintains the payroll amount prescribed by subsection (j) of K.S.A. 79-3271.

(5) *At the election of the taxpayer made at the time of filing of the original return, the qualifying business income of any investment funds service corporation organized as a corporation or S corporation which maintains its primary headquarters and operations or is a branch facility that employs at least 100 individuals on a full-time equivalent basis in this state and has any investment company fund shareholders resided in this state shall be apportioned to this state as provided in this subsection, as follows:*

(A) *By multiplying the investment funds service corporation's qualifying business income from administration, distribution and management services provided to each investment company by a fraction, the numerator of which shall be the average of the number of shares owned by the investment company's fund shareholders resided in this state at the beginning of and at the end of the investment company's taxable year that ends with or within the investment funds service corporation's taxable year, and the denominator of which shall be the average of the number of shares owned by the investment company's fund shareholders everywhere at the beginning of and at the end of the investment company's taxable year that ends with or within the investment funds service corporation's taxable year.*

(B) *A separate computation shall be made to determine the qualifying business income from each fund of each investment company. The qualifying business income from each investment company shall be multiplied by the fraction calculated pursuant to paragraph (A) for each fund of such investment company.*

(C) *The qualifying portion of total business income of an investment funds service corporation shall be determined by multiplying such total business income by a fraction, the numerator of which is the gross receipts from the provision of management, distribution and administration services to or on behalf of an investment company, and the denominator of which is the gross receipts of the investment funds service company. To the extent an investment funds service corporation has business income that is not qualifying business income, such business income shall be apportioned to this state pursuant to subsection (b)(1).*

(D) *For tax year 2002, the tax liability of an investment funds service corporation that has elected to apportion its business income pursuant to paragraph (5) shall be increased by an amount equal to 50% of the difference of the amount of such tax liability if determined pursuant to subsection (b)(1) less the amount of such tax liability determined with regard to paragraph (5).*

(E) *When an investment funds service corporation is part of a unitary group, the business income of the unitary group attributable to the investment funds service corporation shall be determined by multiplying the business income of the unitary group by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. The property factor is a fraction, the numerator of which is the average value of the investment funds service corporation's real and tangible personal property owned or rented and used during the tax period and the denominator of which is the average value of the unitary group's real and tangible personal property owned or rented and used during the tax period. The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the investment funds service corporation for compensation, and the denominator of which is the total compensation paid by the unitary group during the tax period. The sales factor is a fraction, the numerator of which is the total sales of the investment funds service corporation during the tax period, and the denominator of which is the total sales of the unitary group during the tax period.*

(F) *In the event that any taxpayer which has elected to apportion its business income pursuant to subsection (b)(5) no longer maintains its primary headquarters and operations in this state or, with respect to a branch facility, no longer employs at least 100 individuals in this state on a full-time equivalent basis, and maintains at least 95% of the Kansas em-*

employees in existence at the time the taxpayer first makes such election within five years after the year in which such election was made, the tax liability for the first taxable year following the year such taxpayer is disqualified, shall be the amount equal to the sum of such taxpayer's liability determined pursuant to subsection (b)(1) for such taxable year plus an amount equal to the amount of tax liability determined pursuant to subsection (b)(1) less the amount of such tax liability determined pursuant to subsection (b)(5) for all taxable years for which such election was made.

New Sec. 14. The provisions of sections 12 and 13 of this act shall be applicable to all taxable years commencing after December 31, 2001.

New Sec. 15. As used in sections 15 through 18 of this act:

(a) "Establishment" means a business that:

(1) Has at least \$100,000,000 in existing annual gross compensation paid to jobs located in Kansas, according to reports filed with the secretary of human resources, for the previous three years;

(2) has an average annual gross compensation of at least \$40,000 paid per existing employee;

(3) currently has at least \$200,000,000 total investment in Kansas;

(4) intends to add investment, in the state as defined in subsection (d), for modernization and retooling of at least \$50,000,000 within five years from the effective date of this act or within five years of contracting with the department of commerce and housing; and

(5) is described by north American industrial classification code number 326211, tire manufacturing.

(b) "Gross compensation" means wages and benefits paid to or on behalf of employees receiving wages.

(c) "Secretary" means the secretary of commerce and housing.

(d) "Invest" or "investment" for the purpose of determining the eligibility of an establishment for the incentive payments created pursuant to this act, means an amount greater than the average amount invested by the establishment over the five years prior to the effective date of this act or for investments made after July 1, 2003, over the five years prior to entering into a contract with the secretary. If an establishment has been engaged in commercial operations for less than five years, the amount invested shall be greater than the annual average amount invested by the establishment for the entire period of commercial operation.

New Sec. 16. The Kansas development finance authority is hereby authorized to issue obligations in a principal amount not to exceed \$10,000,000 upon certification by the department of commerce and housing that an establishment has entered into a contract with the secretary pursuant to this act. The authority shall issue such obligations in an amount of \$1 for every \$5 the establishment shall invest as required pursuant to section 15, and amendments thereto. The maximum maturity of bonds issued pursuant to this act shall be 15 years. Such obligations shall be issued within 60 days of the date by which the secretary receives the signed contract required pursuant to section 17, and amendments thereto. The proceeds of such issuance shall be used by the authority for acquiring or improving real property or acquiring or replacing personal property for modernizing and retooling of an establishment in the state. Subject to appropriation, the debt service on such obligations shall be paid by the transfer of an amount not to exceed 75% of the revenue realized from payments by employees of the establishment pursuant to K.S.A. 79-3294, *et seq.*, and amendments thereto, but no such transfer shall commence prior to July 1, 2003.

New Sec. 17. An establishment shall enter into a contract with the secretary in which in return for incentive payments authorized pursuant to section 16, and amendments thereto, the establishment agrees that, in the event that insufficient revenue is realized by the payments made pursuant to section 16, and amendments thereto, the establishment shall be responsible for the debt services on obligations issued pursuant to this act. The contract shall include a specified amount which the establishment agrees to invest in the state and shall be the basis for determining the amount of obligations issued pursuant to section 16, and amendments thereto. In the event the establishment invests a lesser amount the establishment shall repay any amount received at a ratio of \$1 for each \$5 of the difference between the amount pledged and the amount actually invested. The contract shall

further specify that, in the event the rate of taxation set forth in the Kansas income tax act is abolished and insufficient revenue is realized to meet the debt service on the obligations issued pursuant to this act, the establishment shall not be responsible for any amount of shortfall attributable to such reduction in rates. The contract may specify such additional terms and conditions as may be necessary to administer this act. The secretary may include provisions in the contract to reduce the amount of eligible tax credits or other benefits on the investment to support such bond repayment.

New Sec. 18. The establishment shall not be allowed credits pursuant to K.S.A. 79-32,160a, and amendments thereto, for any amount of investment related to or computed on the basis of any investment of the proceeds of obligations issued pursuant to this act.

Sec. 19. On and after June 1, 2002, K.S.A. 79-3310 and 79-3312 and K.S.A. 2001 Supp. 79-3311, 79-3603, 79-3620, 79-3635, 79-3703 and 79-3710 are hereby repealed.

Sec. 20. On July 1, 2002, K.S.A. 2001 Supp. 79-3603, as amended by section 1 of 2002 Senate Bill No. 372 is hereby repealed.

Sec. 21. K.S.A. 79-3271 and 79-3279 and K.S.A. 2001 Supp. 79-32,206 are hereby repealed.

Sec. 22. This act shall take effect and be in force from and after its publication in the Kansas register.”;

In the title, in line 14, by striking all after “to”; by striking all in lines 15 through 17 and inserting the following: “taxation; amending K.S.A. 79-3271, 79-3279, 79-3310 and 79-3312 and K.S.A. 2001 Supp. 79-32,206, 79-3311, 79-3603, 79-3620, 79-3635, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 79-3603, as amended by section 1 of 2002 Senate Bill No. 372.”;

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

JOHN T. EDMONDS
DAVID HUFF
Conferees on part of House

DAVID R. CORBIN
LYNN JENKINS
Conferees on part of Senate

On motion of Rep. Edmonds to adopt the conference committee report on **SB 39**, the motion did not prevail.

Call of the House was demanded.

On roll call, the vote was: Yeas 50; Nays 71; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aday, Aurand, Ballard, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cox, DiVita, Dreher, Edmonds, Freeborn, Glasscock, Hermes, Holmes, Horst, Huff, Humerickhouse, Hutchins, Johnson, Krehbiel, Lane, Light, Lightner, Lloyd, Loyd, Mason, Mays, Merrick, Jim Morrison, Judy Morrison, Newton, O’Neal, Owens, Patterson, J. Peterson, Pottorff, Ray, Schwartz, Shultz, Sloan, Stone, Storm, Tafanelli, Tanner, Tomlinson, Vickrey, Wilk.

Nays: Ballou, Barnes, Burroughs, Cook, Crow, Dahl, DeCastro, Dillmore, Faber, Feuerborn, Findley, Flaharty, Flora, Garner, Gatewood, Gilbert, Goering, Grant, Hayzlett, Henderson, Henry, Howell, Huebert, Huy, Kauffman, Kirk, Klein, Kuetner, Landwehr, Larkin, Levinson, Loganbill, M. Long, P. Long, McClure, McCreary, McKinney, McLeland, Miller, Minor, Myers, Nichols, Novascone, Osborne, Ostmeyer, Palmer, Pauls, E. Peterson, Phelps, L. Powell, T. Powell, Powers, Pyle, Reardon, Rehorn, Ruff, Sharp, Showalter, Shriver, Spangler, Swenson, Thimesch, R. Toelkes, Toplikar, Weber, Wells, Welshimer, D. Williams, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: Gordon, Mayans, Neufeld, O’Brien.

EXPLANATION OF VOTE

MR. SPEAKER: While we enthusiastically support provisions in this bill that provide economic incentives for the Goodyear plant in Topeka, we cannot in good conscience support the regressive tax increases also included in the bill. Increasing the sales tax on food and

other daily necessities will hurt low and middle-income families and seniors on fixed incomes the most. If the Goodyear provisions were allowed to stand on their own merits, instead of being used to prop up the Republican's flawed tax increases, we'd be voting yes today. Instead, we must vote against these tax increases that unfairly single out our constituents. We vote no on **SB 39**.—VAUGHN FLORA, NANCY KIRK, ROCKY NICHOLS, ROGER E. TOELKES, ANNIE KUETHER

INTRODUCTION OF ORIGINAL MOTIONS

Having voted on the prevailing side, Rep. Larkin moved that the House reconsider its adverse action in not adopting the conference committee report on **SB 39**. The motion prevailed.

The question then reverted back to the original motion of Rep. Edmonds to adopt the conference committee report on **SB 39**. Rep. Larkin offered a substitute motion to not adopt the conference committee report and that a new conference committee be appointed. The motion prevailed.

Speaker pro tem Aurand thereupon appointed Rep. Edmonds, Huff and Larkin as fourth conferees on the part of the House.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 472**, submits the following report:

The House recedes from its amendments to the bill, and your committee on conference further agrees to amend the bill as originally printed as follows:

On page 6, after line 37, by inserting the following:

“Sec. 2. K.S.A. 2001 Supp. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a, and amendments thereto:

(1) “Gallon” means wine gallon.

(2) “Federal area” means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(3) “Malt product” means malt syrup, malt extract, liquid malt or wort.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of ~~\$-16~~ \$.25 per gallon on beer and cereal malt beverage; ~~\$-20~~ \$.28 per gallon on all wort or liquid malt; ~~\$-10~~ \$.14 per pound on all malt syrup or malt extract; ~~\$-30~~ \$.42 per gallon on wine containing 14% or less alcohol by volume; ~~\$-75~~ \$1.05 per gallon on wine containing more than 14% alcohol by volume; and ~~\$2-50~~ \$3.45 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private citizen outside the borders of the United States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

(c) Manufacturers, microbreweries, farm wineries or distributors at wholesale of alcoholic liquor or cereal malt beverage shall be exempt from the payment of the gallonage tax imposed on alcoholic liquor and cereal malt beverage, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires,

that the liquor or cereal malt beverage was manufactured in this state but was shipped out of the state for sale and consumption outside the state.

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

(e) The tax provided for by this section is not imposed upon:

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

(2) the privilege of engaging in any business of interstate commerce or otherwise, which business may not be made the subject of taxation by this state under the constitution and statutes of the United States.

(f) The tax imposed by this section shall be in addition to all other taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof.

(g) Retail sales of alcoholic liquor, sales of beer to consumers by microbreweries and sales of wine to consumers by farm wineries shall not be subject to the tax imposed by the Kansas retailers' sales tax act but shall be subject to the enforcement tax provided for in this act.

(h) Notwithstanding any ordinance to the contrary, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, microbrewery, farm winery, retailer or nonbeverage user under this act and doing business within the boundaries of the city except as specifically authorized by K.S.A. 41-310, and amendments thereto.

(i) The director shall collect the taxes imposed by this section and shall account for and remit all moneys collected from the tax to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit ~~to~~ 7.25% of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and shall credit the balance of the moneys collected to the state general fund.

(j) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon the manufacturer or distributor shall be reduced by the amount of the taxes which have been paid under this section as to the alcoholic liquor so used.

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanatoria or other institutions caring for the sick. Any school, college, hospital, sanatorium or other institution caring for the sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of \$2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine, the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to

have any other license to purchase alcohol or wine from a microbrewery, farm winery, manufacturer or distributor.

New Sec. 3. On July 1, 2002, a tax at the rate of \$.07 per gallon on all beer and cereal malt beverage, \$.12 per gallon for wine containing 14% or less of alcohol by volume, \$.30 per gallon for wine containing more than 14% of alcohol by volume, \$.95 per gallon on alcohol and spirits, \$.08 per gallon on wort and liquid malt, and \$.04 per pound of malt syrup and malt extract, is hereby imposed on the manufacture, use, sale, storage or purchase of such alcoholic liquors owned at 12:01 a.m., on July 1, 2002, by a licensed distributor or retail dealer as to which the tax has been imposed as provided in K.S.A. 41-501, and amendments thereto. Such tax shall be paid by the licensed distributor or retail dealer owning such alcoholic liquors, cereal malt beverage or beer at such time and date. On or before July 25, 2002, every such distributor and retail dealer shall make a report to the director on a form prescribed and furnished by the director showing the total number of gallons of such alcoholic liquors, cereal malt beverage or beer so owned at 12:01 a.m. on July 1, 2002, and such report shall be accompanied by a remittance of 33 $\frac{1}{3}$ % of the tax due. The remainder of such tax liability shall be remitted in equal installments on or before September 1, 2002, and December 1, 2002.

The license of any licensed distributor or retail dealer who shall fail to make such report or pay such tax, within the time hereinbefore prescribed, shall be subject to suspension or revocation as provided by K.S.A. 41-320, and amendments thereto. All taxes collected by the director under this section shall be paid into the state treasury and the state treasurer shall credit the same to the state general fund.

Sec. 4. K.S.A. 2001 Supp. 79-201w is hereby amended to read as follows: 79-201w. The following described property, to the extent specified by this section, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

(a) Any item of machinery, equipment, materials and supplies which, except for the operation of the provisions of this section, would be required to be listed for the purpose of taxation pursuant to K.S.A. 79-306, and amendments thereto, and which is used or to be used in the conduct of the owner's business, or in the conduct of activities by an entity not subject to Kansas income taxation pursuant to K.S.A. 79-32,113, and amendments thereto, whose original retail cost when new is \$250 or less for tax year 2002, and \$400 or less for tax year 2003, and all tax years thereafter.

(b) ~~The provisions of this section shall apply to all taxable years commencing after December 31, 1995;~~

Also, on page 6, in line 38 after "Supp." by inserting "41-501, 79-201w,";

By renumbering existing sections accordingly;

In the title, in line 9, by striking "sales"; also, in line 9, by striking all after the semicolon; in line 10, after "Supp." by inserting "41-501, 79-201w and"; also, in line 10, by striking "sec-"; in line 11, by striking "tion" and inserting "sections";

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

JOHN T. EDMONDS
DAVID HUFF
BRUCE LARKIN
Conferees on part of House

DAVID R. CORBIN
LYNN JENKINS
JANIS K. LEE
Conferees on part of Senate

On motion of Rep. Huff to adopt the conference committee report on **SB 472**, the motion did not prevail.

On roll call, the vote was: Yeas 32; Nays 88; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aday, Aurand, Benlon, Bethell, Compton, Cox, Dahl, DiVita, Dreher, Freeborn, Glasscock, Hayzlett, Huff, Lane, Lightner, Lloyd, Loyd, Merrick, Judy Morrison, Newton,

O'Neal, Owens, Patterson, Pottorff, L. Powell, Ray, Stone, Storm, Tanner, Tomlinson, Weber, Wilk.

Nays: Ballard, Ballou, Barnes, Beggs, Boston, Burroughs, Cook, Crow, DeCastro, Dillmore, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Garner, Gatewood, Gilbert, Goering, Grant, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Larkin, Levinson, Light, Loganbill, M. Long, P. Long, Mason, Mays, McClure, McCreary, McKinney, McLeland, Miller, Minor, Jim Morrison, Myers, Nichols, Novascone, Osborne, Ostmeyer, Palmer, Pauls, E. Peterson, J. Peterson, Phelps, T. Powell, Powers, Pyle, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Spangler, Swenson, Tafanelli, Thimesch, R. Toelkes, Toplikar, Vickrey, Wells, Welshimer, D. Williams, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: Campbell, Gordon, Mayans, Neufeld, O'Brien.

EXPLANATION OF VOTE

MR. SPEAKER: As a fiscal conservative, this is the one tax bill I can support and feel good about. Research on the societal costs of alcohol-related crashes in Kansas shows that alcohol is a factor in 28% of Kansas' crash costs. The average alcohol-related fatality cost is 3.2 million, that is 1.2 M in monetary costs and 2 M in quality of life losses. The cost per injured survivor of an alcohol-related crash is \$79,000. As we all recognize, alcohol is readily available and easily accessible to the youth of Kansas. A significant increase in the cost of alcohol may help to reduce its consumption by our Kansas youth, and thereby protect and save many innocent lives. I vote yes on **SB 472**.—KAREN DIVITA-JOHNSON

INTRODUCTION OF ORIGINAL MOTIONS

Having voted on the prevailing side, Rep. Larkin moved that the House reconsider its adverse action in not adopting the conference committee report on **SB 472**. The motion prevailed.

The question then reverted back to the original motion of Rep. Edmonds to adopt the conference committee report on **SB 472**. Rep. Larkin offered a motion to not adopt the conference committee report and that a new conference committee be appointed. The motion prevailed.

Speaker pro tem Aurand thereupon appointed Reps Edmonds, Huff and Larkin as second conferees on the part of the House.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 119**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with House Committee amendments, as follows:

On page 1, by striking all after the enacting clause;

By striking all on pages 2 through 19 and by inserting the following:

"Section 1. As used in this act: (a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 40-3401 and K.S.A. 7-121b, and amendments thereto, except that "health care provider" shall not include a health maintenance organization.

(b) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the author-

ized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient, a patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records, within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. A health care provider may withhold copies of health care records if the health care provider reasonably believes that providing copies of the requested records will cause substantial harm to the patient or another person. Health care providers may condition the furnishing of the patient's health care records to the patient, the patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records, upon the payment of charges not to exceed a \$15 fee for the cost of supplies and labor; and for copies of health care records routinely duplicated on a standard photocopy machine, \$.50 per page for the first 250 pages and \$.35 per page for additional pages. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

(b) On January 1, 2004, and annually thereafter, the fees set forth in subsection (a) shall be increased by the secretary of human resources in accordance with the all-items consumer price index published by the United States department of labor.

Sec. 3. Any health care provider, patient, authorized representative or any other entity authorized by law to obtain or reproduce such records may bring a claim or action to enforce the provisions of this act. The petition shall include an averment that the party bringing the action has in good faith conferred or attempted to confer with the other party concerning the matter in dispute without court action. Upon a showing that the failure to comply with this act was without just cause or excuse, the court shall award the costs of the action and order the records produced without cost or expense to the prevailing party.

Sec. 4. Nothing in this act shall be construed to prohibit the state board of healing arts from adopting and enforcing rules and regulations not inconsistent with this act that require licensees of the board to furnish health care records to patients or to their authorized representative. To the extent that the board determines that an administrative disciplinary remedy is appropriate for violation of such rules and regulations, that remedy is separate from and in addition to the provisions of this act.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.;

On page 1, in the title, by striking all after "AN ACT" and inserting "concerning access to health care records by patients, authorized representatives and certain other persons and entities; relating to fees; claims or actions to enforce.;"

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

MICHAEL R. O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

JOHN VRATIL
EDWARD W. PUGH
GRETA GOODWIN
Conferees on part of Senate

On motion of Rep. O'Neal, the conference committee report on **SB 119** was adopted.

On roll call, the vote was: Yeas 116; Nays 3; Present but not voting: 0; Absent or not voting: 6.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goering, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Hu-

merickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, O'Neal, Osborne, Ostmeyer, Owens, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Showalter, Shriver, Shultz, Sloan, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Cook, Sharp, Spangler.

Present but not voting: None.

Absent or not voting: Campbell, Gordon, Mayans, Neufeld, O'Brien, Stone.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2075**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as Senate Substitute for House Bill No. 2075, as follows:

On page 1, in line 27, by striking "or" where it appears for the last time; in line 31, by striking the period and inserting: "which is a dwelling; or

(3) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159, and amendments thereto, damaging any building or property which is not a dwelling.";

Also on page 1, in line 32, by striking the comma where it appears for the last time and inserting "or"; in line 33, by striking "(a)(2)"; in line 35, by striking "or" and inserting a comma; also in line 35, after "(a)(1)(D)" by inserting "or (a)(3)"; after line 35, by inserting: "(3) Arson, as described in subsection (a)(2), is a severity level 7, person felony.";

Also on page 1, by striking all in lines 36 through 43;

By striking all on pages 2 and 3;

On page 4, by striking all in lines 1 through 33;

And by renumbering sections accordingly;

On page 9, by striking all in lines 19 through 43;

By striking all on page 10;

On page 11, by striking all in lines 1 through 22;

And by renumbering sections accordingly;

Also on page 11, in line 23, by striking "60-4117,"; also in line 23, by striking the comma after "65-4152" and inserting "and"; in line 24, by striking "and 74-9501" and inserting "are";

On page 1, in the title, in line 10, by striking "en-"; by striking all in line 11; in line 12, by striking "duties,"; also in line 12, by striking "60-4117,"; in line 13, by striking the comma after "4152" and inserting "and"; also in line 13, by striking "and 74-9501";

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

JOHN VRATIL
DEREK SCHMIDT
GRETA GOODWIN
Conferees on part of Senate

MICHAEL R. O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

On motion of Rep. O'Neal, the conference committee report on **S. Sub. for HB 2075** was adopted.

On roll call, the vote was: Yeas 118; Nays 1; Present but not voting: 0; Absent or not voting: 6.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Compton, Cook, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goeing, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, O'Neal, Osborne, Ostmeyer, Owens, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Sharp, Showalter, Shriver, Shultz, Sloan, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Spangler.

Present but not voting: None.

Absent or not voting: Campbell, Gordon, Mayans, Neufeld, O'Brien, Schwartz.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2078**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 1, in line 30, by striking "If" and inserting "Except as provided further, if"; in line 36, following the period, by inserting "If the merchant recovers the merchandise in merchantable condition, the civil penalty against the parent, as provided in this subsection, shall be \$50.";

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

JOHN VRATIL
DAVID ADKINS
GRETA GOODWIN
Conferees on part of Senate

MICHAEL R. O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

On motion of Rep. O'Neal, the conference committee report on **HB 2078** was adopted.

On roll call, the vote was: Yeas 95; Nays 23; Present but not voting: 0; Absent or not voting: 7.

Yeas: Aday, Aurand, Ballard, Barnes, Beggs, Benlon, Bethell, Boston, Compton, Cox, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Feuerborn, Findley, Freeborn, Garner, Gatewood, Glasscock, Grant, Hayzlett, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Krehbiel, Landwehr, Larkin, Levinson, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, O'Neal, Owens, Palmer, Patterson, Pauls, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Pyle, Ray, Reardon, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Ballou, Burroughs, Cook, Crow, Faber, Flaharty, Flora, Gilbert, Goeing, Henderson, Kirk, Klein, Kuether, Lane, Miller, Osborne, Ostmeyer, E. Peterson, Powers, Rehorn, Spangler, Stone, Wells.

Present but not voting: None.

Absent or not voting: Campbell, Gordon, Light, Mayans, Neufeld, O'Brien, Sloan.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2175**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 3, in line 13, by striking "2000" and inserting "2001"; in line 21, by striking "Thereafter" and inserting "After such payment of the fee and renumbering of the case"; by striking all of lines 35 through 43;

By striking all of page 4;

On page 5, by striking all of lines 1 through 20; before line 21, by inserting the following: "Sec. 2. K.S.A. 2001 Supp. 61-2803 is hereby amended to read as follows: 61-2803. The supreme court of this state shall adopt rules to govern the electronic filing of court matters and the storage of and access by the public to the same; ~~to govern the form of pleadings, other documents to be filed~~ and such other matters as is necessary under the code of civil procedure for limited actions.

Sec. 3. K.S.A. 2001 Supp. 61-2907 is hereby amended to read as follows: 61-2907. (a) The petition shall be served on the defendant in accordance with the provisions of K.S.A. 2001 Supp. 61-3001 through 61-3006, and amendments thereto.

(b) All pleadings other than the petition, motions which cannot be heard ex parte, notices, and orders which are required by their terms to be served, shall be served upon the party's attorney of record, if the party is represented by an attorney, or upon the party if not represented by an attorney, in the following manner:

(1) By delivering a copy;

(2) by mailing a copy by first-class mail, certified mail or registered mail to the last known address; or

(3) if no address is known, by leaving a copy with the clerk of the court. For the purposes of this subsection, delivering a copy means: Handing it to the attorney or to the party; leaving it at the attorney's or party's office with the ~~clerk or other~~ person in charge thereof or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the attorney's or party's office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. All such pleadings, motions, notices and orders covered by this subsection shall be filed with the court either before service or within a reasonable time thereafter.

(c) The filing of pleadings and other papers with the court as required or permitted by this act shall be done in accordance with rules *or orders* of the supreme court.

Sec. 4. K.S.A. 2001 Supp. 61-3002 is hereby amended to read as follows: 61-3002. (a) The summons shall be issued by the clerk; *and* dated the day it is issued ~~and contain the information set forth in the rules to be adopted by the supreme court of this state~~. The summons shall state the time when the law requires the defendant to appear or file an answer in response to the petition, and shall notify such defendant that in case of such defendant's failure to appear or file an answer, judgment by default will be rendered against such defendant for the relief demanded in the petition. ~~The summons shall be in substantially the form set forth in the rules to be adopted hereunder by the supreme court.~~

(b) The time stated in the summons requiring the defendant to appear in response to the petition shall be determined by the court. Such time shall be not less than 11 nor more than 50 days after the date the summons is issued.

Sec. 5. K.S.A. 2001 Supp. 61-3003 is hereby amended to read as follows: 61-3003. (a) Methods of service of process within this state, except service by publication, are described in this section. Service of process outside the state shall be made in substantial compliance with the applicable provisions of K.S.A. 60-308, and amendments thereto.

(b) Who serves process. The sheriff of the county in which the action is filed shall serve any process by any method authorized by this section, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

(c) Service by return receipt delivery.

(1) Service of process by return receipt delivery shall include service effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery.

(2) The sheriff, party or party's attorney shall cause a copy of the process and petition or other document to be placed in a sealed envelope addressed to the person to be served in accordance with K.S.A. 2001 Supp. 61-3004, and amendments thereto, with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the person or entity effecting delivery.

(3) Service of process shall be considered obtained under K.S.A. 2001 Supp. 61-2902, and amendments thereto, upon the delivery of the sealed envelope.

(4) After service and return of the receipt, the sheriff, party, or party's attorney shall execute a return on service stating the nature of the process, to whom delivered, the date of delivery, the address where delivered, and the person or entity effecting delivery. The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery.

(5) If the sealed envelope is returned with an endorsement showing refusal to accept delivery, the sheriff, party or the party's attorney may send a copy of the process and petition or other document by first-class mail addressed to the party to be served, or may elect other methods of service. If mailed, service shall be considered obtained three days after the mailing by first-class mail, postage prepaid, which shall be evidenced by a certificate of service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered for any reason, the sheriff, party or party's attorney shall file an amended certificate of service with the clerk indicating nondelivery, and service by such mailing shall not be considered obtained. Mere failure to claim return receipt delivery is not refusal of service within the meaning of this subsection.

(d) Personal and residence service.

(1) The party may file a written request with the clerk for personal or residence service. Personal service shall be made by delivering or offering to deliver a copy of the process and accompanying documents to the person to be served. Residence service shall be made by leaving a copy of the process and petition, or other document to be served, at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion residing therein. If service cannot be made upon an individual, other than a minor or a disabled person, by personal or residence service, service may be made by leaving a copy of the process and petition, or other document to be served, at the defendant's dwelling house or usual place of abode and mailing a notice that such copy has been left at such house or place of abode to the individual by first-class mail.

(2) When process is to be served under this subsection, the clerk of the court shall deliver the process and sufficient copies of the process and petition, or other document to be served, to the sheriff of the county where the process is to be served or, if requested, to a person appointed to serve process or to the plaintiff's attorney.

(3) Service, levy and execution of all process under this subsection, including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, shall be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas or by some person appointed as a process server by a judge or clerk of the district court, except that a subpoena may also be served by any other person who is not a party and is not less than 18 years of age. Process servers shall be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time. A process server or an authorized attorney may make the service anywhere in or out of the state and shall be allowed the fees prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and such other fees and costs as the court shall allow. All persons authorized under this subsection to serve, levy and execute process shall be considered an "officer" as used in K.S.A. 60-706 and 60-2401, and amendments thereto.

(4) In all cases when the person to be served, or an agent authorized by the person to accept service of process, refuses to receive copies thereof, the offer of the duly authorized process server to deliver copies thereof, and the refusal, shall be a sufficient service of the process.

(e) Publication service. Service of process by publication may be made pursuant to the provisions of K.S.A. 60-307, and amendments thereto, which are not inconsistent or in conflict with this act.

(f) Acknowledgment or appearance. An acknowledgment of service on the summons is equivalent to service. The voluntary appearance by a defendant is equivalent to service as of the date of appearance.

(g) *In addition to other methods listed in this section*, the person serving process may serve a garnishment process in any of the following methods:

(1) First class mail. Process may be sent to a person by first-class mail by placing a copy of the process and petition or other document to be served in an envelope addressed to the person to be served in accordance with K.S.A. 2001 Supp. 61-3004, and amendments thereto, at such person's last known address. The envelope used for such service shall be addressed to the person in accordance with K.S.A. 2001 Supp. 61-3004, and amendments thereto, and shall contain adequate postage. Such envelope shall be sealed and placed in the United States mail. Service by first-class mail shall be complete when the envelope is placed in the mail unless returned undelivered. Service shall be considered obtained upon the mailing by first-class mail unless returned undelivered.

(2) Telefacsimile communication. Process may be sent to a person by telefacsimile communication. Service is complete upon receipt of a confirmation generated by the transmitting machine.

(3) Internet electronic mail. Process may be sent to a person by internet electronic mail as provided in the rules to be adopted hereunder by the supreme court.

Sec. 6. K.S.A. 2001 Supp. 61-3302 is hereby amended to read as follows: 61-3302. (a) A judgment may be entered by master or other journal entry or judgment form approved by a judge. The judgment shall be effective from the date the journal entry or judgment form is filed with the clerk of the court. ~~The form of the journal entry or judgment form shall be set forth in the rules of the supreme court of this state.~~

(b) One or more cases may be shown on a *master* journal entry or judgment form ~~as set forth in the rules of the supreme court of this state.~~

(c) When more than one claim for relief is presented in a lawsuit, the court may direct the entry of a final judgment upon one or more but less than all of the claims upon such terms and conditions as set forth in the judgment of the court.

(d) Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, regardless of whether the party has demanded such relief in such party's pleadings. Upon entry of such judgment, the party in whose favor judgment is entered shall be deemed to have waived such party's right to recover any amount due in excess of such judgment, and such party may not recover in a subsequent lawsuit any amount in excess of such judgment.

(e) Whenever a party has commenced postjudgment proceedings for the enforcement of a judgment, and such judgment is subsequently set aside, reversed on appeal or otherwise nullified, such party shall not be liable for damages as a result of such postjudgment proceedings, unless it can be proven that the judgment upon which such proceedings were based was fraudulently obtained.

Sec. 7. K.S.A. 2001 Supp. 61-3505 is hereby amended to read as follows: 61-3505. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

(a) ~~The order of garnishment shall be substantially in compliance with the forms set forth in the rules of the supreme court of this state.~~

~~(b)~~ The order of garnishment and the appropriate form for the garnishee's answer shall be served on the garnishee in the same manner as process is to be served pursuant to K.S.A. 2001 Supp. 61-3001 through 61-3006, and amendments thereto, except that the garnishee may be served by any means provided under K.S.A. 2001 Supp. 61-3001 through 61-3006, and amendments thereto, at the garnishee's business or office location and this shall be

considered proper service. ~~Two copies~~ A copy of the answer form shall be served if the garnishment order is not served electronically. If the order is served prior to a judgment, the order shall also be served on the judgment debtor, if the judgment debtor can be found, except that the order shall not be served on the judgment debtor until after service has been made on the garnishee. Failure to serve the judgment debtor shall not relieve the garnishee from liability under the order.

~~(a)~~ (b) The order of garnishment shall have the effect of attaching:

(1) All intangible property, funds, credits or other indebtedness belonging to or owing the judgment debtor, other than earnings, which is in the possession or under the control of the garnishee, and all such credits and indebtedness due from the garnishee to the judgment debtor at the time of service of the order; and

(2) all such personal property coming into the possession or control of the garnishee and belonging to the judgment debtor, and all such credits and indebtedness becoming due to the judgment debtor between the time the order is served on the garnishee and the time the garnishee makes the answer of the garnishee. Where the garnishee is an executor or administrator of an estate in which the judgment debtor is or may become a legatee or distributee thereof, the order of garnishment shall have the effect of attaching and creating a first and prior lien upon any property or funds of such estate to which the judgment debtor is entitled upon distribution of the estate, and such garnishee shall be prohibited from paying over to the judgment debtor any of such property or funds until so ordered by the court from which the order of garnishment was issued.

~~(b)~~ (c) The garnishee, without prior agreement, may withhold and retain to defray the garnishee's costs, an administrative fee of \$10 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is greater than the amount of the funds, credits or indebtedness held by the garnishee, the fee shall be deducted from the amount withheld.

Sec. 8. K.S.A. 2001 Supp. 61-3507 is hereby amended to read as follows: 61-3507. This section shall apply if the garnishment is to attach earnings of the judgment debtor.

~~(a) The order of garnishment shall be substantially in compliance with the forms set forth in the rules of the supreme court of this state.~~

~~(b)~~ The order of garnishment and the appropriate form for the garnishee's answer shall be served on the garnishee in the same manner as process is to be served pursuant to K.S.A. 2001 Supp. 61-3001 through 61-3006, and amendments thereto, except that the garnishee may be served by any means provided under K.S.A. 2001 Supp. 61-3001 through 61-3006, and amendments thereto, at the garnishee's business or office location and this shall be considered proper service. ~~Two copies~~ A copy of the answer form shall be served if the garnishment order is not served electronically. If the party having requested the garnishment is notified by the garnishee that the judgment debtor has never been employed by the garnishee or the judgment debtor's employment has been terminated, the party seeking the garnishment shall forthwith file a release with the clerk of the court of such garnishment.

~~(b)~~ (b) The order of garnishment shall have the effect of attaching the nonexempt portion of the judgment debtor's earnings for all pay periods which end while the order is in effect. The order shall remain in effect until either of the following occur, whichever is sooner: (1) The judgment is paid; or (2) the garnishment is released. The party for whom the garnishment is issued shall file a release with the clerk of the court upon satisfaction of the judgment and provide a copy thereof to the defendant and garnishee. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310, and amendments thereto. Computation of the nonexempt portion of the judgment debtor's wages for the pay period or periods covered by the order shall be made in accordance with the directions accompanying the garnishee's answer form, and a written explanation of the garnishee's computations shall be furnished to the judgment debtor with each paycheck from which earnings are withheld pursuant to the order of garnishment. The order of garnishment shall also constitute an order of the court directing the garnishee to pay to the judgment creditor all earnings which are to be withheld by the garnishee under the order of garnishment as more particularly provided in the answer of the garnishee.

~~(d)~~ (c) From income due the judgment debtor, the garnishee may withhold and retain to defray the garnishee's costs, an administrative fee of \$10 for each pay period for which income is withheld, not to exceed \$20 for each 30 day period for which income is withheld, whichever is less. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment. If the addition of this fee causes the total amount withheld to exceed the restrictions imposed by subsection (b) of K.S.A. 60-2310, and amendments thereto, the fee shall be deducted from the amount withheld.

~~(e)~~ (d) For any continuing garnishment, the party having requested the garnishment shall maintain an accounting and record of the judgment reflecting thereon all garnishment proceeds received and applied, all interest accrued thereon, and any and all credits applied in satisfaction thereof, and the remaining unsatisfied balance of such judgment. The party requesting the garnishment shall produce a copy of such accounting and record upon request of the court.

Sec. 9. K.S.A. 2001 Supp. 61-3508 is hereby amended to read as follows: 61-3508. (a) Immediately following the time the order of garnishment is served on the garnishee, the party seeking the garnishment shall send a notice to the judgment debtor in any reasonable manner, notifying the judgment debtor:

(1) That a garnishment order has been issued against the judgment debtor and the effect of such order;

(2) of the judgment debtor's right to assert any claim of exemption allowed under the law with respect to a garnishment against property other than earnings or of the judgment debtor's right to object to the calculation of exempt and nonexempt earnings with respect to a garnishment against the earnings of the debtor; and

(3) of the judgment debtor's right to a hearing on such claim or objection. The notice shall be substantially in compliance with the form set forth in the rules of the supreme court of this state, and shall contain a description of the exemptions that are applicable to garnishments and the procedure by which the judgment debtor can assert any claim of exemption. A copy of the notice form shall be served on the garnishee with the order of garnishment.

(b) If the judgment debtor requests a hearing to assert any claim of exemption, the request shall be filed no later than 10 days following the date the notice is served on the judgment debtor. If a hearing is requested, the hearing shall be held by the court no sooner than five days nor later than 10 days after the request is filed. At the time the request for hearing is filed, the judgment debtor shall obtain from the clerk or court the date and time for the hearing which shall be noted on the request form. Immediately after the request for hearing is filed, the judgment debtor shall hand-deliver to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, or mail to the party seeking the garnishment or such party's attorney, if the party is represented by an attorney, by first-class mail at the party seeking the garnishment or such party's attorney's last known address, a copy of the request for hearing.

(c) If a hearing is held, the judgment debtor shall have the burden of proof to show that some or all of the property subject to the garnishment is exempt, and the court shall enter an order determining the exemption and such other order or orders as is appropriate.

Sec. 10. K.S.A. 2001 Supp. 61-3509 is hereby amended to read as follows: 61-3509. This section shall apply if the garnishment is to attach intangible property other than earnings of the judgment debtor.

~~(a) The answer of the garnishee shall be substantially in compliance with the forms set forth in the rules of the supreme court of this state.~~

~~(b) Within 10 days after service upon a garnishee of an order of garnishment the garnishee shall complete the answer in accordance with the instructions accompanying the answer form stating the facts with respect to the demands of the order and file the completed answer with the clerk of the court. The clerk shall cause a copy of the answer to be mailed promptly to the judgment creditor and judgment debtor at the addresses listed on the answer form. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.~~

Sec. 11. K.S.A. 2001 Supp. 61-3510 is hereby amended to read as follows: 61-3510. This section shall apply if the garnishment is to attach earnings of the judgment debtor.

(a) ~~The answer of the garnishee shall be substantially in compliance with the forms set forth in the rules of the supreme court of this state.~~

~~(b)~~ Within 15 days following the end of each month, the garnishee shall complete the answer in accordance with the instructions accompanying the answer form for all pay periods ending during the month and send the completed answer to each judgment creditor and judgment debtor at the addresses listed on the answer form. The garnishee shall designate on the answer in the space provided on the answer form the name and case number for each judgment creditor who has a garnishment order in effect for the same debtor at the end of each month and the amount that is due each judgment creditor under the garnishment in accordance with the instructions accompanying the answer form. Only one answer needs to be completed for each judgment debtor by the garnishee and the garnishee may duplicate the completed answer in any manner the garnishee desires for distribution to each judgment creditor and judgment debtor. The answer shall be supported by unsworn declaration in the manner set forth on the answer form.

~~(b)~~ If there are other liens against the judgment debtor's earnings which by law have priority over garnishments, the garnishee shall so indicate on the answer. In such event, the garnishment shall remain in effect but no earnings of the debtor shall be withheld under the garnishment order unless and until all of the other liens having priority are released or satisfied or the earnings being withheld under all of such liens are less than the amount which is exempt under K.S.A. 60-2310, and amendments thereto.

Sec. 12. K.S.A. 2001 Supp. 61-3513 is hereby amended to read as follows: 61-3513. This section shall apply if the garnishment is to attach earnings of the judgment debtor. If no reply is made to the answer of garnishee within 10 days following the date the garnishee has ~~completed~~ *sent the completed answer to the judgment creditor and judgment debtor*, the garnishee shall promptly thereafter pay the earnings withheld as indicated on the answer to all judgment creditors designated on the answer in the amount due each as indicated on the answer, unless the garnishee receives prior to such payment an order of the court to the contrary. If any judgment creditor receives more than they are entitled to, that judgment creditor shall promptly pay the excess amount pro-rata to the other judgment creditors designated on the answer, or if no such other judgment creditors are designated, the judgment creditor shall promptly pay the excess amount to the judgment debtor.

Sec. 13. K.S.A. 2001 Supp. 61-3604 is hereby amended to read as follows: 61-3604. (a) As an aid to the collection of a judgment, the judgment creditor is entitled to have an order for a hearing in aid of execution issued by the court at any time after 10 days after judgment. There is no requirement that an execution first be issued and returned unsatisfied. No application for such order needs to be filed except as specially required in this section.

(b) An order for a hearing in aid of execution may be issued at the request of a judgment creditor in an individual case or by a master request covering more than one case, and shall require the judgment debtor to *either: (1) Contact the judgment creditor or attorney prior to the date set for the hearing to furnish information under oath or penalty of perjury concerning the judgment debtor's property and income; or (2) appear and furnish information under oath or penalty of perjury when required by the court concerning the debtor's property and income before the court at a time and place specified in the order within the county where the court is situated.* ~~The form of the order shall be set forth in rules of the supreme court of this state.~~ The court may cancel the hearing if the judgment debtor has furnished to the judgment creditor satisfactory information concerning the debtor's property and income prior to the date and time for the hearing. Witnesses may also be subpoenaed to testify at the hearing.

(c) If the judgment debtor resides in another county in this state or outside of this state, the court can order such judgment debtor to appear if the court finds that it will not cause undue hardship on the judgment debtor to appear.

(d) It shall be the duty of the judge to assist in the enforcement of the judgments of the court. To this end, at any hearing in aid of execution, when the existence of any nonexempt property of the judgment debtor is disclosed, the court shall order the judgment debtor to deliver the property to the sheriff or a duly appointed process server. If the property is other than currency, the property shall be sold in the same manner as other property taken

under execution is sold and the proceeds from the sale shall be applied to the judgment and costs.

Sec. 14. K.S.A. 2001 Supp. 61-3606 is hereby amended to read as follows: 61-3606. If a person fails to appear in response to an order for a hearing in aid of execution, or if a person who has been subpoenaed to testify at the hearing fails to appear or to testify concerning anything about which the person can lawfully be questioned, the court shall issue a citation for contempt to that person providing that the person must ~~either:~~

~~(a) Contact the judgment creditor or attorney within 10 days to furnish information under oath or penalty of perjury concerning the judgment debtor's property and income; or~~

~~(b) appear in court at a date and time specified to show cause why the debtor should not be held in contempt and punished for contempt. The form of the citation for contempt shall be set forth in rules of the supreme court of this state.~~ The citation for contempt does not need to be supported by affidavit or other verification.

Sec. 15. K.S.A. 2001 Supp. 61-3608 is hereby amended to read as follows: 61-3608. (a) If a person fails to comply with the ~~either of the~~ requirements of K.S.A. 2001 Supp. 61-3606, and amendments thereto, or if it appears to the court that the person is hiding to avoid the process of the court or is about to leave the county for that purpose, the court may issue a bench warrant commanding the sheriff to whom it is directed to bring such person before the court to answer for contempt. The bench warrant does not need to be supported by affidavit or other verification. The court may make such orders concerning the release of the person pending the hearing as the court deems proper.

(b) When such person is brought before the court, a hearing shall be held to determine if the person should be punished for contempt. If the court determines that the person is guilty of contempt, the court may punish the person by a fine in an amount to be set by the court or by imprisonment in the county jail for a period of not to exceed 30 days, or both. The court may also order the person guilty of contempt to pay the reasonable attorney fees incurred by the judgment creditor in the filing of the bench warrant and the hearing thereon.

Sec. 16. K.S.A. 2001 Supp. 61-3803 is hereby amended to read as follows: 61-3803. Before a lawsuit to evict a person pursuant to K.S.A. 2001 Supp. 61-3801 through 61-3808, and amendments thereto, is filed, the party desiring to file such lawsuit shall deliver to the other party a notice to leave the premises for which possession is sought. The notice shall be delivered at least three days before commencing the lawsuit, by leaving a written copy with the other party or by leaving a copy thereof with any person over the age of 12 years residing on the premises described in such notice, or if no such person is found upon the premises, by posting a copy of such notice in a conspicuous place thereon, or by mailing a copy of the notice to the other party at the address of the premises described in the notice. The three day notice period provided for in this section shall be computed as three consecutive 24-hour periods to commence at the time the notice is delivered, posted or mailed. If the notice is mailed, an additional two days from the date of mailing shall be allowed for the person to leave the premises before the lawsuit is filed. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation of the notice period. ~~The form of the notice shall be substantially in the form set forth in the rules of the supreme court of this state. The notice may be combined with any notice provided for in K.S.A. 58-2540, et seq., and amendments thereto.~~

Sec. 17. K.S.A. 2001 Supp. 61-3804 is hereby amended to read as follows: 61-3804. The petition shall describe the premises for which possession is sought and why the plaintiff is seeking possession. If there is rent due for possession of the premises, the petition may include a request for judgment for that amount or the plaintiff may bring a subsequent lawsuit for that amount. ~~The form of the petition shall be set forth in the rules of the supreme court of this state.~~

Sec. 18. K.S.A. 2001 Supp. 61-3805 is hereby amended to read as follows: 61-3805. ~~The form of summons in lawsuits under K.S.A. 2001 Supp. 61-3801 through 61-3808, and amendments thereto, shall be the same as for other lawsuits filed under the code of civil procedure for limited actions.~~ The time stated in the summons requiring the defendant to appear in response to the petition shall be determined by the court. Such time shall be not less than three nor more than 14 days after the date the summons is issued.

Sec. 19. K.S.A. 2001 Supp. 61-3808 is hereby amended to read as follows: 61-3808. (a) If judgment is entered against the defendant for possession of the subject premises, the court shall issue, at the request of the plaintiff, a writ of restitution which shall direct anyone who is authorized to serve process and who is named in the writ to place the plaintiff in possession of the premises described in the writ. ~~The form of the writ shall be set forth in the rules of the supreme court of this state.~~

(b) The writ of restitution shall be executed within 10 days after the person named in the writ receives it, and that person shall file a return as with other writs under the code of civil procedure for limited actions. The person serving the writ may use such reasonable force as is necessary to execute the writ.

(c) If the person named in the writ receives a notice from the court that the proceedings have been stayed by appeal, that person shall immediately delay all further proceedings upon the execution. If the premises have been restored to the plaintiff, the person named in the writ shall immediately place the defendant in the possession thereof.”;

And by renumbering the remaining sections accordingly;

Also on page 5, in line 21, by striking “K.S.A. 60-4001 and”; also in line 21, by striking “2000” and inserting “2001”; in line 22, after “60-2418” by inserting “, 61-2803, 61-2906, 61-2907, 61-3002, 61-3003, 61-3302, 61-3401, 61-3505, 61-3507, 61-3508, 61-3509, 61-3510, 61-3513, 61-3604, 61-3606, 61-3608, 61-3803, 61-3804, 61-3805, 61-3808 and 61-4105”;

In the title, on page 1, in line 12, by striking all after the semicolon where it first appears; in line 13, by striking all before “amending”; also in line 13, by striking “K.S.A. 60-4001 and”; in line 14, by striking “2000” and inserting “2001”; also in line 14, after “60-2418” by inserting “, 61-2803, 61-2907, 61-3002, 61-3003, 61-3302, 61-3505, 61-3507, 61-3508, 61-3509, 61-3510, 61-3513, 61-3604, 61-3606, 61-3608, 61-3803, 61-3804, 61-3805 and 61-3808”;

Also in the title, on page 1, in line 15, before the period by inserting “; also repealing K.S.A. 2001 Supp. 61-2906, 61-3401 and 61-4105”

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

JOHN VRATIL
DEREK SCHMIDT
GRETA GOODWIN
Conferees on part of Senate

MICHAEL R. O'NEAL
WARD LOYD
JANICE L. PAULS
Conferees on part of House

On motion of Rep. O'Neal, the conference committee report on **HB 2175** was adopted.

On roll call, the vote was: Yeas 117; Nays 3; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goering, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Novascone, O'Neal, Osborne, Ostmeyer, Owens, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Stone, Storm, Swenson, Tapanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Cook, Howell, Spangler.

Present but not voting: None.

Absent or not voting: Campbell, Gordon, Mayans, Neufeld, O'Brien.

The House stood at ease until the sound of the gavel.

Speaker Glasscock called the House to order.

REPORT ON ENGROSSED BILLS

S. Sub. for HB 2621 reported correctly engrossed May 13, 2002.

HB 2630, HB 2709 reported correctly re-engrossed May 13, 2002.

REPORT ON ENROLLED BILLS

HB 2703, HB 2772, HB 2812; Sub. HB 2979 reported correctly enrolled, properly signed and presented to the governor on May 13, 2002.

On motion of Rep. Weber, the House adjourned until 11:00 a.m., Tuesday, May 14, 2002.

CHARLENE SWANSON, *Journal Clerk.*

JANET E. JONES, *Chief Clerk.*

