

Journal of the House

SEVENTY-SEVENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, May 15, 2002, 9:30 a.m.

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

The roll was called with 123 members present.

Rep. O'Brien was excused on verified illness.

Rep. Stone was excused on excused absence by the Speaker.

Present later: Rep. Stone.

Prayer by Chaplain Chamberlain:

Almighty God, we gather on another beautiful day in the springtime we love in Kansas. We marvel at the beauty of life. We are continually surprised at the joys that life has to offer. We are humbled that even in times of difficulty, your promise shines through.

We give you thanks for the wisdom of the founders of our democracy. We are thankful that in the freedom that we have been given, we are empowered to share in the stewardship of your gifts. We thank you that as a people we may gather in collective governance, so that those who are "of" us, and are sent "by" us may act "for" us.

As your servants—our friends, neighbors and representatives in this body—move to complete their work, bless them richly with your Spirit. When he work is complete, grant them rest and refreshment as they return to their homes.

Hear especially our prayers this day as the victims of the Holocaust are remembered in our capitol. May their souls rest in your eternal peace and may the peoples of the land we call "Holy" find a resolution to the hatred and bigotry that continues to destroy life and its joy. Amen.

The Pledge of Allegiance was led by Rep. Merrick.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to committee as indicated:

Judiciary: **HB 3042**.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 3041, An act creating the Kansas council for interstate adult offender supervision; membership; duties, was considered on final action.

Call of the House was demanded.

On roll call, the vote was: Yeas 123; Nays 0; Present but not voting: 0; Absent or not voting: 2.

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, Gordon, 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, Mayans, Mays, McClure, McCreary, McKinney, Mc-

Leland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Spangler, 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: O'Brien, Stone.

The bill passed, as amended.

SB 664. An act reconciling amendments to certain statutes; amending K.S.A. 2001 Supp. 65-171d, 72-979, 74-3256, 74-3267a, 74-3298, 74-32,107, 74-32,138 and 74-4921 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 19-2881c, 65-171z, 72-979a, 74-3256a, 74-3267b, 74-3298a, 74-32,107a, 74-32,138a and 74-4921b, was considered on final action.

On roll call, the vote was: Yeas 123; Nays 0; Present but not voting: 0; Absent or not voting: 2.

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, Gordon, 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, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Spangler, 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: O'Brien, Stone.

The bill passed.

MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. J. Peterson to concur in Senate amendments to **HB 2896**, the motion did not prevail and the bill remains in conference.

On roll call, the vote was: Yeas 30; Nays 93; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aday, Aurand, Ballou, Beggs, Boston, Campbell, Compton, Freeborn, Glasscock, Gordon, Hayzlett, Humerickhouse, Klein, Krehbiel, Lightner, Lloyd, P. Long, Loyd, McClure, McCreary, Neufeld, Novascone, O'Neal, Pauls, J. Peterson, Rehorn, Schwartz, Shultz, Weber, Wilk.

Nays: Ballard, Barnes, Benlon, Bethell, Burroughs, Cook, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Garner, Gatewood, Gilbert, Goering, Grant, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Hutchins, Huy, Johnson, Kauffman, Kirk, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Loganbill, M. Long, Mason, Mayans, Mays, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Newton, Nichols, Osborne, Ostmeyer, Owens, Palmer, Patterson, E. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Ruff, Sharp, Showalter, Shriver, Sloan, Spangler, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Wells, Welshimer, D. Williams, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: O'Brien, Stone.

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 **H. Sub. for SB 74**.

On motion of Rep. Weber, the House went into Committee of the Whole, with Rep. Sloan in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Sloan, Committee of the Whole report, as follows, was adopted:

Recommended that committee report recommending a substitute bill to **H. Sub. for SB 74** be adopted; and the substitute bill be passed.

On motion of Rep. Weber, the House recessed until 1:30 p.m.

AFTERNOON SESSION

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

Rep. Weber was excused on excused absence by the Speaker for the Afternoon Session.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Ballou, 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 **SB 35**.

MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. Nichols to concur in Senate amendments to **HB 2030**, Rep. Edmonds offered a motion to lay the bill on the table. Roll call was demanded.

On roll call, the vote was: Yeas 74; Nays 46; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aday, Aurand, Ballou, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cox, Dahl, DeCastro, Dillmore, Dreher, Edmonds, Faber, Freeborn, Glasscock, Hayzlett, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Huy, Johnson, Kauffman, Krehbiel, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, P. Long, Loyd, Mason, Mayans, McCreary, McKinney, McLeland, Merrick, Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Neal, Osborne, Ostmeyer, Owens, Palmer, Patterson, J. Peterson, Pottorff, L. Powell, T. Powell, Powers, Ray, Schwartz, Shultz, Sloan, Storm, Swenson, Tanner, Tomlinson, Toplikar, Vickrey, Wilk, D. Williams.

Nays: Ballard, Barnes, Burroughs, Cook, Crow, Feuerborn, Findley, Flaharty, Flora, Garner, Gatewood, Gilbert, Goering, Gordon, Grant, Henderson, Henry, Hermes, Hutchins, Kirk, Klein, Kuether, Loganbill, M. Long, Mays, McClure, Minor, Nichols, Pauls, E. Peterson, Phelps, Pyle, Reardon, Rehorn, Ruff, Sharp, Showalter, Shriver, Spangler, Tafanelli, Thimesch, R. Toelkes, Wells, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: DiVita, O'Brien, Stone, Weber, Welshimer.

The motion to lay **HB 2030** on the table prevailed.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on House amendments to **SB 35**, 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 3, by striking all in lines 27 through 43;

By striking all on pages 4 through 9 and by inserting the following:

“New Section 1. (a) There is hereby established the office of the district attorney in the nineteenth judicial district.

(b) The person holding the office of the county attorney in Cowley county on July 1, 2002, shall become the district attorney of the nineteenth judicial district and the office of the county attorney in such judicial district is abolished on such date. Commencing with the general election in 2004, and at the general election every four years thereafter, a district attorney shall be elected in the judicial district for a four-year term, commencing on the second Monday in January next following the election.

(c) The district attorney authorized by this section is hereby declared to be an executive officer of the nineteenth judicial district. The office constitutes a separate entity with such judicial district for administrative purposes. In no event shall the district attorney be deemed an officer of any county.

(d) Before entering upon the duties of the office, the district attorney shall take the oath of office required by law for public officers and shall execute a good and sufficient surety bond in the manner provided by K.S.A. 75-4101 *et seq.*, and amendments thereto.

(e) The provisions of K.S.A. 22a-102, 22-103, 22a-104, 22a-105, 22a-106 and 22a-107, and amendments thereto, shall apply to the office of district attorney established by this section.

Sec. 2. K.S.A. 2001 Supp. 22a-107 is hereby amended to read as follows: 22a-107. Whenever in any of the statutes of this state the term “county attorney” is used, it shall be construed to include district attorneys provided for by K.S.A. 22a-101, 22a-108 and K.S.A. 2001 Supp. 22a-109 *and section 1*, and amendments thereto, unless the context otherwise requires.

Sec. 3. K.S.A. 2001 Supp. 22a-107 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.”;

On page 1, in the title, by striking all after “AN ACT” and inserting “establishing the office of district attorney in the nineteenth judicial district; amending K.S.A. 2001 Supp. 22a-107 and repealing the existing section.”;

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
DEREK SCHMIDT
GRETA GOODWIN
Conferees on part of Senate

On motion of Rep. O'Neal to adopt the conference committee report on **SB 35**, Rep. Shriver 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. O'Neal to adopt the conference committee report which did not prevail.

On roll call, the vote was: Yeas 57; Nays 64; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aday, Aurand, Ballard, Ballou, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cook, Cox, Dahl, DiVita, Dreher, Edmonds, Gilbert, Glasscock, Gordon, Hayzlett, Hermes, Holmes, Horst, Huff, Humerickhouse, Johnson, Kauffman, Krehbiel, Lane, Light, Lightner, Lloyd, Loganbill, P. Long, Loyd, Mason, McCreary, McKinney, Minor, Judy Morrison, Neufeld, Newton, O'Neal, Owens, Patterson, J. Peterson, Pottorff, L. Powell, Ray, Sharp, Showalter, Shultz, Sloan, Tafanelli, Tomlinson, Toplikar, Wilk.

Nays: Barnes, Burroughs, Crow, DeCastro, Dillmore, Faber, Feuerborn, Findley, Flaherty, Flora, Freeborn, Garner, Gatewood, Goering, Grant, Henderson, Henry, Howell, Huebert, Hutchins, Huy, Kirk, Klein, Kuether, Landwehr, Larkin, Levinson, M. Long, Mays, Mays, McClure, McLeland, Merrick, Miller, Jim Morrison, Myers, Nichols, Novas-

cone, Osborne, Ostmeyer, Palmer, Pauls, E. Peterson, Phelps, T. Powell, Powers, Pyle, Reardon, Rehorn, Ruff, Shriver, Spangler, Storm, Swenson, Tanner, Thimesch, R. Toelkes, Vickrey, Wells, Welshimer, D. Williams, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: O'Brien, Schwartz, Stone, Weber.

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

Speaker pro tem Aurand called the House to order.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Ballou, 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 **SB 459**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 459**, 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 2, after line 10 by inserting the following:

(d) "Date of transaction" means the date payment is processed by the supplier or the date the consumer is able to use the discount card, whichever occurs earlier.

(e) "Service area" means the area defined by the consumer's zip code. Service area shall also include all of the area located outside the area defined by the consumer's zip code but within 60 miles thereof.;

On page 3, in line 8, by striking all after "(4)"; by striking all of lines 9 through 15; in line 16, by striking all before the period and inserting the following:

"(A) Except as provided in subparagraph (B), provide each prospective customer before purchase or at the time of the confirmation required by K.S.A. 50-672, and amendments thereto, a written list for each type of service offered in conjunction with the discount card containing the name, address, and phone number of the closest 25 health care providers in the prospective customer's service area that are contractually bound to honor the discount card. The written list of providers may be provided electronically if requested in that format by the prospective customer.

(B) Unless the supplier has complied with subparagraph (A), the supplier of the discount card must provide the customer a 30-day right to cancel and shall mail the written list required by subparagraph (A) of paragraph 4 within seven calendar days of the date of the transaction.

(5) Make available to each customer on an ongoing basis thereafter through a toll-free telephone number, the internet, or in writing upon request, the name, address and phone number of all health care providers in such customer's service area who are contractually bound to honor the discount card.

(6) Maintain a surety bond in the amount of \$50,000 issued by a surety company authorized to do business in this state, or establish and maintain a surety account in the amount of \$50,000 at a federally insured bank, savings and loan association or federal savings bank located in this state. Each surety bond and surety account shall be subject to the following:

(A) A copy of the bond or a statement identifying the depository, trustee and account number of the surety account, and thereafter proof of annual renewal of the bond or maintenance of the surety account, shall be filed with the secretary of state. Each such filing shall be accompanied by a filing fee of no more than \$250 to cover the cost of filing and administration. Fees received under this act by the secretary of state shall be deposited in the state treasury to the credit of the information and copy service fee fund.

(B) A surety account shall be maintained until two years after the date that the discount card company ceases operations in the state. Funds from any surety account shall not be released to the discount card company without the specific consent of the attorney general.

(C) No surety on a discount card company bond shall cancel such bond without giving written notice thereof to the secretary of state. Whenever the secretary of state receives notice of a surety's intention to cancel a discount card company's bond, the secretary of state shall notify the affected discount card company that, unless such discount card company files another \$50,000 surety bond with the secretary of state or establishes a \$50,000 surety account on or before the cancellation date of such discount card company's surety bond, then such discount card company will no longer be authorized to do business in this state.

(D) The bond or surety account shall be in favor of any person and the attorney general for the benefit of any person who is damaged by any violation of this act, including any violation by the supplier or by any other person which markets, promotes, advertises or otherwise distributes a discount card on behalf of the supplier. The bond shall cover any violation occurring during the time period during which the bond is in effect.

(E) Any person claiming against the bond or surety account for a violation of this act may maintain an action at law against the discount card company and against the surety or trustee of the surety account. The aggregate liability of the surety or trustee of the surety account to all persons damaged by violations of this act may not exceed the amount of the surety bond or account";

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

"(e) The requirements and remedies of this act are in addition to and not in substitution for any other requirements and remedies provided by law.

Sec. 5. K.S.A. 2001 Supp. 75-438 is hereby amended to read as follows: 75-438. (a) There is hereby created the information and copy service fee fund in the state treasury. The secretary of state shall remit all moneys received from fees and charges under K.S.A. 75-409 or 75-437 or K.S.A. 2001 Supp. 50-1,101, and amendments thereto, 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 to the credit of the information and copy service fee fund.

(b) All expenditures from the information and copy service fee fund shall be in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or by a person or persons designated by the secretary.

(c) On the effective date of this act, the secretary of state shall certify to the director of accounts and reports the amount of money in the conversion of materials and equipment fund of the secretary of state which moneys are from fees charged for copies of public documents under K.S.A. 75-409, and amendments thereto. Upon receipt of such certification, the director of accounts and reports shall transfer the amount of money certified from the conversion of materials and equipment fund to the information and copy service fee fund. All liabilities of the conversion of materials and equipment fund of the secretary of state which are attributable to the service of providing copies of public documents under K.S.A. 75-409, and amendments thereto, are hereby transferred to and imposed on the information and copy service fee fund.";

And by renumbering the remaining sections accordingly;

Also on page 3, in line 38, by striking "and"; in line 39, by striking "50-1,105" and inserting ", 50-1,105 and 75-438";

On page 1, in the title, in line 13, by striking "and 50-1,105" and inserting ", 50-1,105 and 75-438";

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

ROBERT TOMLINSON

STANLEY DREHER

NANCY A. KIRK

Conferees on part of House

SANDY PRAEGER
 RUTH TEICHMAN
 PAUL FELECIANO, JR.
Conferees on part of Senate

On motion of Rep. Tomlinson to adopt the conference committee report on **SB 459**, Rep. Bethell 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. Tomlinson and the conference committee report was adopted.

On roll call, the vote was: Yeas 121; Nays 0; Present but not voting: 0; Absent or not voting: 4.

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, Gordon, 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, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: None.

Present but not voting: None.

Absent or not voting: O'Brien, Spangler, Stone, Weber.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 472**, 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 16 through 43; By striking all on pages 2 through 27 and inserting the following:

“New Section 1. (a) The department of revenue is authorized to become a signatory to an agreement with one or more states for the purpose of providing a multi-state, voluntary, streamlined system for sales and use tax collection and administration to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce, at such time as the legislature takes further action to bring the state's laws in compliance with the requirements of the agreement. The department of revenue is further authorized to participate in the streamlined sales tax project, identify all changes in this state's sales and use tax laws and rules and regulations that would be required in order to comply with such agreement, take such other actions reasonably required to prepare this state for entry into such agreement.

(b) The secretary of revenue, or the secretary's designee, is authorized to represent this state before other states that are participating in the streamlined sales tax project or that are signatories to such agreement. In addition, the president and the minority leader of the senate and the speaker and the minority leader of the house of representatives may each appoint a person who is also authorized to so represent this state. All such appointees attending meetings shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

New Sec. 2. The secretary of revenue is hereby authorized to adopt rules and regulations necessary to administer and not inconsistent with the provisions of chapters 41 and 79 of the Kansas Statutes Annotated. All rules and regulations of the secretary of revenue in

existence on the effective date of this act shall continue to be in effect and shall be deemed to be rules and regulations of the secretary until revised, amended or nullified pursuant to law.

Sec. 3. K.S.A. 2001 Supp. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state board of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the board within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue or the secretary's designee. *An appeal may also be taken to the state board of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto and no written agreement by the parties to further extend the time for making such final determination is in effect.* Upon receipt of a timely appeal, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The hearing before the board shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the board relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county or district appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity and correctness of such determination. No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.

Sec. 4. K.S.A. 79-3226 is hereby amended to read as follows: 79-3226. (a) As soon as practicable after the return is filed, the director of taxation shall examine it and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied, notice shall be mailed to the taxpayer. Within 60 days after the mailing of such notice the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax liability or denial of refund by filing a written request with the secretary of revenue or the secretary's designee which sets forth the objections to the proposed liability or proposed denial of refund. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the proposed liability or proposed denial of refund. The secretary of revenue or the secretary's designee shall hold an informal conference with the taxpayer and shall issue a written final determination thereon. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act. Informal conferences held pursuant to this section may be conducted by the secretary of revenue or the secretary's designee. The rules of evidence shall not apply to an informal conference and no record shall be made, except at the request and expense of the secretary of revenue or the secretary's designee or taxpayer. The taxpayer may bring to the informal conference an attorney, certified public accountant and any other person to represent the taxpayer or to provide information. Because the purpose of the department staff is to aid the secretary or secretary's designee in the proper discharge of the secretary's or secretary's designee's duties, the secretary or secretary's designee may confer at any time with any staff member with respect to the case under reconsideration. The secretary of revenue or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing

such final determination. A final determination *issued within or after 270 days, with or without extension*, constitutes final agency action subject to administrative review by the state board of tax appeals. In the event that a written final determination is not rendered within 270 days, the taxpayer may appeal to the state board of tax appeals *at any time provided that a written extension of time is not in effect*.

(b) A final determination finding additional tax shall be accompanied by a notice and demand for payment. Notice under this section shall be sent by first-class mail in the case of individual taxpayers and by registered or certified mail in the case of all other taxpayers. The tax shall be paid within 20 days thereafter, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438 and amendments thereto, but no additional tax shall be assessed for less than \$5 *unless the secretary or the secretary's designee determines the administration and collection cost involved in collecting an amount over \$5 but less than \$100 would not warrant collection of the amount due*. Interest at such rate shall continue to accrue on any additional tax liability during the course of any appeal.

Sec. 5. K.S.A. 79-3650 is hereby amended to read as follows: 79-3650. (a) A refund request may be filed directly by a consumer or purchaser if the consumer or purchaser: (1) paid the tax directly to the department; (2) provides evidence that the retailer refused or was unavailable to refund the tax; (3) provides evidence that the retailer did not act upon its refund request in a timely manner as provided in subsection (b), or; (4) ~~submits such a refund request pursuant to subsection (c)~~ *provides a notarized statement to the department from the retailer that the retailer: (A) Will not claim a refund of the same tax included in the purchaser's or consumer's refund request; (B) agrees to provide to the consumer or purchaser any information or documentation in the retailer's possession needed for submission to the department to support or prove the refund claim; (C) has remitted to the state the tax sought to be refunded; and (D) has not taken or will not take a credit for such tax. A retailer providing false information in any such statement shall be subject to penalties prescribed by K.S.A. 2001 Supp. 79-3615(h), and amendments thereto.*

(b) If the director of taxation finds upon proper showing that a consumer or purchaser submitted a refund request to a retailer that was not acted upon by the retailer in a timely manner, the director shall extend the time for filing the request with the department beyond the three year limitation period that is otherwise provided by the time attributed to the delay caused by the retailer.

~~(c) If, during the course of an audit examination of a business as a purchaser or consumer, it is determined that a vendor has collected Kansas tax from the purchaser on a transaction that is not subject to tax imposed under this act, the purchaser may apply directly to the director for an offset or refund of the tax, notwithstanding subsection (a), if: (1) the purchaser is currently registered to collect and remit tax, and (2) the purchaser provides the director with an affidavit or other acceptable documentation that assures the purchaser has not and will not request a duplicate refund through the vendor.~~

Sec. 6. 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) "Sales" means all gross receipts of the taxpayer not allocated under K.S.A. 79-3274 through 79-3278, and amendments thereto.

(h) "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) "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) "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.

New Sec. 7. If the amount of any tax payment, estimated or otherwise, made during any calendar year or other taxable period exceeds the taxpayer's liability for which such payment was made, any excess shall be applied to any other tax then owed the state of Kansas by such taxpayer, including fines, penalties and interests, if any, and the balance of such excess, if any, shall be refunded to the taxpayer.

Sec. 8. K.S.A. 79-2015 is hereby amended to read as follows: 79-2015. The taxes, fees, interest and penalties, levied and assessed by any state law administered by the ~~director~~ *secretary* of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time *the* same shall become due, and shall be recoverable in any court of competent jurisdiction in any action in the name of the state of Kansas, on relation of the ~~director~~ *secretary* of revenue *or the secretary's designee*. Such suit may be maintained, prosecuted, and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debt. All provisional remedies available in such actions shall be, and are hereby made available to the state of Kansas in the enforcement of the payment of any state tax. ~~Provided, That, except that~~ *except that* the remedy herein provided shall be in addition to the various warrant and lien procedures now provided by law for the collection of delinquent taxes.

Sec. 9. K.S.A. 79-32,104 is hereby amended to read as follows: 79-32,104. (a) The amount paid upon declarations of estimated tax under this act during any calendar year shall be allowed as a credit against the income tax otherwise imposed on the taxpayer by the "Kansas income tax act."

(b) If the amount paid on the declaration of estimated tax during any calendar year exceeds the income tax liability of the taxpayer, any excess shall be applied to any other ~~income~~ tax then owed the state of Kansas by such taxpayer ~~including~~ *as provided by section 7, and amendments thereto*, and the balance of such excess, if any, refunded to the taxpayer as provided in K.S.A. 79-32,105 (c), *and amendments thereto*, or at the taxpayer's option credited to ~~his or her~~ *the taxpayer's* declaration of estimated tax liability for the succeeding year.

Sec. 10. K.S.A. 2001 Supp. 79-32,105 is hereby amended to read as follows: 79-32,105. (a) The director shall remit the entire amount collected under the provisions of this act and from the income tax imposed upon individuals, corporations, estates or trusts pursuant to the "Kansas income tax act" less amounts withheld as provided in subsection (b) and any amounts credited to the IMPACT program repayment fund or the IMPACT program services fund under K.S.A. 74-50,107 and amendments thereto to the state treasurer in accord-

ance 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 to the credit of the state general fund.

(b) A revolving fund, designated as "income tax refund fund" not to exceed \$4,000,000 shall be set apart and maintained by the director from income tax collections, withholding tax collections, and estimated tax collections and held by the state treasurer for prompt payment of all income tax refunds, for the payment of interest as provided in subsection (e), for payment of homestead property tax refunds in accordance with the homestead property tax refund act and for payment of property tax refunds allowed pursuant to the provisions of K.S.A. 2001 Supp. 79-255, and amendments thereto. The fund shall be in such amount, within the limit set by this section, as the director determines is necessary to meet current refunding requirements under this act.

(c) If the director discovers from the examination of the return, or upon claim duly filed by the taxpayer or upon final judgment of the court that the income tax, withholding tax, declaration of estimated tax or any penalty or interest paid by or credited to any taxpayer is in excess of the amount legally due *for such tax or any other tax owed the state of Kansas*, the director shall certify to the director of accounts and reports the name of the taxpayer, the amount of refund and such other information as the director may require. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the taxpayer out of the fund provided in subsection (b), except that no refund shall be made for a sum less than \$5, but such amount may be claimed by the taxpayer as a credit against the taxpayer's tax liability in the taxpayer's next succeeding taxable year.

(d) When a resident taxpayer dies, and the director determines that a refund is due the claimant not in excess of \$100, the director shall certify to the director of accounts and reports the name and address of the claimant entitled to the refund and the amount of the refund. A refund may be made upon a claim duly made on behalf of the estate of the deceased or in the absence of any such claim upon a claim by a surviving spouse and if none upon the claim by any heir at law. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the claimant out of the fund provided in subsection (b).

(e) Interest shall be allowed and paid at the rate of 12% per annum upon any overpayment of the income tax imposed upon individuals, corporations, estates or trusts pursuant to the Kansas income tax act for any period prior to January 1, 1995, 6% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and at the rate prescribed and determined pursuant to K.S.A. 79-2968, and amendments thereto, for any period thereafter.

For the purposes of this subsection:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer;

(2) any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(3) if any overpayment of tax results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises. For purposes of this paragraph, the return for the loss year shall not be deemed to be filed before claim for such overpayment is filed;

(4) in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken, except that if any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, whether or not claimed as a credit in the return of estimated tax

for such succeeding taxable year, and no interest shall be allowed or paid in such overpayment for the taxable year in which the overpayment arises;

(5) in the case of a tax return which is filed after the last date prescribed for filing such return, determined with regard to extensions, no interest shall be allowed or paid for any period before the date on which the return is filed;

(6) in the case of a refund, interest shall be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, as determined by the director, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer, but acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon; and

(7) if any overpayment is refunded within two months after the last date prescribed, or permitted by extension of time, for filing the return of such tax, or within two months after the return was filed, whichever is later, no interest shall be allowed or paid. For the purposes of this section, an overpayment shall be deemed to have been refunded at the time the refund check in the amount of the overpayment, plus any interest due thereon, is deposited in the United States mail.

New Sec. 11. (a) If any compensation required by K.S.A. 70a-102, and amendments thereto, is determined by the director to be unpaid: (1) Not due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, interest on such compensation shall be added at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (2) due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, but without intent to defraud, a penalty of 10% of the amount of such compensation shall be added, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (3) due to fraud with intent to evade the compensation, there shall be added thereto a penalty of 50% of the amount of such compensation, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid.

(b) If any person fails or refuses to make any return, when required to do so under the provisions of K.S.A. 70a-101 *et seq.*, and amendments thereto, such person shall be subject to a penalty of \$25 per day for each return which such person fails or refuses to file.

(c) Whenever, in the judgment of the director, the failure of any person to comply with the provisions of subsection (a)(2) and (b) of this section, was due to reasonable cause, the director may, in the exercise of discretion, waive or reduce any of the penalties upon making a record of the reason therefor.

(d) In addition to all other penalties provided by this section, any person who: (1) Fails to make a return, or to pay any compensation required to be paid as required by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (2) makes a false or fraudulent return, or fails to keep any books or records prescribed by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (3) willfully violates any rules and regulations promulgated by the secretary for the enforcement and administration of K.S.A. 70a-101 *et seq.*, and amendments thereto; or (4) aids and abets another in attempting to evade the payment of any compensation required to be paid, shall be subject to the penalty prescribed for other violations by K.S.A. 70a-108, and amendments thereto.

(e) The director of taxation shall examine all returns filed under the provision of K.S.A. 70a-101 *et seq.*, and amendments thereto, and shall issue notices and final determinations of liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto, relating to income taxes.

Sec. 12. K.S.A. 2001 Supp. 75-5154 is hereby amended to read as follows: 75-5154. The secretary of revenue or the secretary's designee may, in the same manner and to the same extent as provided for income tax liabilities by K.S.A. 79-3233a through K.S.A. 79-3233i, and amendments thereto, abate all or part of a final liability for any excise tax imposed under the provisions of K.S.A. 12-1692 *et seq.*, 12-1696 *et seq.*, 41-501 *et seq.*, 79-3301 *et seq.*, 79-3370 *et seq.*, 79-3401 *et seq.*, 79-3490 *et seq.*, 79-34,108 *et seq.*, 79-3817 *et seq.*, 79-4101 *et seq.* or 79-41a01 or 79-5201 *et seq.*, and amendments thereto.

New Sec. 13. (a) Any correspondence issued by the department of revenue to a taxpayer or the taxpayer's representative demanding payment of an assessment of any tax the imposition and collection of which is administered by the department shall consist of a detailed, clear and accurate explanation of the assessment demand including, but not limited to, the specific tax and tax year to which such assessment applies and penalties and interest which apply thereto. If the department proposes to change the tax or refund due on a return filed by a taxpayer, correspondence detailing the change shall be sent to the taxpayer. The correspondence shall specifically identify the proposed change and explain in simple and non-technical terms the reasons for the change.

(b) Any such correspondence demanding the payment of an assessment of tax, penalties and interest in an amount in excess of \$750 for individual accounts and in excess of \$2,000 for business accounts shall be reviewed prior to issuance for accuracy by an employee of the department and shall provide the employer identification number and contact telephone number of the employee performing any such review.

New Sec. 14. In the event a taxpayer has designated a third party or other representative to discuss an income tax return upon the taxpayer's Kansas return, the department shall adhere and comply with such designation, and shall discuss or correspond with such designee or representative regarding matters concerning the return, including collection matters.

New Sec. 15. In addition to the authority to waive any civil penalty imposed by law for the violation of any law pertaining to any tax administered by the department of revenue, the secretary or the secretary's designee shall waive any such penalty upon the finding of any circumstance allowing waiver of civil penalties pursuant to the federal internal revenue code, as in effect on January 1, 2002.

New Sec. 16. Upon a resolution of any assessment of tax, penalties and interest of any tax the imposition and collection of which is administered by the department, a closing letter evidencing such resolution shall be issued to the affected taxpayer or the taxpayer's representative, as the case may require, within 30 days of the date upon which such resolution is agreed to. The taxpayer shall be entitled to rely on such closing letter as it relates to the issues resolved.

New Sec. 17. (a) Notwithstanding any provision of K.S.A. 79-3235, and amendments thereto, to the contrary, the procedures set forth by this section shall apply to the issuance of any warrant and the levy upon property pursuant to such provisions.

(b) The secretary or the secretary's designee shall notify in writing the person who is the subject of the warrant of the filing of a warrant under K.S.A. 79-3235, and amendments thereto. The notice required shall be given in person, left at the dwelling or usual place of business of such person or sent by certified or registered mail to such person's last known dwelling address, not more than five business days after the day of the filing of the notice of lien. The notice shall include in simple and nontechnical terms the amount of unpaid taxes, the administrative appeals available to the taxpayer with respect to such warrant and the procedures relating to such appeals, and the provisions of law and procedures relating to the release of warrants on property.

Sec. 18. K.S.A. 79-2015, 79-3226, 79-3271, 79-32,104 and 79-3650 and K.S.A. 2001 Supp. 74-2438, 75-5154 and 79-32,105 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.”;

In the title, in line 10, by striking “sales”; by striking all in lines 11 through 13 and inserting “amending K.S.A. 79-2015, 79-3226, 79-3271, 79-32,104 and 79-3650 and K.S.A. 2001 Supp. 74-2438, 75-5154 and 79-32,105 and repealing the existing 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. Edmonds to not adopt the conference committee report on **SB 472** and that a new conference committee be appointed, the motion prevailed.

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

MESSAGE FROM THE SENATE

The Senate adopts conference committee report on **SB 119**.

The Senate adopts conference committee report on **H. Sub. for SB 208**.

The Senate adopts conference committee report on **H. Sub. for Sub. SB 296**.

The Senate adopts conference committee report on **SB 396**.

The Senate adopts conference committee report on **H. Sub. for SB 434**.

The Senate adopts conference committee report on **SB 551**.

The Senate adopts conference committee report on **H. Sub. for SB 643**.

The Senate adopts conference committee report on **SB 647**.

The Senate adopts conference committee report on **S. Sub. for HB 2094**.

The Senate adopts conference committee report on **HB 3011**.

The Senate concurs in House amendments to **H. Sub. for Sub. SB 422**, and requests return of the bill.

The Senate concurs in House amendments to **SB 586**, and requests return of the bill.

The Senate accedes to the request of the House for a conference on **SB 619** and has appointed Senators Morris, Adkins and Feleciano as second conferees on the part of the Senate.

The Senate accedes to the request of the House for a conference on **HB 2337** and has appointed Senators Allen, O'Connor and Gilstrap as third conferees on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2094**, 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. 2094, as follows:

On page 1, following line 13, by inserting the following:

“Section 1. K.S.A. 2001 Supp. 72-978 is hereby amended to read as follows: 72-978.

(a) (1) In each school year, in accordance with appropriations for special education and related services provided under this act, each school district which has provided special education and related services in compliance with the provisions of this act shall be entitled to receive:

(A) Reimbursement for actual travel allowances paid to special teachers at not to exceed the rate specified under K.S.A. 75-3203, and amendments thereto, for each mile actually traveled during the school year in connection with duties in providing special education or related services for exceptional children; such reimbursement shall be computed by the state board by ascertaining the actual travel allowances paid to special teachers by the school district for the school year and shall be in an amount equal to 80% of such actual travel allowances;

(B) reimbursement in an amount equal to 80% of the actual travel expenses incurred for providing transportation for exceptional children to special education or related services; such reimbursement shall not be paid if such child has been counted in determining the transportation weighting of the district under the provisions of the school district finance and quality performance act;

(C) reimbursement in an amount equal to 80% of the actual expenses incurred for the maintenance of an exceptional child at some place other than the residence of such child

for the purpose of providing special education or related services; such reimbursement shall not exceed \$600 per exceptional child per school year; and

(D) *except for those school districts entitled to receive reimbursement under subsection (b) or (c), after subtracting the amounts of reimbursement under (A), (B) and (C) paragraphs (A), (B) and (C) of this subsection (a) from the total amount appropriated for special education and related services under this act, an amount which bears the same proportion to the remaining amount appropriated as the number of full-time equivalent special teachers who are qualified to provide special education or related services to exceptional children and are employed by the school district for approved special education or related services bears to the total number of such qualified full-time equivalent special teachers employed by all school districts for approved special education or related services.*

(2) Each special teacher who is qualified to assist in the provision of special education or related services to exceptional children shall be counted as $\frac{3}{5}$ full-time equivalent special teacher who is qualified to provide special education or related services to exceptional children.

(b) *Each school district which has paid amounts for the provision of special education and related services under an interlocal agreement shall be entitled to receive reimbursement under subsection (a)(1)(D). The amount of such reimbursement for the district shall be the amount which bears the same relation to the aggregate amount available for reimbursement for the provision of special education and related services under the interlocal agreement, as the amount paid by such district in the current school year for provision of such special education and related services bears to the aggregate of all amounts paid by all school districts in the current school year who have entered into such interlocal agreement for provision of such special education and related services.*

(c) *Each contracting school district which has paid amounts for the provision of special education and related services as a member of a cooperative shall be entitled to receive reimbursement under subsection (a)(1)(D). The amount of such reimbursement for the district shall be the amount which bears the same relation to the aggregate amount available for reimbursement for the provision of special education and related services by the cooperative, as the amount paid by such district in the current school year for provision of such special education and related services bears to the aggregate of all amounts paid by all contracting school districts in the current school year by such cooperative for provision of such special education and related services.*

~~(b)~~ (d) No time spent by a special teacher in connection with duties performed under a contract entered into by the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility, or the Topeka juvenile correctional facility and a school district for the provision of special education services by such state institution shall be counted in making computations under this section.”;

And by renumbering the remaining sections accordingly;

On page 4, after line 31, by inserting the following:

“Sec. 3. K.S.A. 2001 Supp. 72-6426 is hereby amended to read as follows: 72-6426. (a) There is hereby established in every district a fund which shall be called the contingency reserve fund—~~which~~. Such fund shall consist of all moneys deposited therein or transferred thereto according to law. The fund shall be maintained for payment of expenses of a district attributable to financial contingencies ~~which were not anticipated at the time of adoption of the general fund budget as determined by the board~~. Except as otherwise provided in subsection (b), at no time in any school year shall the amount maintained in the fund exceed an amount equal to 4% of the general fund budget of the district for the school year.

(b) In any school year, if the amount in the contingency reserve fund of a district is in excess of the amount authorized under subsection (a) to be maintained in the fund, and if such excess amount is the result of a reduction in the general fund budget of the district for the school year because of a decrease in enrollment, the district may maintain the excess amount in the fund until depletion of such excess amount by expenditure from the fund for the purposes thereof.”;

And by renumbering the remaining sections accordingly;

On page 5, after line 20, by inserting the following:

“Sec. 5. K.S.A. 2001 Supp. 72-6433 is hereby amended to read as follows: 72-6433. (a) (1) The board of any district may adopt a local option budget in each school year, ~~commencing with the 1997-98 school year~~, in an amount not to exceed an amount equal to the district prescribed percentage of the amount of state financial aid determined for the district in the school year. As used in this ~~provision~~ ~~the term~~ *section*, “district prescribed percentage” means:

(A) For any district that was authorized to adopt and that adopted a local option budget in the 1996-97 school year and to which the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, do not apply in the current school year, ~~a percentage in the 1997-98 school year that is equal to the percentage specified in the resolution under which the district was authorized to adopt a local option budget in the 1996-97 school year, in the 1998-99 school year, a percentage that is equal to 95% of the percentage specified in the resolution under which the district was authorized to adopt a local option budget in the 1996-97 school year, in the 1999-2000 school year, a percentage that is equal to 90% of the percentage specified in the resolution under which the district was authorized to adopt a local option budget in the 1996-97 school year, in the 2000-01 school year, a percentage that is equal to 85% of the percentage specified in the resolution under which the district was authorized to adopt a local option budget in the 1996-97 school year, in the 2001-02 school year and in each school year thereafter, a percentage that is equal to 80% of the percentage specified in the resolution under which the district was authorized to adopt a local option budget in the 1996-97 school year;~~

(B) for any district that was authorized to adopt and that adopted a local option budget in the 1996-97 school year and to which the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, apply in the current school year, ~~a percentage in the 1997-98 school year that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and 20% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, a percentage in the 1998-99 school year that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and 40% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, a percentage in the 1999-2000 school year that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and 60% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, a percentage in the 2000-01 school year that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and 80% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, a percentage in the 2001-02 school year and each school year thereafter that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto;~~

(C) for any district that was not authorized to adopt a local option budget in the 1996-97 school year and to which the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, apply in the current school year, ~~a percentage in the 1997-98 school year that is equal to 20% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, a percentage in the 1998-99 school year that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and 40% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, a percentage in the 1999-2000 school year that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and 60% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, a percentage in the 2000-01 school year that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in~~

the preceding school year and 80% of the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto; a percentage in the 2001-02 school year and each school year thereafter that is equal to the sum of the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year and the percentage computed for the district by the state board under the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto;

(D) for any district to which the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, applied in the 1997-98 school year and to which the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, do not apply in the current school year, commencing with the 1998-99 school year, because an increase in the amount budgeted by the district in its local option budget as authorized by a resolution adopted under the provisions of subsection (b) causes the actual amount per pupil budgeted by the district in the preceding school year as determined for the district under provision (1) of subsection (a) of K.S.A. 2001 Supp. 72-6444, and amendments thereto, to equal or exceed the average amount per pupil of general fund budgets and local option budgets computed by the state board under whichever of the provisions (7) through (10) of subsection (a) of K.S.A. 2001 Supp. 72-6444, and amendments thereto, is applicable to the district's enrollment group, a percentage that is equal to the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year if the resolution authorized the district to increase its local option budget on a continuous and permanent basis. If the resolution that authorized the district to increase its local option budget specified a definite period of time for which the district would retain its authority to increase the local option budget and such authority lapses at the conclusion of such period and is not renewed, the term district prescribed percentage means a percentage that is equal to the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year less the percentage of increase that was authorized by the resolution unless the loss of the percentage of increase that was authorized by the resolution would cause the actual amount per pupil budgeted by the district to be less than the average amount per pupil of general fund budgets and local option budgets computed by the state board under whichever of the provisions (7) through (10) of subsection (a) of K.S.A. 2001 Supp. 72-6444, and amendments thereto, is applicable to the district's enrollment group, in which case, the term district prescribed percentage means a percentage that is equal to the percentage of the amount of state financial aid the district was authorized to budget in the preceding school year less the percentage of increase that was authorized by the resolution plus a percentage which shall be computed for the district by the state board in accordance with the provisions of K.S.A. 2001 Supp. 72-6444, and amendments thereto, except that, in making the determination of the actual amount per pupil budgeted by the district in the preceding school year, the state board shall exclude the percentage of increase that was authorized by the resolution.

(2) (A) Subject to the provisions of subpart (B), the adoption of a local option budget under authority of this subsection shall require a majority vote of the members of the board and shall require no other procedure, authorization or approval.

(B) In lieu of utilizing the authority granted by subpart (A) for adoption of a local option budget, the board of a district may pass a resolution authorizing adoption of such a budget and publish such resolution once in a newspaper having general circulation in the district. The resolution shall be published in substantial compliance with the following form:

Unified School District No. _____,
_____ County, Kansas.

RESOLUTION

Be It Resolved that:

The board of education of the above-named school district shall be authorized to adopt a local option budget in each school year for a period of time not to exceed _____ years in an amount not to exceed _____% of the amount of state financial aid determined for the current school year. The local option budget authorized by this resolution may be adopted, unless a petition in opposition to the same, signed by not less than 5% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 30 days after publication of this resolution. In the event

a petition is filed, the county election officer shall submit the question of whether adoption of the local option budget shall be authorized to the electors of the school district at an election called for the purpose or at the next general election, as is specified by the board of education of the school district.

CERTIFICATE

This is to certify that the above resolution was duly adopted by the board of education of Unified School District No. _____, _____ County, Kansas, on the _____ day of _____, 19_____.

Clerk of the board of education.

All of the blanks in the resolution shall be appropriately filled. The blank preceding the word "years" shall be filled with a specific number, and the blank preceding the percentage symbol shall be filled with a specific number. No word shall be inserted in either of the blanks. The percentage specified in the resolution shall not exceed the district prescribed percentage. The resolution shall be published once in a newspaper having general circulation in the school district. If no petition as specified above is filed in accordance with the provisions of the resolution, the board may adopt a local option budget. If a petition is filed as provided in the resolution, the board may notify the county election officer of the date of an election to be held to submit the question of whether adoption of a local option budget shall be authorized. If the board fails to notify the county election officer within 30 days after a petition is filed, the resolution shall be deemed abandoned and no like resolution shall be adopted by the board within the nine months following publication of the resolution. If any district is authorized to adopt a local option budget under this subpart, but the board of such district chooses, in any school year, not to adopt such a budget or chooses, in any school year, to adopt such budget in an amount less than the amount of the district prescribed percentage of the amount of state financial aid in any school year, such board of education may so choose. If the board of any district refrains from adopting a local option budget in any one or more school years or refrains from budgeting the total amount authorized for any one or more school years, the authority of such district to adopt a local option budget shall not be extended by such refrainment beyond the period specified in the resolution authorizing adoption of such budget, nor shall the amount authorized to be budgeted in any succeeding school year be increased by such refrainment. Whenever an initial resolution has been adopted under this subpart, and such resolution specified a lesser percentage than the district prescribed percentage, the board of the district may adopt one or more subsequent resolutions under the same procedure as provided for the initial resolution and subject to the same conditions, and shall be authorized to increase the percentage as specified in any such subsequent resolution for the remainder of the period of time specified in the initial resolution. Any percentage specified in a subsequent resolution or in subsequent resolutions shall be limited so that the sum of the percentage authorized in the initial resolution and the percentage authorized in the subsequent resolution or in subsequent resolutions is not in excess of the district prescribed percentage in any school year. The board of any district that has been authorized to adopt a local option budget under this subpart and levied a tax under authority of K.S.A. 72-6435, and amendments thereto, may initiate, at any time after the final levy is certified to the county clerk under any current authorization, procedures to renew its authority to adopt a local option budget in the manner specified in this subpart or may utilize the authority granted by subpart (A). As used in this subpart, the term "authorized to adopt a local option budget" means that a district has adopted a resolution under this subpart, has published the same, and either that the resolution was not protested or that it was protested and an election was held by which the adoption of a local option budget was approved.

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

(b) *The provisions of this subsection (b) shall be subject to the provisions of section 7, and amendments thereto.*

(1) The board of any district that adopts a local option budget under subsection (a) may increase the amount of such budget in each school year, ~~commencing with the 1997-98~~

school year, in an amount which together with the percentage of the amount of state financial aid budgeted under subsection (a) does not exceed the state prescribed percentage of the amount of state financial aid determined for the district in the school year if the board of the district determines that an increase in such budget would be in the best interests of the district.

(2) No district may increase a local option budget under authority of this subsection until: (A) A resolution authorizing such an increase is passed by the board and published once in a newspaper having general circulation in the district; or (B) the question of whether the board shall be authorized to increase the local option budget has been submitted to and approved by the qualified electors of the district at a special election called for the purpose. Any such election shall be noticed, called and held in the manner provided by K.S.A. 10-120, and amendments thereto, for the noticing, calling and holding of elections upon the question of issuing bonds under the general bond law. The notice of such election shall state the purpose for and time of the election, and the ballot shall be designed with the question of whether the board of education of the district shall be continuously and permanently authorized to increase the local option budget of the district in each school year by a percentage which together with the percentage of the amount of state financial aid budgeted under subsection (a) does not exceed the state prescribed percentage in any school year. If a majority of the qualified electors voting at the election approve authorization of the board to increase the local option budget, the board shall have such authority. If a majority of the qualified electors voting at the election are opposed to authorization of the board to increase the local option budget, the board shall not have such authority and no like question shall be submitted to the qualified electors of the district within the nine months following the election.

(3) (A) Subject to the provisions of subpart (B), a resolution authorizing an increase in the local option budget of a district shall state that the board of education of the district shall be authorized to increase the local option budget of the district in each school year in an amount not to exceed _____% of the amount of state financial aid determined for the current school year and that the percentage of increase may be reduced so that the sum of the percentage of the amount of state financial aid budgeted under subsection (a) and the percentage of increase specified in the resolution does not exceed the state prescribed percentage in any school year. The blank preceding the percentage symbol shall be filled with a specific number. No word shall be inserted in the blank. The resolution shall specify a definite period of time for which the board shall be authorized to increase the local option budget and such period of time shall be expressed by the specific number of school years for which the board shall retain its authority to increase the local option budget. No word shall be used to express the number of years for which the board shall be authorized to increase the local option budget.

(B) In lieu of the requirements of subpart (A) and at the discretion of the board, a resolution authorizing an increase in the local option budget of a district may state that the board of education of the district shall be continuously and permanently authorized to increase the local option budget of the district in each school year by a percentage which together with the percentage of the amount of state financial aid budgeted under subsection (a) does not exceed the state prescribed percentage in any school year.

(4) A resolution authorizing an increase in the local option budget of a district shall state that the amount of the local option budget may be increased as authorized by the resolution unless a petition in opposition to such increase, signed by not less than 5% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 30 days after publication. If no petition is filed in accordance with the provisions of the resolution, the board is authorized to increase the local option budget of the district. If a petition is filed as provided in the resolution, the board may notify the county election officer of the date of an election to be held to submit the question of whether the board shall be authorized to increase the local option budget of the district. If the board fails to notify the county election officer within 30 days after a petition is filed, the resolution shall be deemed abandoned and no like resolution shall be adopted by the board within the nine months following publication of the resolution.

(5) The requirements of provision (2) do not apply to any district that is continuously and permanently authorized to increase the local option budget of the district. An increase in the amount of a local option budget by such a district shall require a majority vote of the members of the board and shall require no other procedure, authorization or approval.

(6) If any district is authorized to increase a local option budget, but the board of such district chooses, in any school year, not to adopt or increase such budget or chooses, in any school year, to adopt or increase such budget in an amount less than the amount authorized, such board of education may so choose. If the board of any district refrains from adopting or increasing a local option budget in any one or more school years or refrains from budgeting the total amount authorized for any one or more school years, the amount authorized to be budgeted in any succeeding school year shall not be increased by such refrainment, nor shall the authority of the district to increase its local option budget be extended by such refrainment beyond the period of time specified in the resolution authorizing an increase in the local option budget if the resolution specified such a period of time.

(7) Whenever an initial resolution has been adopted under this subsection, and such resolution specified a percentage which together with the percentage of the amount of state financial aid budgeted under subsection (a) is less than the state prescribed percentage, the board of the district may adopt one or more subsequent resolutions under the same procedure as provided for the initial resolution and shall be authorized to increase the percentage as specified in any such subsequent resolution. If the initial resolution specified a definite period of time for which the district is authorized to increase its local option budget, the authority to increase such budget by the percentage specified in any subsequent resolution shall be limited to the remainder of the period of time specified in the initial resolution. Any percentage specified in a subsequent resolution or in subsequent resolutions shall be limited so that the sum of the percentage authorized in the initial resolution and the percentage authorized in the subsequent resolution or in subsequent resolutions together with the percentage of the amount of state financial aid budgeted under subsection (a) is not in excess of the state prescribed percentage in any school year.

(8) (A) Subject to the provisions of subpart (B), the board of any district that has adopted a local option budget under subsection (a), has been authorized to increase such budget under a resolution which specified a definite period of time for retention of such authorization, and has levied a tax under authority of K.S.A. 72-6435, and amendments thereto, may initiate, at any time after the final levy is certified to the county clerk under any current authorization, procedures to renew the authority to increase the local option budget subject to the conditions and in the manner specified in provisions (2) and (3) of this subsection.

(B) The provisions of subpart (A) do not apply to the board of any district that is continuously and permanently authorized to increase the local option budget of the district.

(9) As used in this subsection:

(A) "Authorized to increase a local option budget" means either that a district has held a special election under provision (2)(B) by which authority of the board to increase a local option budget was approved, or that a district has adopted a resolution under provision (2)(A), has published the same, and either that the resolution was not protested or that it was protested and an election was held by which the authority of the board to increase a local option budget was approved.

(B) "State prescribed percentage" means 25%.

(c) To the extent the provisions of the foregoing subsections conflict with this subsection, this subsection shall control. Any district that is authorized to adopt a local option budget in the 1997-98 school year under a resolution which authorized the adoption of such budget in accordance with the provisions of this section prior to its amendment by this act may continue to operate under such resolution for the period of time specified in the resolution or may abandon the resolution and operate under the provisions of this section as amended by this act. Any such district shall operate under the provisions of this section as amended by this act after the period of time specified in the resolution has expired.

(d)(1) There is hereby established in every district that adopts a local option budget a fund which shall be called the supplemental general fund. The fund shall consist of all amounts deposited therein or credited thereto according to law.

(2) Subject to the limitation imposed under provision (3), amounts in the supplemental general fund may be expended for any purpose for which expenditures from the general fund are authorized or may be transferred to the general fund of the district or to any program weighted fund or categorical fund of the district.

(3) Amounts in the supplemental general fund may not be expended nor transferred to the general fund of the district for the purpose of making payments under any lease-purchase agreement involving the acquisition of land or buildings which is entered into pursuant to the provisions of K.S.A. 72-8225, and amendments thereto.

(4) Any unexpended and unencumbered cash balance remaining in the supplemental general fund of a district at the conclusion of any school year in which a local option budget is adopted shall be disposed of as provided in this subsection. If the district did not receive supplemental general state aid in the school year and the board of the district determines that it will be necessary to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be maintained in such fund or transferred to the general fund of the district. If the board of such a district determines that it will not be necessary to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be transferred to the general fund of the district. If the district received supplemental general state aid in the school year, transferred or expended the entire amount budgeted in the local option budget for the school year, and determines that it will be necessary to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be maintained in such fund or transferred to the general fund of the district. If such a district determines that it will not be necessary to adopt a local option budget in the ensuing school year, the total amount of the cash balance remaining in the supplemental general fund shall be transferred to the general fund of the district. If the district received supplemental general state aid in the school year, did not transfer or expend the entire amount budgeted in the local option budget for the school year, and determines that it will not be necessary to adopt a local option budget in the ensuing school year, the state board shall determine the ratio of the amount of supplemental general state aid received to the amount of the local option budget of the district for the school year and multiply the total amount of the cash balance remaining in the supplemental general fund by such ratio. An amount equal to the amount of the product shall be transferred to the general fund of the district. The amount remaining in the supplemental general fund may be maintained in such fund or transferred to the general fund of the district.”;

And by renumbering the remaining sections accordingly;

On page 6, after line 34, by inserting the following:

“New Sec. 7. (a) As used in this section, “school district” means a school district which was the sponsoring school district of a special education cooperative during school year 2001-2002.

(b) For a school district which adopts a local option budget in an amount which equals the state prescribed percentage for school year 2002-2003, the maximum amount of a local option budget of such school district for school year 2002-2003, shall be determined by the state board as follows:

(1) Determine the amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto, for school year 2001-2002, and subtract the amount of the local option budget of such district under K.S.A. 72-6433, and amendments thereto, for school year 2002-2003.

(2) If the difference obtained under paragraph (1) is one or more, multiply the difference by $\frac{2}{3}$ and add the product to the maximum amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto. The sum shall be the maximum amount of the local option budget of the district for school year 2002-2003.

(3) If the difference obtained under paragraph (1) is zero or less, the maximum amount of the local option budget of the district for school year 2002-2003, shall be the maximum amount allowed under K.S.A. 72-6433, and amendments thereto.

(c) For a school district which adopts a local option budget in an amount which equals the state prescribed percentage for school year 2003-2004, the maximum amount of a local option budget of such school district for school year 2003-2004, shall be determined by the state board as follows:

(1) Determine the amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto, for school year 2001-2002, and subtract the amount of the local option budget of such district under K.S.A. 72-6433, and amendments thereto, for school year 2003-2004.

(2) If the difference obtained under paragraph (1) is one or more, multiply the difference by $\frac{1}{3}$ and add the product to the maximum amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto. The sum shall be the maximum amount of the local option budget of the district for school year 2003-2004.

(3) If the difference obtained under paragraph (1) is zero or less, the maximum amount of the local option budget of the district for school year 2003-2004, shall be the maximum amount allowed under K.S.A. 72-6433, and amendments thereto.

(d) For a school district which adopts a local option budget in an amount which equals the district prescribed percentage for school year 2002-2003, the maximum amount of a local option budget of such school district for school year 2002-2003, shall be determined by the state board as follows:

(1) Determine the amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto, for school year 2001-2002, and subtract the amount of the local option budget of such district under K.S.A. 72-6433, and amendments thereto, for school year 2002-2003.

(2) If the difference obtained under paragraph (1) is one or more, multiply the difference by $\frac{1}{3}$ and add the product to the maximum amount of the local option budget of the school district under K.S.A. 72-6433, and amendments thereto. The sum shall be the maximum amount of the local option budget of the district for school year 2002-2003.

(3) If the difference obtained under paragraph (1) is zero or less, the maximum amount of the local option budget of the district for school year 2002-2003, shall be the maximum amount allowed under K.S.A. 72-6433, and amendments thereto.

Sec. 8. 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.”;

And by renumbering the remaining sections accordingly;

On page 6, in line 35, after “Supp.” by inserting “72-978,”; also in line 35, after the comma by inserting “72-6426,”; also in line 35, after “72-6430” by inserting “ , 72-6433, 72-7108”;

In the title, on page 1, in line 9, by striking all after the semicolon; in line 10, by striking “tention facilities;” also in line 10, after “Supp.” by inserting “72-978,”; also in line 10, after the comma, by inserting “72-6426,”; also in line 10, after “72-6430” by inserting “ , 72-6433, 72-7108”;

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

DWAYNE UMBARGER
JOHN VRATIL
CHRISTINE DOWNEY
Conferees on part of Senate

RALPH M. TANNER
KATHE LLOYD
BILL REARDON
Conferees on part of House

On motion of Rep. Tanner, the conference committee report on **S. Sub. for HB 2094** was adopted.

On roll call, the vote was: Yeas 118; Nays 3; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cook, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glascock, Goering, Gordon, Grant, Hayzlett, Henderson, Henry, 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, Mayans, Mays, McClure, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Faber, McCreary, Spangler.

Present but not voting: None.

Absent or not voting: Hermes, O’Brien, Stone, Weber.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on House amendments to **SB 9**, submits the following report:

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

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

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

JOHN VRATIL
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

On motion of Rep. O'Neal, the conference committee report on **H. Sub. for SB 9** was adopted.

Speaker pro tem Aurand thereupon appointed Reps. O'Neal, Loyd and Pauls as third conferees on the part of the House.

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

Speaker pro tem Aurand called the House to order.

On motion of Rep. Ballou, the House recessed until 6:00 p.m.

EVENING SESSION

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

INTRODUCTION OF ORIGINAL MOTIONS

On emergency motion of Rep. Weber, pursuant to House Rule 2311, to advance **H. Sub. for SB 9** to Final Action on Bills and Concurrent Resolutions, roll call was demanded.

On roll call, the vote was: Yeas 78; Nays 44; Present but not voting: 0; Absent or not voting: 3.

Yeas: Aday, Aurand, Ballou, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cook, Cox, Dahl, DeCastro, DiVita, Dreher, Edmonds, Faber, Freeborn, Glasscock, Gordon, Hayzlett, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Krehbiel, Landwehr, Lane, Light, Lightner, Lloyd, P. Long, Loyd, Mason, Mayans, Mays, McCreary, McLeland, Merrick, Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Neal, Osborne, Ostmeyer, Owens, Palmer, Patterson, J. Peterson, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Schwartz, Shultz, Sloan, Swenson, Tafanelli, Tanner, Tomlinson, Toplikar, Vickrey, Weber, Wilk, D. Williams.

Nays: Ballard, Barnes, Burroughs, Crow, Dillmore, Feuerborn, Findley, Flaharty, Garner, Gatewood, Gilbert, Goering, Grant, Henderson, Henry, Kirk, Klein, Kuether, Larkin, Levinson, Loganbill, M. Long, McClure, McKinney, Minor, Nichols, Pauls, E. Peterson, Phelps, Reardon, Rehorn, Ruff, Sharp, Showalter, Shriver, Spangler, Storm, Thimesch, R. Toelkes, Wells, Welshimer, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: Flora, O'Brien, Stone.

Not having received the required two-thirds majority, the motion did not prevail.

MESSAGE FROM THE SENATE

The Senate adopts conference committee report on **SB 481**.

The Senate adopts conference committee report on **HB 2575**.

The Senate adopts conference committee report on **HB 2719**.

The Senate adopts conference committee report on **HB 2771**.

The Senate adopts conference committee report on **HB 2802**.

The Senate concurs in House amendments to **SB 438**, and requests return of the bill.

The Senate adopts the conference committee report to agree to disagree on **H. Sub. for SB 9** and has appointed Senators Vratil, Schmidt and Haley as third conferees on the part of the Senate.

The Senate not adopts the conference committee report on **H. Sub. for SB 112**, requests a new conference committee be appointed and has appointed Senators Clark, Emler and Barone as second conferees on the part of the Senate.

The Senate not adopts the conference committee report on **HB 2817**, requests a new conference committee be appointed and has appointed Senators Vratil, Schmidt and Goodwin as second conferees on the part of the Senate.

The Senate accedes to the request of the House for a conference on **SB 472** 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 2719**, **HB 2771**, **HB 2817**, **SB 509**.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Weber, the House acceded to the request of the Senate for a conference on **H. Sub. for SB 112**.

Speaker pro tem Aurand thereupon appointed Reps. Holmes, Sloan and McClure as second conferees on the part of the House.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2719**, 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 of the Whole amendments, as follows:

On page 2, in line 33, by striking all after the period; by striking all in line 34; also by striking all in line 35 and by inserting the following:

“Except for purchases or contracts entered into without a competitive bid under subsection (a)(3), (a)(4), (a)(6) or subsection (h), no purchase or contract entered into without a competitive bid for an amount in excess of \$100,000 shall be entered into by the head of any state agency or approved by the director of purchases unless the director of purchases first posts an on-line notice of the proposed purchase or contract at least seven days before the purchase or contract is awarded. The director of purchases shall provide notice thereof to members of the legislature at the beginning of each calendar year that such information will be posted and the director of the division of purchases shall provide the uniform resource locator (URL) and the number of times such information shall be available. In the event a protest of the awarding of such a contract occurs during the seven-day notice period, the director of purchases shall proceed with a competitive procurement.”;

On page 5, by striking all in lines 24 through 43;

On page 6, by striking all in lines 1 through 33;

On page 8, by striking all in lines 14 through 43;

On page 9, by striking all in lines 1 through 43;

On page 10, by striking all in lines 1 through 9;

And by renumbering the remaining sections accordingly;

On page 10, following line 9, by inserting the following:

“Sec. 4. K.S.A. 75-3711a is hereby amended to read as follows: 75-3711a. (a) Any state agency not otherwise specifically authorized by law may, with the approval of the state

finance council, receive grants of money and funds appropriated under any federal act or from any other source.

(b) Subject to the provisions of K.S.A. 75-3711b ~~and 75-3711d~~, *and amendments thereto*, any state agency not otherwise specifically authorized by law may contract with and (1) receive or spend or transfer or (2) receive and spend or transfer moneys from other state or federal agencies, with the approval of the state finance council.

(c) In addition to the findings required by subsection (c) of K.S.A. 75-3711c, *and amendments thereto*, functions under *subsections* (a) and (b) of this section shall be exercised only after a finding by the governor and a majority vote of the legislative members of the state finance council that the program proposed will benefit the health or welfare of the people of this state.

(d) No authorization under this section shall undertake to give any vested commitment that a future legislative enactment will provide any additional state funds to the purpose of the proposed program.

Sec. 5. K.S.A. 75-3711b is hereby amended to read as follows: 75-3711b. (a) Nothing in K.S.A. 75-3711a, *and amendments thereto*, shall be construed to require approval of the state finance council to allow any state agency specifically authorized by any other statute to do so, to receive grants of money and funds appropriated under any federal act or from any other source, or to contract with and (1) receive or spend or transfer or (2) receive and spend or transfer moneys from any other state or federal agencies.

(b) Nothing in K.S.A. 75-3711a ~~or in 75-3711d~~, *and amendments thereto*, shall require approval of the state finance council for any contract requiring expenditures or transfers of an amount equal to ~~two hundred fifty thousand dollars (\$250,000)~~ \$250,000 or less between any state educational institution, as defined in subsection (a) of K.S.A. 76-711, *and amendments thereto*, and any other state agency, including another state educational institution. Within ~~thirty (30)~~ 30 days after entering into each such contract, the state agency required to expend or transfer funds under the contract shall file a copy of the contract with the legislative research department.

Sec. 6. K.S.A. 76-721 is hereby amended to read as follows: 76-721. The board of regents, or any state educational institution with the approval of the board of regents, may enter into contracts with any party or parties including any agency of the United States or any state or any subdivision of any state or with any person, partnership or corporation if the purpose of such contract is related to the operation or function of such board or institution. If such contract is with a corporation whose operations are substantially controlled by the board or any state educational institution, such contract shall provide that the books and records of such corporation shall be public records and shall require an annual audit by an independent certified public accountant to be furnished to the board of regents and filed with the state agency in charge of post auditing state expenditures. All contracts of state educational institutions shall be subject to the provisions of K.S.A. 75-3711b ~~and 75-3711d~~, *and amendments thereto*.”;

And by renumbering remaining sections accordingly;

Also on page 10, in line 10, following “K.S.A.”, by inserting “75-3711a, 75-3711b, 75-3711d.”; also in line 10, following “75-3740.”, by inserting “75-6406.”; in line 11, by striking the first “and” and inserting a comma; also in line 11, following “75-7107”, by inserting “and 76-721”; also in line 11, by striking “72.”; in line 12, by striking “6760.”; also in line 12, by striking “and 75-3739a”;

On page 1, in the title, in line 15, by striking “and school district”; in line 16, following “K.S.A.”, by inserting “75-3711a, 75-3711b.”; also in line 16, by striking “and” and inserting a comma; in line 17, following “3740” by inserting “and 76-721”; also in line 17, by striking “72-6760.”; also in line 17, by striking “and 75-3739a”; in line 18, following “K.S.A.”, by inserting “75-3711d, 75-6406.”;

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

KARIN BROWNLEE

NICK JORDAN

JIM BARONE

Conferees on part of Senate

DEENA L. HORST
JOHN FABER
DOUG GATEWOOD

Conferees on part of House

On motion of Rep. Horst, the conference committee report on **HB 2719** was adopted.

On roll call, the vote was: Yeas 122; Nays 1; Present but not voting: 0; Absent or not voting: 2.

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, Gordon, 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, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, 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: O'Brien, Stone.

CONFERENCE COMMITTEE REPORT

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

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

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

JOHN 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 472** to agree to disagree, the motion did not prevail, and the bill remains in conference.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2575**, 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 8, by striking “, education and welfare” and inserting “and human services”;

On page 5, after line 6, by inserting the following:

“Sec. 7. K.S.A. 39-923 is hereby amended to read as follows: 39-923. (a) As used in this act:

(1) “Adult care home” means any nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, home plus, boarding care home and adult day care facility, all of which classifications of adult care homes are required to be licensed by the secretary of health and environment.

(2) "Nursing facility" means any place or facility operating 24 hours a day, seven days a week, caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care to compensate for activities of daily living limitations.

(3) "Nursing facility for mental health" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments, need skilled nursing care and special mental health services to compensate for activities of daily living limitations.

(4) "Intermediate care facility for the mentally retarded" means any place or facility operating 24 hours a day, seven days a week caring for six or more individuals not related within the third degree of relationship to the administrator or owner by blood or marriage and who, due to functional impairments caused by mental retardation or related conditions need services to compensate for activities of daily living limitations.

(5) "Assisted living facility" means any place or facility caring for six or more individuals not related within the third degree of relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes apartments for residents and provides or coordinates a range of services including personal care or supervised nursing care available 24 hours a day, seven days a week for the support of resident independence. The provision of skilled nursing procedures to a resident in an assisted living facility is not prohibited by this act. Generally, the skilled services provided in an assisted living facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(6) "Residential health care facility" means any place or facility, or a contiguous portion of a place or facility, caring for six or more individuals not related within the third degree or relationship to the administrator, operator or owner by blood or marriage and who, by choice or due to functional impairments, may need personal care and may need supervised nursing care to compensate for activities of daily living limitations and in which the place or facility includes individual living units and provides or coordinates personal care or supervised nursing care available on a 24-hour, seven-day-a-week basis for the support of resident independence. The provision of skilled nursing procedures to a resident in a residential health care facility is not prohibited by this act. Generally, the skilled services provided in a residential health care facility shall be provided on an intermittent or limited term basis, or if limited in scope, a regular basis.

(7) "Home plus" means any residence or facility caring for not more than ~~five~~ *eight* individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the secretary of the department of social and rehabilitation services, and who, due to functional impairment, needs personal care and may need supervised nursing care to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the ~~operator staff~~ and rules and regulations developed by the department of health and environment. *An adult care home may convert a portion of one wing of the facility to a not less than five-bed and not more than eight-bed home plus facility provided that the home plus facility remains separate from the adult care home, and each facility must remain contiguous.*

(8) "Boarding care home" means any place or facility operating 24 hours a day, seven days a week, caring for not more than 10 individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment, need supervision of activities of daily living but who are ambulatory and essentially capable of managing their own care and affairs.

(9) "Adult day care" means any place or facility operating less than 24 hours a day caring for individuals not related within the third degree of relationship to the operator or owner by blood or marriage and who, due to functional impairment need supervision of or assistance with activities of daily living.

(10) "Place or facility" means a building or any one or more complete floors of a building, or any one or more complete wings of a building, or any one or more complete wings and one or more complete floors of a building, and the term "place or facility" may include multiple buildings.

(11) "Skilled nursing care" means services performed by or under the immediate supervision of a registered professional nurse and additional licensed nursing personnel. Skilled nursing includes administration of medications and treatments as prescribed by a licensed physician or dentist; and other nursing functions which require substantial nursing judgment and skill based on the knowledge and application of scientific principles.

(12) "Supervised nursing care" means services provided by or under the guidance of a licensed nurse with initial direction for nursing procedures and periodic inspection of the actual act of accomplishing the procedures; administration of medications and treatments as prescribed by a licensed physician or dentist and assistance of residents with the performance of activities of daily living.

(13) "Resident" means all individuals kept, cared for, treated, boarded or otherwise accommodated in any adult care home.

(14) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, and the legal successor thereof.

(15) "Operate an adult care home" means to own, lease, establish, maintain, conduct the affairs of or manage an adult care home, except that for the purposes of this definition the word "own" and the word "lease" shall not include hospital districts, cities and counties which hold title to an adult care home purchased or constructed through the sale of bonds.

(16) "Licensing agency" means the secretary of health and environment.

(17) "Skilled nursing home" means a nursing facility.

(18) "Intermediate nursing care home" means a nursing facility.

(19) "Apartment" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, a kitchen, sleeping, living and storage area and a lockable door.

(20) "Individual living unit" means a private unit which includes, but is not limited to, a toilet room with bathing facilities, sleeping, living and storage area and a lockable door.

(21) "Operator" means an individual who operates an assisted living facility or residential health care facility with fewer than 61 residents, a home plus or adult day care facility and has completed a course approved by the secretary of health and environment on principles of assisted living and has successfully passed an examination approved by the licensing agency on principles of assisted living and such other requirements as may be established by the licensing agency by rules and regulations.

(22) "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including but not limited to eating, nutrition, dressing, personal hygiene, mobility, toileting.

(23) "Personal care" means care provided by staff to assist an individual with, or to perform activities of daily living.

(24) "Functional impairment" means an individual has experienced a decline in physical, mental and psychosocial well-being and as a result, is unable to compensate for the effects of the decline.

(25) "Kitchen" means a food preparation area that includes a sink, refrigerator and a microwave oven or stove.

(26) The term "intermediate personal care home" for purposes of those individuals applying for or receiving veterans' benefits means residential health care facility.

(b) The term "adult care home" shall not include institutions operated by federal or state governments, except institutions operated by the Kansas commission on veterans affairs, hospitals or institutions for the treatment and care of psychiatric patients, child care facilities, maternity centers, hotels, offices of physicians or hospices which are certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.* and amendments thereto and which provide services only to hospice patients.

(c) Facilities licensed under K.S.A. 39-1501 *et seq.* and amendments thereto or K.S.A. 75-3307b and amendments thereto or ~~K.S.A. 39-923~~ *under this section* as an intermediate personal care home or with license applications on file with the licensing agency as intermediate personal care homes on or before January 1, 1995, shall have the option of becoming

licensed as either an assisted living facility or a residential health care facility without being required to add kitchens or private baths.

(d) Nursing facilities in existence on the effective date of this act changing licensure categories to become residential health care facilities shall be required to provide private bathing facilities in a minimum of 20% of the individual living units.

(e) Facilities licensed under the adult care home licensure act on the day immediately preceding the effective date of this act shall continue to be licensed facilities until the annual renewal date of such license and may renew such license in the appropriate licensure category under the adult care home licensure act subject to the payment of fees and other conditions and limitations of such act.

(f) Nursing facilities with less than 60 beds converting a portion of the facility to residential health care shall have the option of licensing for residential health care for less than six individuals but not less than 10% of the total bed count within a contiguous portion of the facility.

(g) The licensing agency may by rule and regulation change the name of the different classes of homes when necessary to avoid confusion in terminology and the agency may further amend, substitute, change and in a manner consistent with the definitions established in this section, further define and identify the specific acts and services which shall fall within the respective categories of facilities so long as the above categories for adult care homes are used as guidelines to define and identify the specific acts.”;

And by renumbering the remaining sections accordingly;

Also on page 5, in line 7, after “K.S.A.” by inserting “39-923.”;

In the title, on page 1, in line 12, after “to” by inserting “social welfare; concerning”; in line 15, after the semicolon by inserting “adult care homes; definitions.”; also in line 15, after “K.S.A.” by inserting “39-923.”;

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

STEPHEN R. MORRIS
NICK JORDAN
PAUL FELICIANO, JR.
Conferees on part of Senate

KENNY A. WILK
MELVIN NEUFELD
ROCKY NICHOLS
Conferees on part of House

On motion of Rep. Wilk, the conference committee report on **HB 2575** was adopted.

On roll call, the vote was: Yeas 123; Nays 0; Present but not voting: 0; Absent or not voting: 2.

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, Gordon, 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, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Spangler, 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: O’Brien, Stone.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2771**, 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 37, by striking all after "communication"; in line 38, by striking all before the period and inserting "at a telefacsimile number designated by the garnishee"; in line 42, after "mail" by inserting "at an internet electronic mail address designated by the garnishee and"; in line 43, by striking all after the period;

On page 4, by striking all of line 1; by striking all of line 3 and inserting the following:

"New Sec. 2. Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

New Sec. 3. An order of garnishment before judgment may be obtained only upon order of a judge of the district court pursuant to the procedure to obtain an order of attachment. No order of garnishment may be obtained before judgment where the property sought to be attached is wages earned by the person being garnished.

New Sec. 4. (a) As an aid to the collection of a judgment, an order of garnishment may be obtained at any time after 10 days following judgment. There is no requirement that an execution first be issued and returned unsatisfied.

(b) The party requesting a garnishment shall file a request in an individual case or by a master request covering more than one case asking the court to issue an order of garnishment. The request shall designate whether the order of garnishment is to be issued to attach earnings or to attach other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor to enforce:

(1) An order of any court for the support of any person;

(2) an order of any court of bankruptcy under chapter 13 of the United States bankruptcy code; or

(3) a debt due for any state or federal tax, the direction of the party shall so indicate.

No bond is required for an order of garnishment issued after judgment.

New Sec. 5. 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 by the judicial council.

(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. 60-301 through 60-313, and amendments thereto, except that the garnishee may be served by any means provided under K.S.A. 60-301 through 60-313, and amendments thereto, at the garnishee's business or office location and this shall be considered proper service. 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.

(c) 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.

(d) 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.

New Sec. 6. (a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 110% of the amount of the judgment creditor's claim, in the case of prejudgment garnishment, or 110% of the amount of the current balance due under the judgment, in the case of postjudgment garnishment. 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 a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the judgment debtor's address and tax identification number, if known, and shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 110% of the amount of the judgment creditor's claim or 110% of the amount of the current balance due under the judgment, as stated in the written direction of the party seeking the order.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the judgment debtor, the amount to be withheld by you pursuant to this order of garnishment is not to exceed \$_____."

(amount stated in direction)

(d) (1) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the judgment debtor which I shall hold shall not exceed \$_____."

(amount stated in order)

(2) The answer shall further include information that such account is owned in joint tenancy with one or more individuals who are not subject to the garnishment, if applicable.

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the judgment debtor in an account which judgment debtor owns in joint tenancy with one or more individuals who are not subject to the garnishment, the garnishee shall withhold the entire amount sought by the garnishment. Neither the garnishor nor the garnishee shall be liable to the joint owners if the ownership of the funds is later proven not to be the judgment debtor's.

(g) No party shall seek an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor. Except as provided further, not more than two garnishments shall be issued by a party seeking an order of garnishment applicable to the same claim or claims and against the same judgment debtor in any 30-day period. A judge may order an exception to this subsection in any case in which the party seeking the garnishment shall in person or by attorney: (1) Certify that the garnishment is not for the purpose of harassment of the debtor, and (2) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.

New Sec. 7. 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 by the judicial council.

(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. 60-301 through 60-313, and amendments thereto, except that the garnishee may be served by any means provided under K.S.A. 60-301 through 60-313, and amendments thereto, at the garnishee's business or office location and this shall be considered proper service. 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.

(c) 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) 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) 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.

New Sec. 8. (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 by the judicial council, 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.

(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.

New Sec. 9. 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 by the judicial council.

(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.

New Sec. 10. 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 by the judicial council.

(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.

(c) 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.

New Sec. 11. (a) No later than 10 days after the garnishee makes the answer and the clerk or the garnishee sends it to the judgment creditor and judgment debtor, the judgment creditor or judgment debtor, or both, may file a reply disputing any statement in the answer of the garnishee. A copy of the reply shall be sent by the party filing same to the other party, to any other judgment creditors affected and to the garnishee. The party filing the reply shall notify the court and schedule a hearing on the reply to be held within 30 days after filing of the reply.

(b) At the hearing, the court shall determine and rule on all issues related to the reply. The burden of proof shall be upon the party filing the reply to disprove the statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the judgment debtor to the garnishee, or liens asserted by the garnishee against personal property of the judgment debtor. The provisions of K.S.A. 60-719, and amendments thereto, relating to offsets claimed by the garnishee shall be applicable to lawsuits filed pursuant to the code of civil procedure for limited actions.

New Sec. 12. If the garnishment is to attach property other than earnings of the judgment debtor, after 10 days following receipt of the answer of the garnishee by the court, and no reply to the answer has been filed, the court shall direct the garnishee to pay to the court such amount that the garnishee is holding as indicated by the answer, or such lesser amount if the circumstances warrant. If the garnishee is holding property other than money, the provisions of K.S.A. 60-701 *et seq.*, and amendments thereto, relating to attachment shall be applicable. If through garnishment, the claim is overpaid to the court, the court shall promptly refund to the judgment debtor any such overpayment.

New Sec. 13. 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 the answer, 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.

New Sec. 14. If the garnishee fails to answer within the time and manner specified in the order of garnishment, the judgment creditor may file a motion and shall send a copy of the motion to the garnishee and the judgment debtor in the manner allowed under K.S.A. 60-205, and amendments thereto. At the hearing on the motion, the court may grant judgment against the garnishee for the amount of the judgment creditor's judgment or claim against the judgment debtor or for such other amount as the court deems reasonable and proper, and for the expenses and attorney fees of the judgment creditor. If the claim of the plaintiff has not been reduced to judgment, the liability of the garnishee shall be limited to the judgment ultimately rendered against the judgment debtor.

New Sec. 15. If after the time the garnishee is to make payment of funds or property held under a garnishment, the garnishee fails or refuses to pay or deliver property to the judgment creditor, the judgment creditor may file a motion and shall send a copy of the motion to the garnishee and the judgment debtor in the manner allowed under K.S.A. 60-205, and amendments thereto. At the hearing on the motion, the court may find the garnishee in contempt and punish the garnishee by a fine or may enter judgment against the garnishee for such amount as the court deems reasonable and proper, including the expenses and attorney fees of the judgment creditor.

New Sec. 16. The forms set forth by the judicial council are sufficient under this act and are intended to indicate the simplicity and brevity of statement which this act contemplates.

New Sec. 17. The provisions of sections 2 through 17, and amendments thereto, shall be part of and supplemental to the code of civil procedure.

Sec. 18. K.S.A. 2001 Supp. 60-205 is hereby amended to read as follows: 60-205. The method of service and filing of pleadings and other papers as provided in this section shall constitute sufficient service and filing in all civil actions and special proceedings but they

shall be alternative to, and not in restriction of, different methods specifically provided by law.

(a) *When required.* Except as otherwise provided in this chapter, the following shall be served upon each of the parties: Every order required by its terms to be served; every pleading subsequent to the original petition, unless the court otherwise orders because of numerous defendants; every paper relating to disclosure of expert testimony or discovery required to be served upon a party, unless the court otherwise orders; every written motion other than one which may be heard *ex parte*; and every written notice, appearance, demand, offer of judgment, designation of record on appeal and similar paper. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in article 3 of chapter 60.

(b) *How made.* Whenever under this article service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by: (1) Delivering a copy to the attorney or a party; (2) mailing it to the attorney or a party at the last known address; (3) if no address is known, by leaving it with the clerk of the court; or (4) sending or transmitting to such attorney a copy by telefacsimile communication. For the purposes of this subsection, "Delivery of 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. Service by telefacsimile communication is complete upon receipt of a confirmation generated by the transmitting machine.

(c) *Numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that services of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) *Filing.* (1) Interrogatories, depositions other than those taken under K.S.A. 60-227 and amendments thereto, disclosures of expert testimony under K.S.A. 60-226 and amendments thereto and discovery requests or responses under K.S.A. 60-234 or 60-236, and amendments thereto, shall not be filed except on order of the court or until used in a trial or hearing, at which time the documents shall be filed.

(2) A party serving discovery requests or responses under K.S.A. 60-233, 60-234 or 60-236, and amendments thereto, or disclosures of expert testimony under K.S.A. 60-226 and amendments thereto, shall file with the court a certificate stating what document was served, when and upon whom.

(3) All other papers filed after the petition and required to be served upon a party, shall be filed with the court either before service or within a reasonable time thereafter.

(e) *Filing with the court defined.* The filing of pleadings and other papers with the court as required by this article shall be made by filing them with the clerk of the court. In accordance with K.S.A. 60-271 and amendments thereto and supreme court rules, pleadings and other papers may be filed by telefacsimile communication. The judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Sec. 19. K.S.A. 60-714, 60-715, 60-716 and 60-720 and K.S.A. 2001 Supp. 60-205, 60-717, 60-718, 60-726, 60-728 and 61-3003 and Forms No. 27 and 28 in the appendix of forms following K.S.A. 60-269 are hereby repealed;

And by renumbering section 3 as section 20;

In the title, on page 1, in line 12, by striking "for limited actions"; in line 15, after "Supp." by inserting "60-205 and"; also in line 15, by striking "section" and inserting "sections"; also

repealing K.S.A. 60-714, 60-715, 60-716 and 60-720 and K.S.A. 2001 Supp. 60-717, 60-718, 60-726 and 60-728 and Forms No. 27 and 28 in the appendix of forms following K.S.A. 60-269”;

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

JOHN VRATIL
EDWARD W. PUGH
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 2771** was adopted.

On roll call, the vote was: Yeas 123; Nays 0; Present but not voting: 0; Absent or not voting: 2.

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, Gordon, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightmer, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Spangler, 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: O'Brien, Stone.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2802**, submits the following report:

The Senate recedes from all of its amendments to the bill;

The Senate recedes from all of its amendments to the bill;

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 2802** was adopted.

On roll call, the vote was: Yeas 117; Nays 6; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goering, Gordon, Grant, Hayzlett, Henry, Hermes, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Krehbiel, Kuether, Land-

wehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, P. Long, Loyd, Mason, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams.

Nays: Cook, Faber, Henderson, Spangler, Wilson, Winn.

Present but not voting: None.

Absent or not voting: O'Brien, Stone.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 509**, 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 6, following line 3, by inserting the following:

“Sec. 2. K.S.A. 75-5521 is hereby amended to read as follows: 75-5521. As used in this act:

(a) “Beneficiary” means any person designated to receive benefits under a deferred compensation plan.

(b) “Deferred compensation plan” means a plan developed and approved as provided in this act and under which an employee sets aside a specified amount of salary or compensation which may not be subject to state or federal taxation until receipt thereof by the employee under stated conditions in the future a participant elects to defer, transfer or rollover amounts as permitted by the plan.

(c) “Director” means the director of accounts and reports.

(d) “Employee” means any person who is an elected or appointed officer or any employee of the state in the classified service or unclassified service under the Kansas civil service act, other than persons who are employed on a seasonal or temporary basis:

—(e) “Participant” means an eligible employee who has entered into an agreement with the director as provided in K.S.A. 75-5524, to defer an amount of the employee’s salary or compensation under the Kansas public employees deferred compensation plan.

—(f) “State” means the state of Kansas and any state agency as defined in subsection (3) of K.S.A. 75-3701, and amendments thereto.

Sec. 3. K.S.A. 75-5523 is hereby amended to read as follows: 75-5523. (a) The director is authorized to establish a deferred compensation plan in accordance with ~~the federal revenue act of 1978, Public Law No. 95-600 section 457 of the federal internal revenue code of 1986, and amendments thereto,~~ subject to the approval of the secretary of administration. Such plan shall be the Kansas public employees deferred compensation plan. All powers and duties heretofore conferred by such plan upon the advisory committee on deferred compensation are hereby transferred to the director of personnel services or the director’s designees.

(b) The director may enter into an agreement or agreements with approved insurers or other contracting parties whereby benefits under the Kansas public employees deferred compensation plan would be made available to ~~those participants who contract with the director for deferred compensation under K.S.A. 75-5524, and amendments thereto.~~ In addition, the director may enter into an agreement with one or more qualified private firms for consolidated billing services, participant enrollment services, participant accounts and other services related to the administration of the Kansas public employees deferred compensation plan.

(c) No significant costs shall be incurred by the state as a result of the administration of this act unless such costs are recovered by charging and collecting a service charge from all participants and in addition thereto or in lieu thereof, where the director has entered into agreements with one or more qualified private firms under subsection (b), are recovered

from such firms. The amount of any such significant costs incurred and to be recovered by the state shall be determined by the director.

(d) Subject to the approval of the secretary of administration, the director is authorized to negotiate and enter into contracts with qualified insurers and other contracting parties for the purposes of establishing a deferred compensation plan, including acquisition of actuarial and other services necessary therefor. The director shall advertise for deferred compensation proposals, shall negotiate with not less than three firms or other contracting parties submitting such proposals, and shall select from among those submitting such proposals the firm or firms or other contracting party or parties to contract with for purposes of establishing a deferred compensation plan. Contracts entered into under this act shall not be subject to K.S.A. 75-3739 and amendments thereto.

Sec. 4. K.S.A. 75-5524, as amended by section 10 of 2002 Senate Substitute for House Bill No. 2621, is hereby amended to read as follows: 75-5524. (a) The director is authorized to enter into a voluntary agreement with any employee whereby the director agrees to defer and deduct each payroll period a portion of the employee's salary or compensation from the state in accordance with the Kansas public employees deferred compensation plan. Such agreement may require each participant to pay a service charge to defray all or part of any significant costs incurred and to be recovered by the state pursuant to subsection (c) of K.S.A. 75-5523, and amendments thereto, as a result of the administration of this act. Pursuant to this act and such agreements the director is authorized to deduct amounts authorized in such agreements from the salary or compensation of such employee each payroll period, as part of the system of regular payroll deduction. On and after July 1, 2002, pursuant to section 401(a) of the federal internal revenue code, the director may establish a qualified plan under which the state may contribute a specified amount, subject to appropriations, to the deferred compensation plan for state employees who have entered into a voluntary agreement with the director under this section.

(b) The minimum amount and the maximum amount which may be deferred in any one payroll period shall be established by rules and regulations adopted under K.S.A. 75-5529, and amendments thereto.

(c) The Kansas public employees deferred compensation plan shall exist and be in addition to, and shall not be a part of any retirement or pension system for employees. The state shall not be responsible for any loss incurred by ~~an employee~~ *a participant* under the Kansas public employees deferred compensation plan established and approved pursuant to this act.

(d) Any amount of the employee's salary or compensation that is deferred under such authorized agreement shall continue to be included as regular compensation for all purposes of computing retirement and pension benefits earned by any such employee, but any sum deferred or deducted shall not be subject to any state or local income taxes for the year in which such sum is earned but shall be subject to applicable state and local income taxes for the year in which such sum is received by the employee.

(e) The director is hereby authorized to establish a deferred compensation clearing fund in the state treasury in which shall be placed temporarily all compensation deferred, deducted or contributed in accordance with this act, as provided for in any agreement between ~~an employee~~ *a participant* and the director.

Sec. 5. K.S.A. 2001 Supp. 75-5525 is hereby amended to read as follows: 75-5525. (a) All moneys which are deferred ~~and, deducted by the director~~ *transferred or rolled-over* in accordance with the provisions of ~~an agreement entered into under K.S.A. 75-5524, and amendments thereto~~ *the deferred compensation plan*, and the provisions of this act, ~~shall remain assets of the state~~, shall be held *in trust* in accordance with section 457 of the federal internal revenue code of 1986, and amendments thereto, for the exclusive benefit of participants and their beneficiaries, and shall be disposed of in accordance with the terms of the agreement ~~between the employee and the director~~ *with the participant*. ~~The obligation of the state to the employee and approved insurers or other contractors shall be a contractual obligation only and no preferred or special interest in the deferred moneys shall accrue to such employee or to such approved insurer or other contractor. No part of the assets of the plan may be used for, or diverted to, purposes other than for the exclusive benefit of participants and the participant's beneficiaries and for defraying reasonable expenses of the plan.~~

(b) ~~Contributions~~ *Amounts* payable to the deferred compensation plan pursuant to the plan shall not be subject to any premium tax or other charges arising under the insurance laws of this state. If any such tax or charge has been paid prior to the effective date of this act, the same shall be refunded.

Sec. 6. K.S.A. 75-5530 is hereby amended to read as follows: 75-5530. (a) Upon receipt of written authorization by any state employee, the director of accounts and reports shall make periodic deductions of amounts as specified in such authorization from the salary or wages of such state employee for the purposes of purchasing United States savings bonds ~~and~~. *The director of accounts and reports* shall make payments of such amounts in accordance with such authorization and the payroll deduction plan adopted pursuant to subsection (b). Any amounts deducted from the salary or wages of such state employee pursuant to such authorization shall be subject to the maximum and minimum amounts established by rules and regulations adopted pursuant to subsection (c). Any such written authorization may be withdrawn or modified by such state employee upon filing written notice of such withdrawal or modification in the manner and at the times prescribed in rules and regulations adopted pursuant to subsection (c).

(b) The director of accounts and reports shall establish a payroll deduction plan for the purchase of United States savings bonds by state employees. Such plan shall be administered by the director of accounts and reports in accordance with rules and regulations adopted pursuant to subsection (c) and such additional accounting procedures as may be prescribed by the director of accounts and reports.

(c) The secretary of administration, upon the recommendation of the director of accounts and reports, shall adopt rules and regulations as provided in K.S.A. 75-3706, *and amendments thereto*, for the implementation and administration of this act. Such rules and regulations shall include maximum and minimum limitations on the amounts to be deducted from the salary or wages of any state employee and provisions for the modification or withdrawal of any authorization to make periodic deductions for the purchase of United States savings bonds under this act.

(d) As used in this act, the term "state employee" or "employee" means any appointed or elective officer or *any* employee of the state of Kansas ~~whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year.~~

Sec. 7. K.S.A. 75-5531 is hereby amended to read as follows: 75-5531. As used in K.S.A. 75-5531 to 75-5534, inclusive, *and amendments thereto*:

(a) "State employee" or "employee" means any appointed or elective officer or any employee of the state of Kansas ~~whose employment is not seasonal or temporary and whose employment requires at least one thousand (1,000) hours of work per year;~~ and

(b) "united way organization" means the organization conducting a single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable ~~or~~, public health, welfare or service purposes, which commonly is known as the united way. Such term includes the united fund, the community chest or any other organization which serves in communities or areas of the state where the united way is not organized.

New Sec. 8. (a) The governor is hereby authorized and directed to modify the pay plan for fiscal year 2003 in accordance with this section and to adopt such pay plan as so modified. The existing pay plan for fiscal year 2003 shall be modified to authorize and provide for a recruitment, hiring and retention incentive package by executive directive which may include salary bonus payments and which shall be targeted to critical and specific staffing needs for persons employed as physician assistants, advanced registered nurse practitioners, registered nurses, physical therapists and occupational therapists at department of social and rehabilitation services facilities and persons employed as registered nurses at a state veterans' home operated by the Kansas commission on veterans affairs as described in K.S.A. 76-1901 *et seq.*, and amendments thereto, or K.S.A. 76-1951 *et seq.*, and amendments thereto. The pay plan adopted by the governor under this section shall be the pay plan for the classified service under the Kansas civil service act and such pay plan shall be subject to modification and approval as provided under K.S.A. 75-2938 and amendments thereto.

(b) The provisions of subsection (q) of section 169 of 2002 Senate Bill No. 517 shall not apply to any salary bonus payments under the recruitment, hiring and retention incentive

package prescribed by this section that are chargeable to biweekly payroll periods chargeable to the fiscal year ending June 30, 2003.

New Sec. 9. (a) The director of personnel services shall conduct a classification and job rate study of all health care professional and paraprofessional jobs and job classes under the Kansas civil service act to compare salaries among comparable jobs and job classes in both public and private sector entities within the state and within states adjacent to Kansas. The health care professional and paraprofessional jobs and job classes under the Kansas civil service act in such classification and job rate study shall include physician assistants, advanced registered nurse practitioners, registered nurses, physical therapists and occupational therapists. The director of personnel services shall present a report on the results of such classification and job rate study, including any estimates of costs required to implement any findings, to the legislative budget committee during the interim period prior to the 2003 regular session of the legislature and to the committee on appropriations of the house of representatives and the committee on ways and means of the senate at the beginning of the 2003 regular session of the legislature.

(b) Upon request of the director of personnel services, each public and private health care facility located in Kansas shall provide salary survey data for the purposes of the classification and job rate study of all health care professional and paraprofessional jobs and job classes prescribed by this section. Salary and survey data and other information collected pursuant to this section shall be confidential, shall be disseminated only for statistical purposes for the purposes of the classification and job rate study and shall not be disclosed or made public in any manner which would identify individuals.”;

And by renumbering remaining sections accordingly;

Also on page 6, in line 4, by striking “is” and inserting “, 75-5521, 75-5523, 75-5524, as amended by section 10 of 2002 Senate Substitute for House Bill No. 2621, 75-5530 and 75-5531 and K.S.A. 2001 Supp. 75-5525 are”;

On page 1, in the title, in line 18, by striking “retirement” and inserting “compensation,”; in line 19, following “74-49,115”, by inserting “, 75-5521, 75-5523, 75-5524, as amended by section 10 of 2002 Senate Substitute for House Bill No. 2621, 75-5530 and 75-5531 and K.S.A. 2001 Supp. 75-5525”; in line 21, by striking “section” and inserting “sections”;

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

KENNY A. WILK
MELVIN NEUFELD
ROCKY NICHOLS
Conferees on part of House

STEPHEN R. MORRIS
NICK JORDAN
PAUL FELICIANO, JR.
Conferees on part of Senate

On motion of Rep. Wilk, the conference committee report on **SB 509** was adopted.

On roll call, the vote was: Yeas 121; Nays 2; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Goering, Gordon, 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, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, 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, Spangler, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Cook, DiVita.

Present but not voting: None.

Absent or not voting: O'Brien, Stone.

EXPLANATION OF VOTE

MR. SPEAKER: The Conference Committee has revised the definition of "employee" so over-broadly that anyone employed or appointed by the State of Kansas can become a participant of KPRS. The additional cost of administration of KPRS accounts for temporary and seasonal employees, whose individual contributions to KPRS will be minimal, is an expense that may overburden the KPRS system. Ultimately, the long-range solvency of KPRS may be threatened if the cost of administration is not offset by adequate contributions from these "employees." I vote no on **SB 509**.—KAREN DIVITA-JOHNSON

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 472**, 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 16 through 43; By striking all on pages 2 through 27 and inserting the following:

"New Section 1. (a) The department of revenue is authorized to become a signatory to an agreement with one or more states for the purpose of providing a multi-state, voluntary, streamlined system for sales and use tax collection and administration to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce, at such time as the legislature takes further action to bring the state's laws in compliance with the requirements of the agreement. The department of revenue is further authorized to participate in the streamlined sales tax project, identify all changes in this state's sales and use tax laws and rules and regulations that would be required in order to comply with such agreement, take such other actions reasonably required to prepare this state for entry into such agreement.

(b) The secretary of revenue, or the secretary's designee, is authorized to represent this state before other states that are participating in the streamlined sales tax project or that are signatories to such agreement. In addition, the president and the minority leader of the senate and the speaker and the minority leader of the house of representatives may each appoint a person who is also authorized to so represent this state. All such appointees attending meetings shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

New Sec. 2. The secretary of revenue is hereby authorized to adopt rules and regulations necessary to administer and not inconsistent with the provisions of chapters 41 and 79 of the Kansas Statutes Annotated. All rules and regulations of the secretary of revenue in existence on the effective date of this act shall continue to be in effect and shall be deemed to be rules and regulations of the secretary until revised, amended or nullified pursuant to law.

Sec. 3. K.S.A. 2001 Supp. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state board of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the board within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue or the secretary's designee. *An appeal may also be taken to the state board of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto and no written agreement by the parties to further extend the time for making such final determination is in effect.* Upon receipt of a timely appeal, the board shall conduct a hearing in accordance with the provi-

sions of the Kansas administrative procedure act. The hearing before the board shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the board relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county or district appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity and correctness of such determination. No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.

Sec. 4. K.S.A. 79-3226 is hereby amended to read as follows: 79-3226. (a) As soon as practicable after the return is filed, the director of taxation shall examine it and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied, notice shall be mailed to the taxpayer. Within 60 days after the mailing of such notice the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax liability or denial of refund by filing a written request with the secretary of revenue or the secretary's designee which sets forth the objections to the proposed liability or proposed denial of refund. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the proposed liability or proposed denial of refund. The secretary of revenue or the secretary's designee shall hold an informal conference with the taxpayer and shall issue a written final determination thereon. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act. Informal conferences held pursuant to this section may be conducted by the secretary of revenue or the secretary's designee. The rules of evidence shall not apply to an informal conference and no record shall be made, except at the request and expense of the secretary of revenue or the secretary's designee or taxpayer. The taxpayer may bring to the informal conference an attorney, certified public accountant and any other person to represent the taxpayer or to provide information. Because the purpose of the department staff is to aid the secretary or secretary's designee in the proper discharge of the secretary's or secretary's designee's duties, the secretary or secretary's designee may confer at any time with any staff member with respect to the case under reconsideration. The secretary of revenue or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing such final determination. A final determination *issued within or after 270 days, with or without extension*, constitutes final agency action subject to administrative review by the state board of tax appeals. In the event that a written final determination is not rendered within 270 days, the taxpayer may appeal to the state board of tax appeals *at any time provided that a written extension of time is not in effect*.

(b) A final determination finding additional tax shall be accompanied by a notice and demand for payment. Notice under this section shall be sent by first-class mail in the case of individual taxpayers and by registered or certified mail in the case of all other taxpayers. The tax shall be paid within 20 days thereafter, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438 and amendments thereto, but no additional tax shall be assessed for less than \$5 *unless the secretary or the secretary's designee determines the administration and collection cost involved in collecting an amount over \$5 but less than \$100 would not warrant collection of the amount due*. Interest at such rate shall continue to accrue on any additional tax liability during the course of any appeal.

Sec. 5. K.S.A. 79-3650 is hereby amended to read as follows: 79-3650. (a) A refund request may be filed directly by a consumer or purchaser if the consumer or purchaser: (1) paid the tax directly to the department; (2) provides evidence that the retailer refused or was unavailable to refund the tax; (3) provides evidence that the retailer did not act upon its refund request in a timely manner as provided in subsection (b), or; (4) ~~submits such a refund request pursuant to subsection (c)~~ provides a notarized statement to the department from the retailer that the retailer: (A) Will not claim a refund of the same tax included in the purchaser's or consumer's refund request; (B) agrees to provide to the consumer or purchaser any information or documentation in the retailer's possession needed for submission to the department to support or prove the refund claim; (C) has remitted to the state the tax sought to be refunded; and (D) has not taken or will not take a credit for such tax. A retailer providing false information in any such statement shall be subject to penalties prescribed by K.S.A. 2001 Supp. 79-3615(h), and amendments thereto.

(b) If the director of taxation finds upon proper showing that a consumer or purchaser submitted a refund request to a retailer that was not acted upon by the retailer in a timely manner, the director shall extend the time for filing the request with the department beyond the three year limitation period that is otherwise provided by the time attributed to the delay caused by the retailer.

~~(c) If, during the course of an audit examination of a business as a purchaser or consumer, it is determined that a vendor has collected Kansas tax from the purchaser on a transaction that is not subject to tax imposed under this act, the purchaser may apply directly to the director for an offset or refund of the tax, notwithstanding subsection (a), if: (1) the purchaser is currently registered to collect and remit tax, and (2) the purchaser provides the director with an affidavit or other acceptable documentation that assures the purchaser has not and will not request a duplicate refund through the vendor.~~

Sec. 6. 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) "Sales" means all gross receipts of the taxpayer not allocated under K.S.A. 79-3274 through 79-3278, and amendments thereto.

(h) "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) "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) "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.

New Sec. 7. If the amount of any tax payment, estimated or otherwise, made during any calendar year or other taxable period exceeds the taxpayer's liability for which such payment was made, any excess shall be applied to any other tax then owed the state of Kansas by such taxpayer, including fines, penalties and interests, if any, and the balance of such excess, if any, shall be refunded to the taxpayer.

Sec. 8. K.S.A. 79-2015 is hereby amended to read as follows: 79-2015. The taxes, fees, interest and penalties, levied and assessed by any state law administered by the ~~director~~ *secretary* of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time *the same* shall become due, and shall be recoverable in any court of competent jurisdiction in any action in the name of the state of Kansas, on relation of the ~~director~~ *secretary* of revenue *or the secretary's designee*. Such suit may be maintained, prosecuted, and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debt. All provisional remedies available in such actions shall be, and are hereby made available to the state of Kansas in the enforcement of the payment of any state tax. ~~Provided, That, except that~~ the remedy herein provided shall be in addition to the various warrant and lien procedures now provided by law for the collection of delinquent taxes.

Sec. 9. K.S.A. 79-32,104 is hereby amended to read as follows: 79-32,104. (a) The amount paid upon declarations of estimated tax under this act during any calendar year shall be allowed as a credit against the income tax otherwise imposed on the taxpayer by the "Kansas income tax act."

(b) If the amount paid on the declaration of estimated tax during any calendar year exceeds the income tax liability of the taxpayer, any excess shall be applied to any other ~~income~~ tax then owed the state of Kansas by such taxpayer ~~including fines, penalties and interest, if any, as provided by section 7, and amendments thereto~~, and the balance of such excess, if any, refunded to the taxpayer as provided in K.S.A. 79-32,105 (c), *and amendments thereto*, or at the taxpayer's option credited to ~~his or her~~ *the taxpayer's* declaration of estimated tax liability for the succeeding year.

Sec. 10. K.S.A. 2001 Supp. 79-32,105 is hereby amended to read as follows: 79-32,105. (a) The director shall remit the entire amount collected under the provisions of this act and from the income tax imposed upon individuals, corporations, estates or trusts pursuant to the "Kansas income tax act" less amounts withheld as provided in subsection (b) and any amounts credited to the IMPACT program repayment fund or the IMPACT program services fund under K.S.A. 74-50,107 and amendments thereto 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 to the credit of the state general fund.

(b) A revolving fund, designated as "income tax refund fund" not to exceed \$4,000,000 shall be set apart and maintained by the director from income tax collections, withholding tax collections, and estimated tax collections and held by the state treasurer for prompt payment of all income tax refunds, for the payment of interest as provided in subsection (e), for payment of homestead property tax refunds in accordance with the homestead property tax refund act and for payment of property tax refunds allowed pursuant to the provisions of K.S.A. 2001 Supp. 79-255, and amendments thereto. The fund shall be in such amount, within the limit set by this section, as the director determines is necessary to meet current refunding requirements under this act.

(c) If the director discovers from the examination of the return, or upon claim duly filed by the taxpayer or upon final judgment of the court that the income tax, withholding tax,

declaration of estimated tax or any penalty or interest paid by or credited to any taxpayer is in excess of the amount legally due *for such tax or any other tax owed the state of Kansas*, the director shall certify to the director of accounts and reports the name of the taxpayer, the amount of refund and such other information as the director may require. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the taxpayer out of the fund provided in subsection (b), except that no refund shall be made for a sum less than \$5, but such amount may be claimed by the taxpayer as a credit against the taxpayer's tax liability in the taxpayer's next succeeding taxable year.

(d) When a resident taxpayer dies, and the director determines that a refund is due the claimant not in excess of \$100, the director shall certify to the director of accounts and reports the name and address of the claimant entitled to the refund and the amount of the refund. A refund may be made upon a claim duly made on behalf of the estate of the deceased or in the absence of any such claim upon a claim by a surviving spouse and if none upon the claim by any heir at law. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the claimant out of the fund provided in subsection (b).

(e) Interest shall be allowed and paid at the rate of 12% per annum upon any overpayment of the income tax imposed upon individuals, corporations, estates or trusts pursuant to the Kansas income tax act for any period prior to January 1, 1995, 6% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and at the rate prescribed and determined pursuant to K.S.A. 79-2968, and amendments thereto, for any period thereafter.

For the purposes of this subsection:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer;

(2) any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(3) if any overpayment of tax results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises. For purposes of this paragraph, the return for the loss year shall not be deemed to be filed before claim for such overpayment is filed;

(4) in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken, except that if any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year, and no interest shall be allowed or paid in such overpayment for the taxable year in which the overpayment arises;

(5) in the case of a tax return which is filed after the last date prescribed for filing such return, determined with regard to extensions, no interest shall be allowed or paid for any period before the date on which the return is filed;

(6) in the case of a refund, interest shall be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, as determined by the director, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer, but acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon; and

(7) if any overpayment is refunded within two months after the last date prescribed, or permitted by extension of time, for filing the return of such tax, or within two months after the return was filed, whichever is later, no interest shall be allowed or paid. For the purposes

of this section, an overpayment shall be deemed to have been refunded at the time the refund check in the amount of the overpayment, plus any interest due thereon, is deposited in the United States mail.

New Sec. 11. (a) If any compensation required by K.S.A. 70a-102, and amendments thereto, is determined by the director to be unpaid: (1) Not due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, interest on such compensation shall be added at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (2) due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, but without intent to defraud, a penalty of 10% of the amount of such compensation shall be added, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (3) due to fraud with intent to evade the compensation, there shall be added thereto a penalty of 50% of the amount of such compensation, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid.

(b) If any person fails or refuses to make any return, when required to do so under the provisions of K.S.A. 70a-101 *et seq.*, and amendments thereto, such person shall be subject to a penalty of \$25 per day for each return which such person fails or refuses to file.

(c) Whenever, in the judgment of the director, the failure of any person to comply with the provisions of subsection (a)(2) and (b) of this section, was due to reasonable cause, the director may, in the exercise of discretion, waive or reduce any of the penalties upon making a record of the reason therefor.

(d) In addition to all other penalties provided by this section, any person who: (1) Fails to make a return, or to pay any compensation required to be paid as required by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (2) makes a false or fraudulent return, or fails to keep any books or records prescribed by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (3) willfully violates any rules and regulations promulgated by the secretary for the enforcement and administration of K.S.A. 70a-101 *et seq.*, and amendments thereto; or (4) aids and abets another in attempting to evade the payment of any compensation required to be paid, shall be subject to the penalty prescribed for other violations by K.S.A. 70a-108, and amendments thereto.

(e) The director of taxation shall examine all returns filed under the provision of K.S.A. 70a-101 *et seq.*, and amendments thereto, and shall issue notices and final determinations of liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto, relating to income taxes.

Sec. 12. K.S.A. 2001 Supp. 75-5154 is hereby amended to read as follows: 75-5154. The secretary of revenue or the secretary's designee may, in the same manner and to the same extent as provided for income tax liabilities by K.S.A. 79-3233a through K.S.A. 79-3233i, and amendments thereto, abate all or part of a final liability for any excise tax imposed under the provisions of K.S.A. 12-1692 *et seq.*, 12-1696 *et seq.*, 41-501 *et seq.*, 79-3301 *et seq.*, 79-3370 *et seq.*, 79-3401 *et seq.*, 79-3490 *et seq.*, 79-34,108 *et seq.*, 79-3817 *et seq.*, 79-4101 *et seq.* or 79-41a01 or 79-5201 *et seq.*, and amendments thereto.

New Sec. 13. (a) Any correspondence issued by the department of revenue to a taxpayer or the taxpayer's representative demanding payment of an assessment of any tax the imposition and collection of which is administered by the department shall consist of a detailed, clear and accurate explanation of the assessment demand including, but not limited to, the specific tax and tax year to which such assessment applies and penalties and interest which apply thereto. If the department proposes to change the tax or refund due on a return filed by a taxpayer, correspondence detailing the change shall be sent to the taxpayer. The correspondence shall specifically identify the proposed change and explain in simple and non-technical terms the reasons for the change.

(b) Any such correspondence demanding the payment of an assessment of tax, penalties and interest in an amount in excess of \$750 for individual accounts and in excess of \$2,000 for business accounts shall be reviewed prior to issuance for accuracy by an employee of the department and shall provide the employer identification number and contact telephone number of the employee performing any such review.

New Sec. 14. In the event a taxpayer has designated a third party or other representative to discuss an income tax return upon the taxpayer's Kansas return, the department shall adhere and comply with such designation, and shall discuss or correspond with such designee or representative regarding matters concerning the return, including collection matters.

New Sec. 15. In addition to the authority to waive any civil penalty imposed by law for the violation of any law pertaining to any tax administered by the department of revenue, the secretary or the secretary's designee shall waive any such penalty upon the finding of any circumstance allowing waiver of civil penalties pursuant to the federal internal revenue code, as in effect on January 1, 2002.

New Sec. 16. Upon a resolution of any assessment of tax, penalties and interest of any tax the imposition and collection of which is administered by the department, a closing letter evidencing such resolution shall be issued to the affected taxpayer or the taxpayer's representative, as the case may require, within 30 days of the date upon which such resolution is agreed to. The taxpayer shall be entitled to rely on such closing letter as it relates to the issues resolved.

New Sec. 17. (a) Notwithstanding any provision of K.S.A. 79-3235, and amendments thereto, to the contrary, the procedures set forth by this section shall apply to the issuance of any warrant and the levy upon property pursuant to such provisions.

(b) The secretary or the secretary's designee shall notify in writing the person who is the subject of the warrant of the filing of a warrant under K.S.A. 79-3235, and amendments thereto. The notice required shall be given in person, left at the dwelling or usual place of business of such person or sent by certified or registered mail to such person's last known dwelling address, not more than five business days after the day of the filing of the notice of lien. The notice shall include in simple and nontechnical terms the amount of unpaid taxes, the administrative appeals available to the taxpayer with respect to such warrant and the procedures relating to such appeals, and the provisions of law and procedures relating to the release of warrants on property.

Sec. 18. K.S.A. 79-2015, 79-3226, 79-3271, 79-32,104 and 79-3650 and K.S.A. 2001 Supp. 74-2438, 75-5154 and 79-32,105 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.”;

In the title, in line 10, by striking “sales”; by striking all in lines 11 through 13 and inserting “amending K.S.A. 79-2015, 79-3226, 79-3271, 79-32,104 and 79-3650 and K.S.A. 2001 Supp. 74-2438, 75-5154 and 79-32,105 and repealing the existing sections.”;

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

JOHN T. EDMOND
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. Edmonds to adopt the conference committee report on **SB 472**, Rep. T. Powell 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. Edmonds and the conference committee report was adopted.

On roll call, the vote was: Yeas 95; Nays 28; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aday, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Campbell, Compton, Cox, Crow, Dahl, Dillmore, DiVita, Dreher, Edmonds, Feuerborn, Findley, Flaherty, Flora, Freeborn, Gatewood, Gilbert, Glasscock, Goering, Gordon, Grant, Hayzlett, Henry, Hermes, Holmes, Horst, Huff, Humerickhouse, Hutchins, Johnson, Kirk, Krehbiel,

Kuether, Lane, Larkin, Levinson, Light, Lloyd, Loganbill, M. Long, Loyd, Mason, Mays, McClure, McKinney, Minor, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Neal, Osborne, Owens, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, Powers, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Storm, Swenson, Tafanelli, Tanner, Thimesch, R. Toelkes, Tomlinson, Vickrey, Weber, Wells, Welshimer, Wilk, J. Williams, Wilson.

Nays: Burroughs, Cook, DeCastro, Faber, Garner, Henderson, Howell, Huebert, Huy, Kauffman, Klein, Landwehr, Lightner, P. Long, Mayans, McCreary, McLeland, Merrick, Miller, Ostmeyer, Palmer, L. Powell, T. Powell, Pyle, Spangler, Toplikar, D. Williams, Winn.

Present but not voting: None.

Absent or not voting: O'Brien, Stone.

INTRODUCTION OF ORIGINAL MOTIONS

Having voted on the prevailing side, Rep. T. Powell moved that the House reconsider its adverse action in not adopting the conference committee report on **SB 35**. The motion prevailed.

The question then reverted back to the original motion of Rep. O'Neal (see previous action, Afternoon Session) to adopt the conference committee report. Rep. O'Neal offered a substitute motion to not adopt the conference committee report on **SB 35** and that a new conference committee be appointed. The motion prevailed.

Speaker pro tem Aurand thereupon appointed Reps. O'Neal, Loyd and Pauls as second conferees on the part of the House.

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

Speaker pro tem Aurand called the House to order.

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 July 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 July 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 July 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 July 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 July 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 July 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.

Sec. 5. On and after July 1, 2002, K.S.A. 79-3371 is hereby amended to read as follows: 79-3371. A tax is hereby imposed upon the privilege of selling or dealing in tobacco products in this state by any person engaged in business as a distributor thereof, at the rate of ~~ten percent (10%)~~ 20% of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings or causes to be brought into this state from without the state tobacco products for sale; (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or (c) ships or transports tobacco products to retailers in this state to be sold by those retailers.

New Sec. 6. On or before July 30, 2002, each distributor having a place of business in this state shall file a report with the director in such form as the director may prescribe, showing the tobacco products on hand at 12:01 a.m. on July 1, 2002. A tax at a rate equal to 10% of the wholesale sales price of such tobacco products is hereby imposed upon such tobacco products and shall be due and payable in equal installments on or before July 30, 2002, on or before September 30, 2002, and on or before December 30, 2002. The tax upon such tobacco products 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. 7. On and after July 1, 2002, K.S.A. 79-3378 is hereby amended to read as follows: 79-3378. On or before the ~~twentieth~~ 20th day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product (~~+~~) brought, or caused to be brought, into this state for sale; and (~~2~~) made, manufactured, or fabricated in this state for sale in this state during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director. Each return shall be accompanied by a remittance for the full tax liability shown therein, less ~~four percent (4%)~~ 2% of such liability as compensation to reimburse the distributor for his or her expenses incurred in the administration of this act. As soon as practicable after any return is filed, the director shall examine the return. If the director finds that, ~~in his or her judgment,~~ the return is incorrect and any amount of tax is due from the distributor and unpaid, ~~he or she~~ the director shall notify the distributor of the deficiency. If a deficiency disclosed by the director's examination cannot be allocated by him to a particular month or months, ~~he or she~~ the director may nevertheless notify the distributor that a deficiency exists and state the amount of tax due. Such notice shall be given to the distributor by registered or certified mail.

New Sec. 8. (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. 9. On and after July 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 July 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 received 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. 10. On and after July 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 $\frac{5}{98}$ 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. 11. On and after July 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~~ \$72. 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~~ \$36. 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~~ \$36 or \$72, 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~~ 2001, 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~~ \$36 or \$72, 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~~ \$36 or \$72, 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. 12. On and after July 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 July 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. 13. On and after July 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 $\frac{5}{100}$ s 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. 14. 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. 15. 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.

(b)(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.

(b)(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.

(b)(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. 16. 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 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. 17. The provisions of sections 15 and 16 of this act shall be applicable to all taxable years commencing after December 31, 2001.

New Sec. 18. As used in sections 18 through 21 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. 19. 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 20, 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. 20. An establishment shall enter into a contract with the secretary in which in return for incentive payments authorized pursuant to section 19, and amendments thereto, the establishment agrees that, in the event that insufficient revenue is realized by the payments made pursuant to section 19, 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 19, 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. 21. 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. 22. 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.~~

Sec. 23. K.S.A. 79-2803a is hereby amended to read as follows: 79-2803a. *Lots or tracts may be sold or transferred as a single group or unit or in more than one group or unit either:*

(a) Upon the motion of any party to the action, the court may, if it finds and the court grants such motion by order after making a finding that any two or more lots or tracts constitute a single unit for usual uses and will sell for a higher price if sold together, order said lots or tracts sold together as a single unit, or

(b) by the county, without a court order, if such lots or tracts previously have been offered at public auction for delinquent property taxes, but which did not sell at the previous public auction.

New Sec. 24. (a) As a part of an order issued pursuant to K.S.A. 79-2803a, and amendments thereto, and upon application of the county, a court may authorize the county to dispose of one or more lots or tracts by negotiated public or private sale or transfer if the court finds that such property or properties had been included as a part of a prior judgment and order of sale and had not been purchased at the sale.

(b) Any sale or transfer authorized pursuant to subsection (a), shall be conducted in accordance with this subsection. The county may negotiate the sale or transfer of the property on such terms and conditions it deems advisable and shall publish notice of the proposed sale or transfer in the official county newspaper. Such notice shall describe the property and shall state the name of the purchaser or recipient and the sales price or other consideration, or shall state the other manner of transfer. The notice also shall state the date, time, and general location of the hearing to confirm the sale or transfer of the property. The purchaser or recipient of the property shall execute an affidavit pursuant to the provisions of K.S.A. 79-2804h, and amendments thereto, and the county may not sell or transfer of the property to any person who is prohibited from purchasing the property under the provisions of K.S.A. 79-2812, and amendments thereto. Any sale or transfer of real estate by the county under this section shall be subject to a hearing upon and order of confirmation by the court and, thereafter, shall be conveyed to the purchaser or recipient by the sheriff of the county, who shall issue a sheriff's deed, in conformance with K.S.A. 79-2804, and amendments thereto, upon receipt of the court's order confirming the sale or transfer of the property. The deed shall convey the property with all rights provided by K.S.A. 79-2804, and amendments thereto.

Sec. 25. K.S.A. 79-2401a is hereby amended to read as follows: 79-2401a. (a) (1) Except as provided by paragraph (2) and subsection (b), real estate bid off by the county for both delinquent taxes and special assessments, as defined by subsection (c), shall be held by the county until the expiration of two years from the date of the sale, subject only to the right of redemption as provided by this section. Any owner or holder of the record title, the owner's or holder's heirs, devisees, executors, administrators, assigns or any mortgagee or the owner's or holder's assigns may redeem the real estate sold in the sale at any time within two years after the sale by paying to the county treasurer the amount for which the real estate was sold plus the interest accrued, all delinquent taxes and special assessments and interest thereon that have accrued after the date of such sale which remain unpaid as of the date of redemption and costs and expenses of the sale and redemption, including but not limited to, abstracting costs incurred in anticipation of a tax sale.

(2) Any abandoned building or structure and the land accommodating such building or structure bid off by the county for both delinquent taxes and special assessments, as defined by subsection (c), shall be held by the county until the expiration of one year from the date of the sale, subject only to the right of redemption as provided by this section. Any owner or holder of the record title, the owner's or holder's heirs, devisees, executors, administrators, assigns or any mortgagee or the owner's or holder's assigns may redeem the real estate sold in the sale at any time within one year after the sale by paying to the county treasurer the amount for which the real estate was sold plus the interest accrued, all delinquent taxes and special assessments and interest thereon that have accrued after the date of such sale which remain unpaid as of the date of redemption and costs and expenses of the sale and redemption, including but not limited to abstracting costs incurred in anticipation of a tax sale.

When used in this subsection "abandoned building or structure and the land accommodating such building or structure" shall mean a building or structure which, for a period of at least one year, has been unoccupied and which there has been a failure to perform reasonable maintenance of such building or structure and the land accommodating such building or structure.

(b) (1) Except as provided by paragraph (2), real estate which is a homestead under section 9 of article 15 of the Kansas Constitution and all real estate not described in subsection (a) shall be held by the county until the expiration of three years from the date of

the sale and may be redeemed partially by paying to the county treasurer the amount of taxes for which the real estate was sold for one or more years, beginning with the first year for which the real estate was carried on the tax-sale book of the county plus interest at the rate prescribed by K.S.A. 79-2004, and amendments thereto, on the amount from the date the same was carried on the sale book. Upon payment and partial redemption, the time when a tax foreclosure sale may be commenced shall be extended by the number of years paid in the partial redemption.

(2) In Johnson ~~and Wyandotte counties~~ *county*, real estate which is a homestead under section 9 of article 15 of the Kansas constitution and all real estate not described in subsection (a) shall be held by the county until the expiration of three years from the date of the sale and may be redeemed partially by paying to the county treasurer the amount of taxes for which the real estate was sold for one or more years, beginning with the most recent year for which the real estate was carried on the tax-sale book of the county plus interest at the rate prescribed by K.S.A. 79-2004, and amendments thereto, on the amount from the date the same was carried on the sale book.

(c) For the purpose of this act, the term "real estate bid off by the county for both delinquent taxes and special assessments" shall include only real estate on which there are delinquent taxes of a general ad valorem property tax nature and delinquent special assessments or other special taxes levied by a city, county or other municipality in response to a petition or request of the landowners. Upon publication of the listing of real estate subject to sale under the provisions of K.S.A. 79-2302, and amendments thereto, the clerk of any city, county or other municipality which has levied special assessments during the past 10 years shall certify to the county treasurer those listed parcels of real estate which are located within a special assessment district, but no parcel shall be so certified unless the public improvement was constructed pursuant to a petition or request of one or more landowners sufficient to authorize the improvement under the applicable statutory special assessment procedure used by the city, county or other municipality.

(d) If at the expiration of the redemption period, the real estate has not been redeemed, the real estate shall be disposed of by foreclosure and sale in the manner provided by K.S.A. 79-2801 et seq., and amendments thereto.

New Sec. 26. (a) Any correspondence issued by the department of revenue to a taxpayer or the taxpayer's representative demanding payment of an assessment of any tax the imposition and collection of which is administered by the department shall consist of a detailed, clear and accurate explanation of the assessment demand including, but not limited to, the specific tax and tax year to which such assessment applies and penalties and interest which apply thereto. If the department proposes to change the tax or refund due on a return filed by a taxpayer, correspondence detailing the change shall be sent to the taxpayer. The correspondence shall specifically identify the proposed change and explain in simple and non-technical terms the reasons for the change.

(b) Any such correspondence demanding the payment of an assessment of tax, penalties and interest in an amount in excess of \$750 for individual accounts and in excess of \$2,000 for business accounts shall be reviewed prior to issuance for accuracy by an employee of the department and shall provide the employer identification number and contact telephone number of the employee performing any such review.

New Sec. 27. In the event a taxpayer has designated a third party or other representative to discuss an income tax return upon the taxpayer's Kansas return, the department shall adhere and comply with such designation, and shall discuss or correspond with such designee or representative regarding matters concerning the return, including collection matters.

New Sec. 28. In addition to the authority to waive any civil penalty imposed by law for the violation of any law pertaining to any tax administered by the department of revenue, the secretary or the secretary's designee shall waive any such penalty upon the finding of any circumstance allowing waiver of civil penalties pursuant to the federal internal revenue code, as in effect on January 1, 2002.

New Sec. 29. Upon a resolution of any assessment of tax, penalties and interest of any tax the imposition and collection of which is administered by the department, a closing letter evidencing such resolution shall be issued to the affected taxpayer or the taxpayer's repre-

sentative, as the case may require, within 30 days of the date upon which such resolution is agreed to. The taxpayer shall be entitled to rely on such closing letter as it relates to the issues resolved.

New Sec. 30. (a) Notwithstanding any provision of K.S.A. 79-3235, and amendments thereto, to the contrary, the procedures set forth by this section shall apply to the issuance of any warrant and the levy upon property pursuant to such provisions.

(b) The secretary or the secretary's designee shall notify in writing the person who is the subject of the warrant of the filing of a warrant under K.S.A. 79-3235, and amendments thereto. The notice required shall be given in person, left at the dwelling or usual place of business of such person or sent by certified or registered mail to such person's last known dwelling address, not more than five business days after the day of the filing of the notice of lien. The notice shall include in simple and nontechnical terms the amount of unpaid taxes, the administrative appeals available to the taxpayer with respect to such warrant and the procedures relating to such appeals, and the provisions of law and procedures relating to the release of warrants on property.

Sec. 31. K.S.A. 79-3226 is hereby amended to read as follows: 79-3226. (a) As soon as practicable after the return is filed, the director of taxation shall examine it and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied, notice shall be mailed to the taxpayer. Within 60 days after the mailing of such notice the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax liability or denial of refund by filing a written request with the secretary of revenue or the secretary's designee which sets forth the objections to the proposed liability or proposed denial of refund. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the proposed liability or proposed denial of refund. The secretary of revenue or the secretary's designee shall hold an informal conference with the taxpayer and shall issue a written final determination thereon. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act. Informal conferences held pursuant to this section may be conducted by the secretary of revenue or the secretary's designee. The rules of evidence shall not apply to an informal conference and no record shall be made, except at the request and expense of the secretary of revenue or the secretary's designee or taxpayer. The taxpayer may bring to the informal conference an attorney, certified public accountant and any other person to represent the taxpayer or to provide information. Because the purpose of the department staff is to aid the secretary or secretary's designee in the proper discharge of the secretary's or secretary's designee's duties, the secretary or secretary's designee may confer at any time with any staff member with respect to the case under reconsideration. The secretary of revenue or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing such final determination. A final determination constitutes final agency action subject to administrative review by the state board of tax appeals. In the event that a written final determination is not rendered within 270 days, the taxpayer may appeal to the state board of tax appeals.

(b) A final determination finding additional tax shall be accompanied by a notice and demand for payment. Notice under this section shall be sent by first-class mail in the case of individual taxpayers and by registered or certified mail in the case of all other taxpayers. The tax shall be paid within 20 days thereafter, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438 and amendments thereto, but no additional tax shall be assessed for less than \$5 *unless the secretary or the secretary's designee determines the administration and collection cost involved in collecting an amount over \$5 but less than \$100 would not warrant collection of the amount due*. Interest at such rate shall continue to accrue on any additional tax liability during the course of any appeal.

Sec. 32. K.S.A. 2001 Supp. 79-3295 is hereby amended to read as follows: 79-3295. (a) The term "employee" means a resident of this state as defined by subsection (b) of K.S.A. 79-32,109, and amendments thereto, performing services for an employer either within or

without the state and a nonresident performing services within this state, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation.

(b) The term "employer" means any person, firm, partnership, limited liability company, corporation, association, trust or fiduciary of any kind or other type organization qualifying as an employer for federal income tax withholding purposes and who maintains an office, transacts business in or derives any income from sources within the state of Kansas for whom an individual performs or performed any services, of whatever nature, as the employee of such employer, and who has control of the payment of wages for such services, or is the officer, agent or employee of the person having control of the payment of wages. It also includes the United States, the state and all political subdivisions thereof, and all agencies or instrumentalities of any of them.

(c) The term "distributee" means any person or organization who receives a distribution which is subject to withholding of income tax pursuant to this act.

(d) The term "distribution" means a distribution from a corporation for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, from a limited liability company formed under the laws of the state of Kansas, or from a partnership.

(e) The term "payee" means any person or organization who receives a payment other than wages which is subject to withholding of income tax pursuant to this act.

(f) The term "payment other than wages" means a payment that is subject to federal income tax withholding and taxable under the Kansas income tax act, and that is a payment:

- (1) for any supplemental unemployment compensation, annuity, or sick pay;
- (2) pursuant to a voluntary withholding agreement;
- (3) of gambling winnings;
- (4) of taxable payments of Indian casino profits;
- (5) for any vehicle fringe benefit;
- (6) of periodic payments of pensions, annuities, and other deferred income;
- (7) of nonperiodic distributions of pensions, annuities, and other deferred income;
- (8) of eligible rollover distributions of pensions, annuities, and other deferred income.

~~(g)~~ (g) The term "payor" means any person or organization, other than an employer, who makes payments, other than wages or distributions, which are subject to withholding of income tax pursuant to this act.

~~(h)~~ (h) The term "wages" means wages as defined by section 3401(a) of the federal internal revenue code which are taxable under the Kansas income tax act, and shall include any prize or award paid to a professional athlete at a sporting event held in this state.

Sec. 33. K.S.A. 2001 Supp. 79-32,100a is hereby amended to read as follows: 79-32,100a. (a) Every payor who ~~withholds federal income tax:~~

- ~~(a) For any supplemental unemployment compensation, annuity or sick pay;~~
- ~~(b) pursuant to a voluntary withholding agreement;~~
- ~~(c) on gambling winnings;~~
- ~~(d) on taxable payments of Indian casino profits;~~
- ~~(e) for any vehicle fringe benefit;~~
- ~~(f) on periodic payments of pensions, annuities and other deferred income;~~
- ~~(g) on nonperiodic distributions of pensions, annuities and other deferred income; or~~
- ~~(h) on eligible rollover distributions of pensions, annuities and other deferred income;~~

from payments made to those persons whose primary residence is in Kansas shall withhold and deduct an amount to be determined in accordance with K.S.A. 2001 Supp. 79-32,100b, 79-32,100d, and amendments thereto: is required under federal law to withhold upon payments other than wages pursuant to the federal internal revenue code shall withhold and deduct an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, whenever the payee is a person whose primary residence is in Kansas.

(b) A determination by the internal revenue service that relieves a payor from withholding responsibility with respect to payments other than wages to a payee shall also apply for Kansas income tax withholding purposes. Whenever a payor is required to reinstate withholding for federal income tax with regard to any payee, such obligation shall be equally applicable for Kansas withholding purposes.

(c) *Every payor who makes a distribution as defined by subsection (d) of K.S.A. 79-3295, and amendments thereto, shall withhold and deduct an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, from amounts distributed or distributable to each nonresident shareholder or partner.*

Sec. 34. K.S.A. 2001 Supp. 79-32,211 is hereby amended to read as follows: 79-32,211.

(a) For all taxable years commencing after December 31, ~~2000~~ 2001, there shall be allowed a tax credit against the income, *privilege or premium* tax liability imposed upon a taxpayer pursuant to the Kansas income tax act, *the privilege tax imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, or the premiums tax and privilege fees imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto,* in an amount equal to 25% of qualified expenditures incurred in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of such expenditures equal \$5,000 or more. If the amount of such tax credit exceeds the qualified taxpayer's income, *privilege or premium* tax liability for the year in which ~~such costs and expenses were incurred; the qualified rehabilitation plan was placed in service, as defined by section 47(b)(1) of the federal internal revenue code and federal regulation section 1.48-12(f)(2),~~ such excess amount may be carried over for deduction from such taxpayer's income, *privilege or premium* tax liability in the next succeeding year or years until the total amount of the credit has been deducted from tax liability, except that no such credit shall be carried over for deduction after the 10th taxable year succeeding the taxable year in which the qualified ~~expenditures were incurred~~ *rehabilitation plan was placed in service.*

(b) As used in this section, unless the context clearly indicates otherwise:

(1) "Qualified expenditures" means the costs and expenses incurred by a qualified taxpayer in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan which are defined as a qualified rehabilitation expenditure by section 47 (c)(2) of the federal internal revenue code;

(2) "qualified historic structure" means any building, whether or not income producing, which is defined as a certified historic structure by section 47 (c)(3) of the federal internal revenue code, is individually listed on the register of Kansas historic places, or is located and contributes to a district listed on the register ~~or~~ of Kansas historic places;

(3) "qualified rehabilitation plan" means a project which is approved by the cultural resources division of the state historical society, or by a local government certified by the division to so approve, as being consistent with the standards for rehabilitation and guidelines for rehabilitation of historic buildings as adopted by the federal secretary of interior and in effect on the effective date of this act. The society shall adopt rules and regulations providing application and approval procedures necessary to effectively and efficiently provide compliance with this act, and may collect fees in order to defray its approval costs in accordance with rules and regulations adopted therefor; and

(4) "qualified taxpayer" means the owner of the qualified historic structure or any other person who may qualify for the federal rehabilitation credit allowed by section 47 of the federal internal revenue code.

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, or as the corporation, partnership or limited liability company mutually agree as provided in the bylaws or other executed agreement. Credits granted to a partnership, a limited liability company taxed as a partnership or other multiple owners of property shall be passed through to the partners, members or owners respectively pro rata or pursuant to an executed agreement among the partners, members or owners documenting any alternate distribution method.

(c) *Any person, hereinafter designated the assignor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to subsection (a). The taxpayer acquiring credits, hereinafter designated the assignee, may use the amount of the acquired credits to*

offset up to 100% of its income, privilege or premiums tax liability for either the taxable year in which the qualified rehabilitation plan was first placed into service or the taxable year in which such acquisition was made. Unused credit amounts claimed by the assignee may be carried forward for up to five years, except that all such amounts shall be claimed within 10 years following the tax year in which the qualified rehabilitation plan was first placed into service. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the cultural resources division of the state historical society in writing within 90 calendar days following the effective date of the transfer and shall provide any information as may be required by such division to administer and carry out the provisions of this section. The amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

New Sec. 35. (a) As used in this section:

(1) "Administrative fee" means those amounts charged by the professional employer organization to the client over and above amounts applied to the mandatory state and federal taxes, wages of assigned workers and amounts applied to premiums or contributions for benefits provided for assigned workers.

(2) "Assigned worker" means a person having an employment relationship with both the professional employer organization and the client.

(3) "Client" means a person who contracts with a professional employer organization to obtain employer services from another person through a professional employer arrangement.

(4) "Person" means an individual, an association, a company, a firm, a partnership, a corporation or any other form of legally recognized entity.

(5) "Professional employer arrangement" means an arrangement, under contract or whereby:

(A) A professional employer organization agrees to employ all or a majority of a client's workforce;

(B) the arrangement is intended to be, or is, ongoing rather than temporary in nature;

(C) employer responsibilities for workers under the arrangement are in fact shared by the professional employer organization and the client; and

(D) for the purposes of this act, a professional employer arrangement shall not include:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the federal internal revenue code of 1986, as amended, and which does not hold itself out as a professional employer organization.

(ii) Arrangements in which a person assumes full responsibility for the product or service performed by such person or such person's agents and retains and exercises, both legally and in fact, a right of direction and control over the individuals whose services are supplied under such contractual arrangements, and such person and such person's agents perform a specified function for the client which is separate and divisible from the primary business or operations of the client.

(iii) Any person otherwise subject to this act if, during any fiscal year of the person commencing after July 1, 2000, the person pays total gross wages to employees employed by the person in the state under one or more professional employer arrangements which do not exceed 5% of the total gross wages paid to all employees employed by the person in the state during the same fiscal year under all arrangements described in paragraph (4) and that each person does not advertise or hold itself out to the public as providing services as a professional employer organization.

(6) "Professional employer organization" means any person engaged in providing the services of employees pursuant to one or more professional employer arrangements or any person that represents itself to the public as providing services pursuant to a professional employer arrangement.

(b) A professional employer organization shall be considered an employer for the purposes of withholding state income tax of the assigned workers pursuant to the Kansas income tax act. Commencing after December 31, 1999, the client shall be considered as the em-

ployer of an assigned worker under the terms of the professional employer arrangement between the client and the professional employer organization, for purposes of: (1) subsection (d) of K.S.A. 79-32,154, subsection (d) of K.S.A. 74-50,114, K.S.A. 79-32,160a or K.S.A. 2001 Supp. 74-50,131, and amendments thereto; and (2) calculating the client's payroll factor under K.S.A. 79-3283. The client shall provide to the department of revenue the payroll information for assigned workers needed for purposes of administering the above provisions.

New Sec. 36. (a) The value for property tax purposes of any vessel, as defined by K.S.A. 32-1102, and amendments thereto, which is acquired or sold after January 1 and prior to September 1 of any taxable year shall be equal to the value determined therefor pursuant to K.S.A. 79-503a, and amendments thereto, multiplied by: (1) In the case of a sale, a fraction the numerator of which is the number of months, or major portion thereof, such vessel was owned by the record owner thereof during the taxable year in which such vessel was sold, and the denominator of which is 12; and (2) in the case of an acquisition, a fraction the numerator of which is the number of months, or major portion thereof, remaining in the taxable year after the date of acquisition by the record owner thereof, and the denominator of which is 12.

(b) Notice of the acquisition or sale of any such vessel shall be provided by the record owner thereof to the appropriate county appraiser within 30 days after such acquisition or sale. Upon receipt of such notice, and after computation of the value of any such vessel in accordance with the provision of subsection (a), a notification or revised notification of value shall be mailed to the taxpayer.

(c) Vessels acquired after September 1 of a taxable year shall not be subject to assessment and taxation for such year, except as provided by paragraph (1) of subsection (a).

(d) The provisions of this section shall apply to all taxable years commencing after December 31, 2002.

Sec. 37. K.S.A. 12-187 is hereby amended to read as follows: 12-187. (a) (1) No city shall impose a retailers' sales tax under the provisions of this act without the governing body of such city having first submitted such proposition to and having received the approval of a majority of the electors of the city voting thereon at an election called and held therefor. The governing body of any city may submit the question of imposing a retailers' sales tax and the governing body shall be required to submit the question upon submission of a petition signed by electors of such city equal in number to not less than 10% of the electors of such city.

(2) The governing body of any class B city located in any county which does not impose a countywide retailers' sales tax pursuant to paragraph (5) of subsection (b) may submit the question of imposing a retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as enumerated in the question, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited to the following: Local health departments, city, county or district hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home health care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, rural health clinics, integration of health care services, home health services and rural health networks.

(b) (1) The board of county commissioners of any county may submit the question of imposing a countywide retailers' sales tax to the electors at an election called and held thereon, and any such board shall be required to submit the question upon submission of a petition signed by electors of such county equal in number to not less than 10% of the electors of such county who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than $\frac{2}{3}$ of the membership of the governing body of each of one or more cities within such county which contains a population of not less than 25% of the entire population of the county, or upon receiving resolutions requesting such an election passed by $\frac{2}{3}$ of the

membership of the governing body of each of one or more taxing subdivisions within such county which levy not less than 25% of the property taxes levied by all taxing subdivisions within the county.

(2) The board of county commissioners of *Anderson*, *Atchison*, *Barton*, *Butler*, *Cowley*, *Cherokee*, *Crawford*, *Ford*, *Jefferson*, *Lyon*, *Montgomery*, *Neosho*, *Osage*, *Ottawa*, *Riley*, *Saline*, *Seward*, *Wabaunsee*, *Wilson* and *Wyandotte* counties may submit the question of imposing a countywide retailers' sales tax and pledging the revenue received therefrom for the purpose of financing the construction or remodeling of a courthouse, jail, law enforcement center facility or other county administrative facility, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire when sales tax sufficient to pay all of the costs incurred in the financing of such facility has been collected by retailers as determined by the secretary of revenue. Nothing in this paragraph shall be construed to allow the rate of tax imposed by *Butler*, *Cowley*, *Lyon*, *Montgomery*, *Neosho*, *Riley* or *Wilson* county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189, and amendments thereto.

(3) (A) Except as otherwise provided in this paragraph, the result of the election held on November 8, 1988, on the question submitted by the board of county commissioners of *Jackson* county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the *Banner Creek* reservoir project. The tax imposed pursuant to this paragraph shall take effect on the effective date of this act and shall expire not later than five years after such date.

(B) The result of the election held on November 8, 1994, on the question submitted by the board of county commissioners of *Ottawa* county for the purpose of increasing its countywide retailers' sales tax by 1% is hereby declared valid, and the revenue received therefrom by the county shall be expended solely for the purpose of financing the erection, construction and furnishing of a law enforcement center and jail facility.

(4) The board of county commissioners of *Finney* and *Ford* counties may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing all or any portion of the cost to be paid by *Finney* or *Ford* county for construction of highway projects identified as system enhancements under the provisions of paragraph (5) of subsection (b) of K.S.A. 68-2314, and amendments thereto, to the electors at an election called and held thereon. Such election shall be called and held in the manner provided by the general bond law. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects. Nothing in this paragraph shall be construed to allow the rate of tax imposed by *Finney* or *Ford* county pursuant to this paragraph to exceed the maximum rate prescribed in K.S.A. 12-189, and amendments thereto. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in *Finney* county, the state treasurer shall remit such funds to the treasurer of *Finney* county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund. If any funds remain upon the payment of all costs authorized pursuant to this paragraph in the financing of such highway projects in *Ford* county, the state treasurer shall remit such funds to the treasurer of *Ford* county and upon receipt of such moneys shall be deposited to the credit of the county road and bridge fund.

(5) The board of county commissioners of any county may submit the question of imposing a retailers' sales tax at the rate of .25%, .5%, .75% or 1% and pledging the revenue received therefrom for the purpose of financing the provision of health care services, as enumerated in the question, to the electors at an election called and held thereon. Whenever any county imposes a tax pursuant to this paragraph, any tax imposed pursuant to paragraph (2) of subsection (a) by any city located in such county shall expire upon the effective date of the imposition of the countywide tax, and thereafter the state treasurer shall remit to each such city that portion of the countywide tax revenue collected by retailers within such city as certified by the director of taxation. The tax imposed pursuant to this paragraph shall be deemed to be in addition to the rate limitations prescribed in K.S.A. 12-189, and amendments thereto. As used in this paragraph, health care services shall include but not be limited

to the following: Local health departments, city or county hospitals, city or county nursing homes, preventive health care services including immunizations, prenatal care and the postponement of entry into nursing homes by home care services, mental health services, indigent health care, physician or health care worker recruitment, health education, emergency medical services, rural health clinics, integration of health care services, home health services and rural health networks.

(6) The board of county commissioners of Allen county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% and pledging the revenue received therefrom for the purpose of financing the costs of operation and construction of a solid waste disposal area or the modification of an existing landfill to comply with federal regulations to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire upon the payment of all costs incurred in the financing of the project undertaken. Nothing in this paragraph shall be construed to allow the rate of tax imposed by Allen county pursuant to this paragraph to exceed or be imposed at any rate other than the rates prescribed in K.S.A. 12-189 and amendments thereto.

(7) The board of county commissioners of Clay, Dickinson and Miami county may submit the question of imposing a countywide retailers' sales tax at the rate of .50% in the case of Clay and Dickinson county and at a rate of up to 1% in the case of Miami county, and pledging the revenue received therefrom for the purpose of financing the costs of roadway construction and improvement to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(8) The board of county commissioners of Sherman county may submit the question of imposing a countywide retailers' sales tax at the rate of .25%, .5% or .75% and pledging the revenue therefrom for the purpose of financing the costs of the county roads 64 and 65 construction and improvement project. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized pursuant to this paragraph in the financing of such project.

(9) The board of county commissioners of Cowley, Russell and Woodson county may submit the question of imposing a countywide retailers' sales tax at the rate of .5% in the case of Russell and Woodson county and at a rate of up to .25%, in the case of Cowley county and pledging the revenue received therefrom for the purpose of financing economic development initiatives or public infrastructure projects. The tax imposed pursuant to this paragraph shall expire after five years from the date such tax is first collected.

(10) The board of county commissioners of Franklin county may submit the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purpose of financing recreational facilities. The tax imposed pursuant to this paragraph shall expire upon payment of all costs authorized in financing such facilities.

(11) *The board of county commissioners of Douglas county may submit to the question of imposing a countywide retailers' sales tax at the rate of .25% and pledging the revenue received therefrom for the purposes of preservation, access and management of open space, and for industrial and business park related economic development.*

(c) The boards of county commissioners of any two or more contiguous counties, upon adoption of a joint resolution by such boards, may submit the question of imposing a retailers' sales tax within such counties to the electors of such counties at an election called and held thereon and such boards of any two or more contiguous counties shall be required to submit such question upon submission of a petition in each of such counties, signed by a number of electors of each of such counties where submitted equal in number to not less than 10% of the electors of each of such counties who voted at the last preceding general election for the office of secretary of state, or upon receiving resolutions requesting such an election passed by not less than $\frac{2}{3}$ of the membership of the governing body of each of one or more cities within each of such counties which contains a population of not less than 25% of the entire population of each of such counties, or upon receiving resolutions requesting such an election passed by $\frac{2}{3}$ of the membership of the governing body of each of one or more taxing subdivisions within each of such counties which levy not less than 25% of the property taxes levied by all taxing subdivisions within each of such counties.

(d) Any city retailers' sales tax in the amount of .5% being levied by a city on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax or until repealed by the adoption of an ordinance so providing. In addition to any city retailers' sales tax being levied by a city on July 1, 1990, any such city may adopt an additional city retailers' sales tax in the amount of .25% or .5%, provided that such additional tax is adopted and approved in the manner provided for the adoption and approval of a city retailers' sales tax. Any countywide retailers' sales tax in the amount of .5% or 1% in effect on July 1, 1990, shall continue in effect until repealed in the manner provided herein for the adoption and approval of such tax.

(e) A class D city shall have the same power to levy and collect a city retailers' sales tax that a class A city is authorized to levy and collect and in addition, the governing body of any class D city may submit the question of imposing an additional city retailers' sales tax in the amount of .125%, .25%, .5% or .75% and pledging the revenue received therefrom for economic development initiatives, strategic planning initiatives or for public infrastructure projects including buildings to the electors at an election called and held thereon. Any additional sales tax imposed pursuant to this paragraph shall expire no later than five years from the date of imposition thereof, except that any such tax imposed by any class D city after the effective date of this act shall expire no later than 10 years from the date of imposition thereof.

(f) Any city or county proposing to adopt a retailers' sales tax shall give notice of its intention to submit such proposition for approval by the electors in the manner required by K.S.A. 10-120, and amendments thereto. The notices shall state the time of the election and the rate and effective date of the proposed tax. If a majority of the electors voting thereon at such election fail to approve the proposition, such proposition may be resubmitted under the conditions and in the manner provided in this act for submission of the proposition. If a majority of the electors voting thereon at such election shall approve the levying of such tax, the governing body of any such city or county shall provide by ordinance or resolution, as the case may be, for the levy of the tax. Any repeal of such tax or any reduction or increase in the rate thereof, within the limits prescribed by K.S.A. 12-189, and amendments thereto, shall be accomplished in the manner provided herein for the adoption and approval of such tax except that the repeal of any such city retailers' sales tax may be accomplished by the adoption of an ordinance so providing.

(g) The sufficiency of the number of signers of any petition filed under this section shall be determined by the county election officer. Every election held under this act shall be conducted by the county election officer.

(h) The governing body of the city or county proposing to levy any retailers' sales tax shall specify the purpose or purposes for which the revenue would be used, and a statement generally describing such purpose or purposes shall be included as a part of the ballot proposition.

Sec. 38. K.S.A. 12-189 is hereby amended to read as follows: 12-189. Except as otherwise provided by paragraph (2) of subsection (a) of K.S.A. 12-187, and amendments thereto, the rate of any class A, class B or class C city retailers' sales tax shall be fixed in the amount of .25%, .5%, .75% or 1% which amount shall be determined by the governing body of the city. Except as otherwise provided by paragraph (2) of subsection (a) of K.S.A. 12-187, and amendments thereto, the rate of any class D city retailers' sales tax shall be fixed in the amount of .10%, .25%, .5%, .75%, 1%, 1.125%, 1.25%, 1.5% or 1.75%. The rate of any countywide retailers' sales tax shall be fixed in an amount of either .25%, .5%, .75% or 1% which amount shall be determined by the board of county commissioners, except that:

(a) The board of county commissioners of Wabaunsee county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%; the board of county commissioners of Osage county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25% or 1.5%; the board of county commissioners of Cherokee, Crawford, Ford, Saline, Seward or Wyandotte county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, the board of county commissioners of Atchison county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and

amendments thereto, may fix such rate at 1.5% or 1.75% and the board of county commissioners of *Anderson*, Barton, Jefferson or Ottawa county, for the purposes of paragraph (2) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(b) the board of county commissioners of Jackson county, for the purposes of paragraph (3) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 2%;

(c) the boards of county commissioners of Finney and Ford counties, for the purposes of paragraph (4) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at .25%;

(d) the board of county commissioners of any county for the purposes of paragraph (5) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at a percentage which is equal to the sum of the rate allowed to be imposed by a board of county commissioners on the effective date of this act plus .25%, .5%, .75% or 1%, as the case requires;

(e) the board of county commissioners of Dickinson county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, and the board of county commissioners of Miami county, for the purposes of paragraph (7) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%, 1.5%, 1.75% or 2%;

(f) the board of county commissioners of Sherman county, for the purposes of paragraph (8) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%, 1.75% or 2%;

(g) the board of county commissioners of Russell county for the purposes of paragraph (9) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.5%;

or

(h) the board of county commissioners of Franklin county, for the purposes of paragraph (10) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.75%; or

(i) *the board of county commissioners of Douglas county, for the purposes of paragraph (11) of subsection (b) of K.S.A. 12-187, and amendments thereto, may fix such rate at 1.25%.*

Any county or city levying a retailers' sales tax is hereby prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Except as otherwise specifically provided in K.S.A. 12-189a, and amendments thereto, such tax shall be identical in its application, and exemptions therefrom, to the Kansas retailers' sales tax act and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable. The state director of taxation is hereby authorized to administer, enforce and collect such local sales taxes and to adopt such rules and regulations as may be necessary for the efficient and effective administration and enforcement thereof.

Upon receipt of a certified copy of an ordinance or resolution authorizing the levy of a local retailers' sales tax, the director of taxation shall cause such taxes to be collected within or without the boundaries of such taxing subdivision at the same time and in the same manner provided for the collection of the state retailers' sales tax. Such copy shall be submitted to the director of taxation within 30 days after adoption of any such ordinance or resolution. All moneys collected by the director of taxation under the provisions of this section shall be credited to a county and city retailers' sales tax fund which fund is hereby established in the state treasury. Any refund due on any county or city retailers' sales tax collected pursuant to this act shall be paid out of the sales tax refund fund and reimbursed by the director of taxation from collections of local retailers' sales tax revenue. Except for local retailers' sales tax revenue required to be deposited in the redevelopment bond fund established under K.S.A. 2001 Supp. 74-8927, and amendments thereto, all local retailers' sales tax revenue collected within any county or city pursuant to this act shall be apportioned and remitted at least quarterly by the state treasurer, on instruction from the director of taxation, to the treasurer of such county or city.

Revenue that is received from the imposition of a local retailers' sales tax which exceeds the amount of revenue required to pay the costs of a special project for which such revenue was pledged shall be credited to the city or county general fund, as the case requires.

The director of taxation shall provide, upon request by a city or county clerk or treasurer of any city or county levying a local retailers' sales tax, monthly reports identifying each retailer having a place of business in such city or county setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month and identifying each business location maintained by the retailer within such city or county. Such report shall be made available to the clerk or treasurer of such city or county within a reasonable time after it has been requested from the director of taxation. The director of taxation shall be allowed to assess a reasonable fee for the issuance of such report. Information received by any city or county pursuant to this section shall be confidential, and it shall be unlawful for any officer or employee of such city or county to divulge any such information in any manner. Any violation of this paragraph by a city or county officer or employee is a class B misdemeanor, and such officer or employee shall be dismissed from office.

New Sec. 39. On or before September 1, 2002, the director of property valuation of the department of revenue shall issue and submit a report pertaining to the interpretation and implementation of the provisions of K.S.A. 79-1476, and amendments thereto, relating to the procedures of valuation of land devoted to agriculture use. Such report shall include a summary of changes in each class of land which have been implemented within the past 10 years, when the change was made, and an explanation of the rationale for each such change. Such report shall be submitted to the following: The governor, the legislative coordinating council, the house taxation committee and the senate assessment and taxation committee, and shall be made available to the public on the internet.

Sec. 40. K.S.A. 2001 Supp. 79-1476 is hereby amended to read as follows: 79-1476. The director of property valuation is hereby directed and empowered to administer and supervise a statewide program of reappraisal of all real property located within the state. Except as otherwise authorized by K.S.A. 19-428, and amendments thereto, each county shall comprise a separate appraisal district under such program, and the county appraiser shall have the duty of reappraising all of the real property in the county pursuant to guidelines and timetables prescribed by the director of property valuation and of updating the same on an annual basis. In the case of multi-county appraisal districts, the district appraiser shall have the duty of reappraising all of the real property in each of the counties comprising the district pursuant to such guidelines and timetables and of updating the same on an annual basis. Commencing in 2000, every parcel of real property shall be actually viewed and inspected by the county or district appraiser once every six years. Any county or district appraiser shall be deemed to be in compliance with the foregoing requirement in any year if 17% or more of the parcels in such county or district are actually viewed and inspected.

Compilation of data for the initial preparation or updating of inventories for each parcel of real property and entry thereof into the state computer system as provided for in K.S.A. 79-1477, and amendments thereto, shall be completed not later than January 1, 1989. Whenever the director determines that reappraisal of all real property within a county is complete, notification thereof shall be given to the governor and to the state board of tax appeals.

Valuations shall be established for each parcel of real property at its fair market value in money in accordance with the provisions of K.S.A. 79-503a, and amendments thereto.

In addition thereto valuations shall be established for each parcel of land devoted to agricultural use upon the basis of the agricultural income or productivity attributable to the inherent capabilities of such land in its current usage under a degree of management reflecting median production levels in the manner hereinafter provided. A classification system for all land devoted to agricultural use shall be adopted by the director of property valuation using criteria established by the United States department of agriculture soil conservation service. For all taxable years commencing after December 31, 1989, all land devoted to agricultural use which is subject to the federal conservation reserve program shall be classified as cultivated dry land for the purpose of valuation for property tax purposes pursuant to this section. For all taxable years commencing after December 31, 1999, all land devoted to agricultural use which is subject to the federal wetlands reserve program shall be classified as native grassland for the purpose of valuation for property tax purposes pursuant to this section. Productivity of land devoted to agricultural use shall be determined for all land classes within each county or homogeneous region based on an average of the eight calendar years immediately preceding the calendar year which immediately precedes the year of

valuation, at a degree of management reflecting median production levels. The director of property valuation shall determine median production levels based on information available from state and federal crop and livestock reporting services, the soil conservation service, and any other sources of data that the director considers appropriate.

The share of net income from land in the various land classes within each county or homogeneous region which is normally received by the landlord shall be used as the basis for determining agricultural income for all land devoted to agricultural use except pasture or rangeland. The net income normally received by the landlord from such land shall be determined by deducting expenses normally incurred by the landlord from the share of the gross income normally received by the landlord. The net rental income normally received by the landlord from pasture or rangeland within each county or homogeneous region shall be used as the basis for determining agricultural income from such land. The net rental income from pasture and rangeland which is normally received by the landlord shall be determined by deducting expenses normally incurred from the gross income normally received by the landlord. Commodity prices, crop yields and pasture and rangeland rental rates and expenses shall be based on an average of the eight calendar years immediately preceding the calendar year which immediately precedes the year of valuation. Net income for every land class within each county or homogeneous region shall be capitalized at a rate determined to be the sum of the contract rate of interest on new federal land bank loans in Kansas on July 1 of each year averaged over a five-year period which includes the five years immediately preceding the calendar year which immediately precedes the year of valuation, plus a percentage not less than .75% nor more than 2.75%, as determined by the director of property valuation, *except that the capitalization rate calculated for property tax year 2003, and all such years thereafter, shall not be less than 11% nor more than 12%.*

Based on the foregoing procedures the director of property valuation shall make an annual determination of the value of land within each of the various classes of land devoted to agricultural use within each county or homogeneous region and furnish the same to the several county appraisers who shall classify such land according to its current usage and apply the value applicable to such class of land according to the valuation schedules prepared and adopted by the director of property valuation under the provisions of this section.

It is the intent of the legislature that appraisal judgment and appraisal standards be followed and incorporated throughout the process of data collection and analysis and establishment of values pursuant to this section.

For the purpose of the foregoing provisions of this section the phrase "land devoted to agricultural use" shall mean and include land, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, other than that land established as a controlled shooting area pursuant to K.S.A. 32-943, and amendments thereto, which shall be deemed to be land devoted to agricultural use, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

The term "expenses" shall mean those expenses typically incurred in producing the plants, animals and horticultural products described above including management fees, production costs, maintenance and depreciation of fences, irrigation wells, irrigation laterals and real estate taxes, but the term shall not include those expenses incurred in providing temporary or permanent buildings used in the production of such plants, animals and horticultural products.

The provisions of this act shall not be construed to conflict with any other provisions of law relating to the appraisal of tangible property for taxation purposes including the equalization processes of the county and state board of tax appeals.

Sec. 41. On and after July 1, 2002, K.S.A. 79-3310, 79-3312, 79-3371 and 79-3378 and K.S.A. 2001 Supp. 79-3311, 79-3603, 79-3603, as amended by section 1 of 2002 Senate Bill No. 372, 79-3620, 79-3635, 79-3703 and 79-3710 are hereby repealed.

Sec. 42. K.S.A. 12-187, 12-189, 12-189e, 79-2401a, 79-2803a, 79-3226, 79-3271 and 79-3279 and K.S.A. 2001 Supp. 79-201w, 79-1476, 79-3295, 79-32,100a, 79-32,206 and 79-32,211 are hereby repealed.

Sec. 43. 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. 12-187, 12-189, 79-2401a, 79-2803a, 79-3226, 79-3271, 79-3279, 79-3310, 79-3312, 79-3371 and 79-3378 and K.S.A. 2001 Supp. 79-201w, 79-1476, 79-3295, 79-32,100a, 79-32,206, 79-32,211, 79-3311, 79-3603, 79-3620, 79-3635, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 12-189e and 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 58; Nays 66; Present but not voting: 0; Absent or not voting: 1.

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

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

Present but not voting: None.

Absent or not voting: O’Brien.

EXPLANATION OF VOTE

MR. SPEAKER: Earlier today we voted to send legislation to the Governor that provides economic incentives for the Goodyear plant, but the Republicans blocked our efforts. Let us restate our support for similar provisions in this bill. However, we must also reaffirm our strong opposition to the tax increases that unfairly target low and middle-income families and our seniors on fixed incomes also included in this bill. It’s unfortunate this body wasn’t allowed the chance to vote the Goodyear bill up or down on its own merits. It’s even more shameful that Republican leaders would engage in political games to deny legislators that opportunity. I vote no on **SB 39**.—VAUGHAN L. FLORA, ANNIE KUETHER, ROCKY NICHOLS, NANCY A. KIRK, ROGER TOELKES

MESSAGES FROM THE SENATE

The Senate nonconcur in House amendments to **H. Sub. for SB 152**, requests a conference and has appointed Senators Allen, Jenkins and Hensley as conferees on the part of the Senate.

Also, the Senate adopts conference committee report on **SB 459**.

The Senate adopts conference committee report on **SB 472**.

The Senate adopts conference committee report on **SB 509**.

The Senate adopts conference committee report on **HB 2050**.

The Senate adopts conference committee report on **HB 3009**.

The Senate concurs in House amendments to **SB 482**, and requests return of the bill.

The Senate accedes to the request of the House for a conference on **SB 35** and has appointed Senators Vratil, Schmidt and Goodwin as second conferees on the part of the Senate.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Weber, the House acceded to the request of the Senate for a conference on **H. Sub. for SB 152**.

Speaker pro tem Aurand thereupon appointed Reps. O'Neal, Mays and Findley as conferees on the part of the House.

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

Speaker pro tem Aurand called the House to order.

REPORT ON ENGROSSED BILLS

HB 2154, HB 2563, HB 2653, HB 2665, HB 2727, HB 2754, HB 2991, HB 3041 reported correctly engrossed May 15, 2002.

HB 2020, HB 2145, HB 2878 reported correctly re-engrossed May 15, 2002.

REPORT ON ENROLLED BILLS

S. Sub. for HB 2621; HB 2630, HB 2642, HB 2752 reported correctly enrolled, properly signed and presented to the governor on May 15, 2002.

On motion of Rep. Weber, the House adjourned until 10:00 a.m., Thursday, May 16, 2002.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

