

Journal of the Senate

SEVENTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, May 15, 2002—11:00 a.m.

The Senate was called to order by President Dave Kerr.

The roll was called with thirty-nine senators present.

Senator Steineger was excused.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Some of us are concerned that the dilemma we are in may result in some name calling which could jeopardize friendships.

I recently read an article, not written by a legislator, which used the following pejorative adjectives to describe legislators who were the objects of the writer's criticism.

"Sorry, Shameful, Contemptible, Hypocritical, Farcical, Inspid, Craven, Self-centered, Unsavory, Unthinking, and Grossly Negligent."

Even if they were guilty of wrong doing, it is hard to believe that they would be inclined to change their vote when subjected to such a verbal barrage.

When people do things that we think are wrong, we are tempted to judge their motives.

While there may be those whose motives are questionable, not all legislators who frustrate us are deviously motivated. They may even question our motives.

You have made it quite clear, O God, in the book of James how destructive the tongue can be: ". . . no man can tame the tongue. It is a restless evil, full of deadly poison.

. . . There is only one Lawgiver and Judge, the One Who is able to save and destroy. But you—who are you to judge your neighbor?" (James 3:8; 4:12)

Help us, O God, to refrain from name-calling. It's not worth the loss of even one friend.

I pray in the Name of the Lord Jesus Christ,

AMEN

MESSAGE FROM THE HOUSE

Announcing passage of **HB 3041**.

Passage of **SB 664**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 3041 was thereupon introduced and read by title.

ORIGINAL MOTION

Senator Oleen moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 119; H Sub for SB 208; H Sub for Sub SB 296; SB 396, H Sub for Sub SB 422; H Sub for SB 434; SB 551, SB 586, H Sub for SB 643; SB 647; S Sub for HB 2094; HB 3011**

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Morris moved the Senate concur in house amendments to **H Sub for Sub SB 422**.

H Sub for Sub SB 422. An act concerning the department of social and rehabilitation services; relating to prescription drugs under the state medicaid program; providing for a state medicaid preferred drug formulary and an advisory committee therefor; medicaid drug utilization review board duties, procedures and composition; amending K.S.A. 39-7,118, 39-7,119 and 39-7,120 and K.S.A. 2001 Supp. 77-421 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Senate concurred.

Senator Praeger moved the Senate concur in house amendments to **SB 586**.

SB 586. An act concerning long-term care insurance; relating to restrictions on elimination periods; amending K.S.A. 40-2228 and repealing the existing section.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Senate concurred.

CONFERENCE COMMITTEE REPORT

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

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

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

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

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

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

(c) "Authorization" means a written or printed document signed by a patient or a patient's authorized representative containing: (1) A description of the health care records a health care provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to obtain copies of the health care records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a patient's authorized representative, the authorized representative's name, address, telephone number and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

Sec. 2. (a) Subject to applicable law, copies of health care records shall be furnished to a patient, a patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records, within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. A health care provider may withhold copies of health care records if the health care provider reasonably believes that providing copies of the requested records will cause substantial harm to the patient or another person. Health

care providers may condition the furnishing of the patient's health care records to the patient, the patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records, upon the payment of charges not to exceed a \$15 fee for the cost of supplies and labor; and for copies of health care records routinely duplicated on a standard photocopy machine, \$.50 per page for the first 250 pages and \$.35 per page for additional pages. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

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

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

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

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

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

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

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

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

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 119**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.
Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on House amendments to **SB 208**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as House Substitute for Senate Bill No. 208, as follows:

On page 1, in line 15, by striking "or knowingly"; in line 16, by striking "aiding any other person to use any such substance";

On page 2, by striking all in lines 6 through 43;

By striking all on pages 3 through 5;

On page 6, by striking all in lines 1 through 33 and inserting the following:

“Sec. 2. K.S.A. 8-1567, as amended by section 1 of 2002 Senate Bill No. 433, is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

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

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

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

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

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

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

program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 *et seq.*, and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

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

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

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

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

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

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

(3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

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

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

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

(n) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

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

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

(q) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(r) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(3) "Drug" includes toxic vapors as such term is defined in section 1, and amendments thereto.

(s) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication

programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.”;

Also on page 6, in line 34, by striking “38-1567” and inserting “8-1567, as amended by section 1 of 2002 Senate Bill No. 433.”;

On page 1, in the title, in line 10, after “8-1567” by inserting “, as amended by section 1 of 2002 Senate Bill No. 433.”;

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

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

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

Senator Vratil moved the Senate adopt the Conference Committee Report on **H Sub for SB 208**.

On roll call, the vote was: Yeas 37, Nays 2, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Clark, Haley.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on House amendments to **SB 296**, submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as House Substitute for Substitute for Senate Bill No. 296, as follows:

On page 2, in line 15, by striking “inquiry.”; in line 40, by striking “2004” and inserting “2005”;

On page 3, in line 14, by striking “act” and inserting “section”; in line 19, by striking “charge” and inserting “charged”; in line 22, after “list”, by inserting “. Such schedule of dates shall provide that time period prior to the date of the next quarterly update in which consumers must submit their information in order to be included in the next quarterly update shall not exceed 30 days”; in line 24, after “list”, by inserting “. Such schedule of dates shall provide that the no-call list shall be updated no less frequently than on a quarterly basis, on January 1, April 1, July 1 and October 1”; also in line 24, by striking “and”; in line 29, by striking the period and inserting “; and”; following line 29, by inserting:

“(6) the consent of the direct marketing association to subject itself to the jurisdiction of the courts of this state for the purpose of enforcing the provisions of this section; the designation of a resident agent, who is a resident of Kansas, by the direct marketing association, for service of process, and who registers with the secretary of state pursuant to K.S.A. 60-306, and amendments thereto; and the agreement of the direct marketing association and its resident agent to comply with the provisions of this section.”;

Also on page 3, in line 42, by striking the comma; also in line 42, after “list”, by inserting “, or the attorney general”; also in line 42, after the period, by inserting “The attorney general may compile a list of telephone numbers from consumers desiring to register for such service. The attorney general shall forward the list to the direct marketing association or such other vendor in electronic format no less than 15 days prior to the date of the next quarterly update. No registration fee shall be imposed on the attorney general for submission of such list to the direct marketing association or such other vendor.”

On page 4, in line 2, by striking all after the period; by striking all in lines 3 through 5; in line 6, by striking "October."; by striking all in lines 11 and 12; in line 13, by striking "quarterly update."; in lines 21 and 23, by striking "database" and inserting "list"; in line 23, by striking "90" and inserting "120"; in line 24, after "number", by inserting "; that it may be as long as 30 days from the time of publication of the current quarterly update of the no-call list before the consumer's telephone number is removed from the telephone solicitor's calling lists; and that the consumer and the attorney general may not be able to enforce the provisions of this section until 150 days have passed since the consumer submitted the consumer's registration to be on the no-call list"; in line 25, by striking "60" and by inserting "30";

On page 5, in line 11, after "(h)" by inserting the following:

"It shall be an affirmative defense to a violation of this section if the telephone solicitor can demonstrate by clear and convincing evidence that: (1) The consumer affirmatively listed or held out to the public such consumer's residential number as a business number; (2) the telephone solicitor had knowledge of and relied upon such consumer's actions as provided in subsection (h)(1) at the time of the telephone solicitor's alleged violation; and (3) the purpose of the call was directly related to the consumer's business.

(i)";

Also on page 5, in line 13, by striking "(i)(1)" and inserting "(j)(1)"; in line 24, by striking "(j)" and inserting "(k)"; after line 26, by inserting the following:

"(l) Except as directed by the attorney general, the direct marketing association shall be prohibited from disclosing or using, in any way, any and all addresses obtained from consumers in the course of registering such consumer's phone numbers on the no-call list.";

Also on page 5, in line 27, by striking "(k)" and inserting "(m)"; in line 30, by striking "(l)" and inserting "(n)"; in line 34, by striking "act" and inserting "section"; in line 35, by striking "(m)" and inserting "(o)";

On page 6, in line 1, by striking "(n)" and inserting "(p)"; in line 4, by striking "(o)" and inserting "(q)"; in line 6, by striking "(p)" and inserting "(r)"; in line 8, by striking "New Sec. 3. This act" and inserting "(s) The provisions of this section"; after line 9, by inserting the following:

"New Sec. 3. (a) It shall be an unconscionable act within the meaning of K.S.A. 50-627, and amendments thereto, for any supplier to profiteer from a disaster.

(b) As used in this section:

(1) "Profiteer from a disaster" means unjustifiably increasing during a time of disaster the price at which any necessary property or service is offered for sale to consumers. Actual sales at the increased price shall not be required for the increase to be considered unconscionable. In determining whether the price increase described in this subsection is unjustified, the court shall consider all relevant circumstances including, but not limited to, the following: (A) Whether the price charged by the supplier during the time of disaster grossly exceeded the price charged by the supplier for similar property or services on the business day before the disaster, and an increase of more than 25% shall be *prima facie* evidence of gross excess;

(B) whether the amount charged by the supplier during the time of disaster grossly exceeded the price at which the same or similar property or services were readily obtainable by other consumers in the trade area, and a price difference of more than 25% shall be *prima facie* evidence of gross excess; and

(C) whether the increase in the amount charged by the supplier during the time of disaster was attributable to additional costs incurred by the supplier in connection with the sale of the product or service, and proof the supplier incurred such additional costs shall be *prima facie* evidence that the price increase was justified when such additional costs were actually incurred by the supplier during the period in which the substantially increased price was being charged;

(2) "time of disaster" means the period of time when a declaration of a state of emergency by the president of the United States or the governor is in effect; or 30 days after the occurrence of the event that constitutes the disaster, whichever is longer;

(3) "disaster" means natural or man-made events including, but not limited to, tornado or other severe storm, earthquake, flood, fire, riot, act of war, terrorism, civil disorder or

other extraordinary adverse circumstance. The court shall find that an event constitutes a disaster if the event results in the declaration of a state of emergency by the president of the United States or the governor. The court may find that an event constitutes a disaster in the absence of a declared state of emergency; and

(4) “necessary property or service” means any necessary property or service for which consumer demand does, or is likely to, increase as a consequence of the disaster and includes, but is not limited to, consumer food items or property, property or services for emergency cleanup, emergency supplies, communication supplies and services, medical supplies and services, home heating fuel, building materials and services, freight, storage services, housing, lodging, transportation and motor fuels.

(c) The provisions of this section shall be part of and supplemental to the consumer protection act.”;

On page 1, in the title, in line 11, after “concerning”, by inserting “consumer protection; relating to”; in line 12, after the semicolon, by inserting “relating to profiteering from a disaster.”;

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

CARL DEAN HOLMES
TOM SLOAN
NILE DILLMORE
Conferees on part of House

JOHN VRATIL
DAVID ADKINS
GRETA GOODWIN
Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **H Sub for Sub SB 296**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.
Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: **SB 296** allows Kansas consumers the opportunity to stop telemarketers from calling them at home. There are more than 140,000 telemarketing firms in the U.S. and it is estimated that 10% of them are involved in fraud. Nearly fifty billion dollars is lost to fraudulent telemarketing scams each year with seniors often being the target of these rip offs. While I am hopeful this bill will be strengthened in the future, it represents an important step forward in protecting Kansas consumers by creating an enforceable “do not call” list. I encourage all Kansans who wish to protect their privacy to add their residential phone number(s) to the “do not call” list. They may do so now by sending their name, address, phone number and signature to the Telephone Preference Service at P.O. Box 9014, Farmingdale, N.Y. 11735.—DAVID ADKINS

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on House amendments to **SB 396**, 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 after the enacting clause;

On page 2, by striking all in lines 1 through 13 and by inserting the following:

“Section 1. K.S.A. 2001 Supp. 75-4318 is hereby amended to read as follows: 75-4318.

(a) ~~Except as otherwise provided by state or federal law or by rules of the house or senate, and except with respect to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives~~ *Subject to the provisions of subsection (f)*, all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot; ~~but any administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving such quasi-judicial functions.~~ Meetings of task forces, advisory committees or subcommittees of advisory committees created pursuant to a governor’s executive order shall be open to the public in accordance with this act.

(b) Notice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such notice, except that:

(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition;

(2) if notice is furnished to an executive officer of an employees’ organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association; and

(3) the public body may require that a request to receive notice must be submitted again to the body prior to the commencement of any subsequent fiscal year of the body during which the person wishes to continue receiving notice, but, prior to discontinuing notice to any person, the public body must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.

(c) It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the notice required by subsection (b).

(d) Prior to any meeting hereinabove mentioned, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting said agenda.

(e) The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a), but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.

(f) *The provisions of the open meetings law shall not apply:*

(1) *To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;*

(2) *to the parole board when conducting parole hearings or parole violation hearings held at a correctional institution;*

(3) *to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and*

(4) *if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.*

Sec. 2. K.S.A. 2001 Supp. 75-4318 is hereby repealed.

Sec. 3. 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 “concerning open meetings; relating to certain hearings conducted by the parole board; amending K.S.A. 2001 Supp. 75-4318 and repealing the existing section.”;

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

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

JOHN VRATIL
DEREK SCHMIDT
GRETA GOODWIN
Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 396**.

On roll call, the vote was: Yeas 29, Nays 10, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Goodwin, Harrington, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Adkins, Barone, Feleciano, Gilstrap, Gooch, Haley, Hensley, Huelskamp, Schmidt, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on House amendments to **SB 434**, 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 31;

And by renumbering sections accordingly;

On page 9, in line 30, by striking "(1)"; in line 41, after "certificate" by inserting "shall be"; in line 42, after "thereto" by inserting "or";

On page 19, by striking all in lines 7 through 43;

By striking all on pages 20 and 21 and by inserting the following:

"Sec. 6. K.S.A. 2001 Supp. 22-4902, as amended by section 1 of 2002 House Bill No. 2399, is hereby amended to read as follows: 22-4902. As used in this act, unless the context otherwise requires:

(a) "Offender" means: (1) A sex offender as defined in subsection (b);

(2) a violent offender as defined in subsection (d);

(3) a sexually violent predator as defined in subsection (f);

(4) any person who, on and after the effective date of this act, is convicted of any of the following crimes when the victim is less than 18 years of age:

(A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;

(B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or

(C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;

(5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

(A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;

(C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;

(D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;

(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and ~~amendment~~ amendments thereto; or

(F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;

(6) any person who is a resident of this state who has been required to register under any federal, military or other state's law;

(7) any person who has been convicted of an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in subsection (4) or (5), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4) or (5); or

(8) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4) or (5).

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

(b) "Sex offender" includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;

(6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;

(7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;

(8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;

(9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;

(10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;

(11) aggravated incest as defined by K.S.A. 21-3603 and amendments thereto; or

(12) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;

(13) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; or

(14) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(d) "Violent offender" includes any person who, after the effective date of this act, is convicted of any of the following crimes:

(1) Capital murder as defined by K.S.A. 21-3439 and amendments thereto;

(2) murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;

(3) murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;

(4) voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;

(5) involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto;

or

(6) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(e) “Law enforcement agency having jurisdiction” means the sheriff of the county in which the offender expects to reside upon the offender’s discharge, parole or release.

(f) “Sexually violent predator” means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 *et seq.* and amendments thereto.

(g) “Nonresident student or worker” includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) “Aggravated offenses” means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 2001 Supp. 21-3502, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in *this* subsection ~~(f)~~.”;

On page 22, by striking all in lines 23 through 43;

On page 23, by striking all in lines 1 through 7;

And by renumbering sections accordingly;

Also on page 23, in line 9, by striking “21-3701,”; also in line 9, after “22-4902” by inserting “, as amended by section 1 of 2002 House Bill No. 2399,”;

On page 1, in the title, in line 12, by striking “21-3701,”; also in line 12, after “22-4902” by inserting “, as amended by section 1 of 2002 House Bill No. 2399,”;

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

MICHAEL O’NEAL

WARD LOYD

JANICE L. PAULS

Conferees on part of House

JOHN VRATIL

DEREK SCHMIDT

GRETA GOODWIN

Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **H Sub for SB 434**.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Brownlee, Jackson, O’Connor.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **H Sub for SB 434** because the process of committee hearings was forgotten. Even the smallest ideas deserve to be well thought out with the assistance of the citizens in public hearings.—KARIN BROWNLEE

Senator O’Connor requests the record to show she concurs with the “Explanation of Vote” offered by Senator Brownlee on **H Sub for SB 434**.

CONFERENCE COMMITTEE REPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) *cost of bussing;*

(6) *food service;*

(7) *administration and teachers;*

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

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

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

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

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

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

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

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

(b) Claims for salaries or wages of officers or employees need not be signed by the officer or employee if a payroll claim is certified ~~to~~ by the administrative head of a department or group of officers or employees or an authorized representative that the

salaries or wages stated therein were contracted or incurred for the municipality under authority of law, that the amounts claimed are correct, due and unpaid and that the amounts are due as salaries and wages for services performed by the person named.

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

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

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

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

(f) When an employee is required to travel on behalf of a municipality, the employee shall be entitled, upon complying with the provisions of the municipality's policies and regulations on employee travel, to timely payment of subsistence allowances and reimbursement for transportation and other related travel expenses incurred by the employee while on an approved travel status. When reimbursement through the regular claims approval process of the municipality will require more than 15 days from the date the reimbursement claim is filed, the claim may be authorized to be paid in advance of approval thereof by the governing body in accordance with the provisions of this subsection. The governing body may designate and authorize one or more of its officers or employees

to pay any such claim made against the municipality in advance of its presentation to and approval by the governing body if payment of the amount of such claim is required before the next scheduled regular meeting of the governing body. Any officer or employee authorized to pay claims under this subsection shall keep an accurate record of all moneys paid and the purpose for which expended, and shall submit the record to the governing body at the next meeting thereof. Payments of claims by an officer or employee of the municipality under authority of this subsection are valid to the same extent as if the claims had been approved and ordered to be paid by the governing body.

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

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

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

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

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

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

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

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

(e) "Professional employees' organizations" means any one or more organizations, agencies, committees, councils or groups of any kind in which professional employees participate, and which exist for the purpose, in whole or part, of engaging in professional negotiation with boards of education with respect to the terms and conditions of professional service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Provision by agreements entered into under authority of this section for the attendance of pupils at school in a school district of nonresidence of such pupils shall be

deemed to be compliance with the kindergarten, grade, course and units of instruction requirements of law.

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

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

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

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

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

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

And by renumbering the remaining section accordingly;

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

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

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

RALPH M. TANNER
KATHE LLOYD
Conferees on part of House

DWAYNE UMBARGER
JOHN VRATIL
CHRISTINE DOWNEY
Conferees on part of Senate

Senator Umbarger moved the Senate adopt the Conference Committee Report on **SB 551**.

On roll call, the vote was: Yeas 35, Nays 4, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gooch, Goodwin, Haley, Harrington, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Feleciano, Gilstrap, Hensley.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

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

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

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

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

On page 21, after line 5, by inserting:

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

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

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

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

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

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

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

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

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

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

- (1) A failure to pay a license fee or an annual renewal fee for a license;
- (2) the applicant obtained or attempted to obtain a license by fraud or deception;
- (3) a violation of any of the provisions of this act; or

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

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

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

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

By striking all on pages 22 through 28;

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

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

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

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

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

By renumbering section 26 accordingly;

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

On page 30, after line 24, by inserting:

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

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

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

(b) All rules and regulations of the Kansas state board of cosmetology in effect on the effective date of this act which establish sanitation standards, as defined in K.S.A. 65-1,148, and amendments thereto, for tanning facilities, tattoo facilities, body piercing facilities, permanent color technicians and tattoo artists and persons performing body piercing shall continue to be effective and shall be deemed to be rules and regulations of the secretary of

health and environment under K.S.A. 65-1,148, and amendments thereto, until revised, amended, revoked or nullified by the secretary of health and environment, or otherwise, pursuant to law.”;

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

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

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

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

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

SUSAN WAGLE
SANDY PRAEGER
DAVID HALEY
Conferees on part of Senate

Senator Wagle moved the Senate adopt the Conference Committee Report on **H Sub SB 643**.

On roll call, the vote was: Yeas 34, Nays 5, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gooch, Goodwin, Haley, Harrington, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Feleciano, Gilstrap, Hensley, Huelskamp.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

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

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

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

By striking all on pages 13 and 14;

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

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

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

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

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

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

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

(f) The administrator or executive director of the education commission of the states, the interstate compact on agricultural grain marketing, the Mo-Kan metropolitan development district and agency compact, the Kansas City area transportation district and authority

compact, the midwest nuclear compact, the central interstate low-level radioactive waste compact, the multistate tax compact, the Kansas-Oklahoma Arkansas river basin compact, the Kansas-Nebraska Big Blue river compact, and the multistate lottery;

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

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

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

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

By renumbering sections accordingly;

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

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

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

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

DWAYNE UMBARGER
JOHN VRATIL
CHRISTINE DOWNEY
Conferees on part of Senate

Senator Umbarger moved the Senate adopt the Conference Committee Report on **SB 647**.

Senator Schmidt offered a substitute motion to not adopt the conference committee report and requested a new conference committee be appointed.

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

On roll call, the vote was: Yeas 10, Nays 28, Present and Passing 1, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barone, Gooch, Oleen, Praeger, Schmidt, Teichman, Vratil, Wagle.

Nays: Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Goodwin, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Pugh, Salmans, Schodorf, Taddiken, Tyson, Umbarger.

Present and Passing: Haley.

Absent or Not Voting: Steineger.

The motion failed and the Conference Committee Report on **SB 647** was considered on final action.

On roll call, the vote was: Yeas 34, Nays 5, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Donovan, Downey, Emler, Feleciano, Gilstrap, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Wagle.

Nays: Barone, Corbin, Gooch, Schmidt, Vratil.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on the Conference Committee Report on **SB 647** because

the last-minute amendment requiring certain university and community college faculty members to file Statements of Substantial Intent is bad policy that violates the First Amendment. This language on its face targets political speech. It uses the power of the criminal law to deter certain persons from engaging in certain political speech unless they file forms disclosing personal information that likely is not relevant. This provision covers not just legislative testimony but a broad spectrum of types of political speech. It is too broad. There are other ways to protect the state's interests that are less burdensome on free speech. This bill will chill speech. I vote no.—DEREK SCHMIDT

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 $\frac{2}{3}$ 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 reso-

lution. 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 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 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

Senator Umbarger moved the Senate adopt the Conference Committee Report on **S Sub for HB 2094**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelkamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 3011**, submits the following report:

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

On page 1, in line 22, by striking "On and after July 1, 2002,";

On page 11, in line 20, by striking "On and after July 1, 2002,";

On page 12, in line 32, by striking "On and after June 1, 2002,";

By striking all on page 17 and inserting the following:

On page 18, by striking “(b)” and inserting “(c)”;

On page 19, in line 10, by striking “On and after June 1, 2002.”; in line 19, following “\$12.50” by inserting “until July 1, 2003, and \$13”; in line 26, by striking “On and after June 1, 2002.”; in line 38, by striking “June” and inserting “July”; also in line 38, by striking “2020” and inserting “2003”; in line 40, by striking “\$.25” and inserting “\$.23”; in line 43, by striking “\$.24” and inserting “\$.22”; following line 43, by inserting the following:

“(b) On and after July 1, 2003, until July 1, 2020, the tax imposed under this act shall be not less than:

- (1) On motor-vehicle fuels, \$.24 per gallon, or fraction thereof;
- (2) on special fuels, \$.26 per gallon, or fraction thereof; and
- (3) on LP-gas, \$.23 per gallon, or fraction thereof.”;

On page 20, in line 1, by striking “(b)” and inserting “(c)”;

in line 6, by striking “On and after June 1, 2002.”; in line 17, by striking “June” and inserting “July”; also in line 17, by striking “2020” and inserting “2003”; in line 20, by striking “67.16%” and inserting “64.6%”; in line 21, by striking “32.84%” and inserting “35.4%”; following line 21, by inserting the following subsection:

“(b) On and after July 1, 2003, until July 1, 2020, the state treasurer shall credit amounts received pursuant to K.S.A. 79-3408, 79-3408c, 79-3491a, 79-3492 and 79-34,118, and amendments thereto, as follows: To the state highway fund 66.37% and to the special city and county highway fund 33.63%.”;

Also on page 20, in line 22, by striking “(b)” and inserting “(c)”;

by striking all of lines 27 through 30 and inserting the following:

“Sec. 7. K.S.A. 8-143 and 8-143j and K.S.A. 2001 Supp. 79-3492b, 79-34,118, 79-34,141 and 79-34,142 are hereby repealed.”;

By renumbering section 9 accordingly;

Also on page 20, in line 32, by striking “Kansas register” and inserting “statute book”;

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

DAVID R. CORBIN
 LESILE DONOVAN
 JANIS K. LEE
Conferees on part of Senate

GARY K. HAYZLETT
 JENE VICKERY
 MARGARET E. LONG
Conferees on part of House

Senator Corbin moved the Senate adopt the Conference Committee Report on **HB 3011**.

On roll call, the vote was: Yeas 22, Nays 17, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brungardt, Corbin, Donovan, Downey, Emler, Gooch, Goodwin, Jackson, Jenkins, Kerr, Morris, Oleen, Praeger, Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Nays: Brownlee, Clark, Feleciano, Gilstrap, Haley, Harrington, Hensley, Huelskamp, Jordan, Lee, Lyon, O'Connor, Pugh, Salmans, Taddiken, Tyson, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

ORIGINAL MOTION

On motion of Senator Morris, the Senate acceded to the request of the House for a conference on **SB 619**.

The President appointed Senators Morris, Adkins and Feleciano as second conferees on the part of the Senate.

On motion of Senator Allen, the Senate acceded to the request of the House for a conference on **HB 2337**.

The President appointed Senators Allen, O'Connor and Gilstrap as third conferees on the part of the Senate.

REPORT ON ENROLLED BILLS

SB 69, SB 436; Sub SB 508 reported correctly enrolled, properly signed and presented to the Governor on May 15, 2002.

On motion of Senator Oleen, the Senate recessed until 4:00 p.m.

AFTERNOON SESSION

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

COMMUNICATIONS FROM STATE OFFICERS

DEPARTMENT OF HUMAN RESOURCES
Kansas Advisory Committee on Hispanic Affairs

May 14, 2002

Tina DeLaRosa, Executive Director, submitted the 2001 Annual Report for the Kansas Advisory Committee on Hispanic Affairs.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

MESSAGE FROM THE HOUSE

Announcing passage of **SB 152**, as amended by **House Substitute for SB 152**.

The House adopts the conference committee report on **HB 2727**.

The House adopts the conference committee report on **House Substitute for SB 112**.

The House adopts the conference committee report on **SB 459**.

The House not adopts the conference committee report on **SB 472**, requests a conference and has appointed Representatives Edmonds, Huff and Larkin as third conferees on the part of the House.

The House adopts the conference committee report to agree to disagree on **House Substitute for SB 9** and has appointed Representatives O'Neal, Loyd and Pauls as second conferees on the part of the House.

The House adopts the conference committee report on **Senate Substitute for HB 2094**.

POINT OF PERSONAL PRIVILEGE

Senator Kerr rose on a point of personal privilege to congratulate Gus Simmons, who has served as the Senate reader this session, and on Saturday will graduate from Washburn University School of Law.

At Washburn this year, Gus served as Moot Court Council President. He is a member of Phi Alpha Delta Legal Fraternity, the International Law Society, and the American Bar Association, Law School Division.

Gus will be entering full-time employment with the County Prosecutor's Office in Kirksville, Missouri.

ORIGINAL MOTION

Senator Oleen moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 438, SB 481, HB 2575, HB 2719, HB 2771, HB 2802, HB 2817, HB 2828**.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Schmidt moved the Senate concur in house amendments to **SB 438**.

SB 438, An act concerning agriculture; relating to powers, duties and responsibilities of secretary of agriculture; fees and penalties; amending K.S.A. 2-1205, 2-2204, 2-2440, 2-2440b, 2-2441a, 2-2443a, 2-2445a, 2-2805, 2-2806, 2-2905, 2-2906, 2-3304, 2-3306, 2-3318 and 82a-727 and K.S.A. 2001 Supp. 65-771, 65-775, 65-778, 65-781, 65-782, 65-789, 82a-708a, 82a-708b, 82a-714, 83-302 and 83-402 and repealing the existing sections.

On roll call, the vote was: Yeas 23, Nays 16, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Corbin, Donovan, Emler, Gilstrap, Goodwin, Jackson, Jenkins, Jordan, Morris, Oleen, Praeger, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Barone, Clark, Downey, Feleciano, Gooch, Haley, Harrington, Hensley, Huelkamp, Kerr, Lee, Lyon, O'Connor, Pugh, Salmans, Tyson.

Absent or Not Voting: Steineger.

The Senate concurred.

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

JOHN VRATIL
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

On motion of Senator Vratil, the Senate adopted the conference committee report on **H Sub for SB 9**, and requested a new conference committee be appointed.

The President appointed Senators Vratil, Schmidt and Haley as a third Conference Committee on the part of the Senate on **SB 9**.

CONFERENCE COMMITTEE REPORT

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

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as House Substitute for Senate Bill No. 112, As Amended by House Committee of the Whole, as follows:

By striking all of pages 6 through 8;

On page 9, by striking all of lines 1 through 7 and inserting the following:

“New Section 1. (a) On and after January 1, 2003: (1) No faculty member or other employee of a state educational institution in the unclassified service under the Kansas civil services act, and amendments thereto; or (2) no faculty member or other employee of a postsecondary educational institution shall serve as a consultant or perform consulting services, either individually or as part of a business, unless such person has filed a disclosure statement as required by this section. The disclosure statement shall contain the following information:

- (1) The names of the contracting parties;
- (2) whether or not the faculty member has a substantial interest in the consulting business;
- (3) the date that the contract was approved by the institution as determined by the board of regents;
- (4) the amount of the consideration of the contract;
- (5) a summary of the basic terms of the contract; and
- (6) any other information required by rules and regulations promulgated by the board of regents.

The information required by paragraphs (1) through (5) shall be disclosed pursuant to any request therefor made under the open records act.

(b) The disclosure statement required by this section, and amendments thereto, shall be filed with the secretary of state and the local information officer of the state educational institution or post-secondary educational institution and such other locations as designated by the board of regents by rule and regulation no later than 10 business days after the contract has been signed by both parties. Each disclosure statement, and amendments thereto, required by this section shall be available for public inspection, under the provisions of the open records act, during the normal business hours of any office in which it is filed. Disclosure statements required under this section shall be maintained for a period of five years after the faculty member or unclassified employee of a state educational institution or faculty member or employee of a postsecondary educational institution ceases to be employed by such state educational institution or postsecondary educational institution.

(c) A separate disclosure statement, or amendment of an existing disclosure statement, shall be filed for each consulting business owned, operated or maintained by such faculty member or other unclassified employee in the unclassified service under the Kansas civil service act, and amendments thereto, of a state educational institution or such faculty member or other employee of a postsecondary educational institution.

(d) No contract may be divided for the purpose of evading the requirements of this section. All contracts between the same parties during a calendar year shall be treated cumulatively as one contract for the purposes of this section.

New Sec. 2. The statement required by section 1, and amendments thereto, shall be signed and dated by the individual making the statement and shall contain substantially the following:

STATEMENT OF CONSULTING INTERESTS

(name)

(office or position of employment for which this statement is filed)

(address) (body of statement, including the information prescribed by section 1 in form prescribed by Kansas board of regents)

“I declare that this statement of substantial interests (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my consulting interests and other matters required by law. I understand that intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.”

(date of filing)

(signature of person making the statement)

New Sec. 3. As used in this act: (a) “Board of regents shall have the meaning ascribed to it in K.S.A. 76-711, and amendments thereto.

(b) “Business” shall have the meaning ascribed to it in K.S.A. 46-230 and amendments thereto.

(c) “Consultant” shall have the meaning ascribed to it in K.S.A. 46-284 and amendments thereto. Consultant also includes any corporation, partnership or other business entity in which the individual has a substantial interest.

(d) “Contract” shall have the meaning ascribed to it in K.S.A. 46-231 and amendments thereto.

(e) “Person” shall have the meaning ascribed to it in K.S.A. 46-223 and amendments thereto.

(f) “Postsecondary educational institution” shall have the meaning ascribed to it in K.S.A. 2001 Supp. 74-3201b, and amendments thereto, except that it shall not include public universities as defined in K.S.A. 2001 Supp. 74-3201b, and amendments thereto.

(g) “State educational institution” shall have the meaning ascribed to it in K.S.A. 76-711, and amendments thereto.

(h) “Substantial interest” shall have the meaning ascribed to it in K.S.A. 46-229 and amendments thereto.

New Sec. 4. This act shall not apply to any faculty member or other employee of a state educational institution in the unclassified service under the Kansas civil service act, and amendments thereto or any faculty member or other employee of a postsecondary educational institution:

- (a) Who serves in an adjunct faculty position which is a part-time position which is equivalent to 25% or less of a full-time position;
- (b) whose consulting contract has an annual value of \$500 or less;
- (c) who is a lawyer if disclosure would require revealing the identity of a client or otherwise violate the lawyer-client privilege set forth in K.S.A. 60-426, and amendments thereto; or
- (d) who is a physician if disclosure would require revealing the identity of a patient or otherwise violate the physician-patient privilege set forth in K.S.A. 60-427, and amendments thereto.

New Sec. 5. (a) Failure to file any statement as required by this act or intentionally filing a false statement is a class B misdemeanor.

(b) Failure to provide access to or a copy of a disclosure statement as required by this act shall be deemed to be a violation of the open records act and shall be subject to the provisions of K.S.A. 45-222 and 45-223 and amendments thereto.

New Sec. 6. The Kansas board of regents shall adopt rules and regulations necessary to implement this act on or before January 1, 2003.

New Sec. 7. Sections 1 through 7, and amendments thereto, shall be known and may be cited as the university consulting contract sunshine act.

Sec. 8. K.S.A. 2001 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

- (1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.
- (2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.
- (3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.
- (4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.
- (5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.
- (6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.
- (7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.
- (8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.
- (9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.
- (10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:
 - (A) Is in the public interest;
 - (B) would not interfere with any prospective law enforcement action;
 - (C) would not reveal the identity of any confidential source or undercover agent;
 - (D) would not reveal confidential investigative techniques or procedures not known to the general public;
 - (E) would not endanger the life or physical safety of any person; and
 - (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting;

or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting;

or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901, *et seq.*, and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 *et seq.* and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(36) Information which would reveal the precise location of an archeological site.

(37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and ~~45-2d20~~ 40-2d20 and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.

(41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.

(42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.

(43) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.

(44) The amount of franchise tax paid to the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.

(45) *Records the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; or (B) sewer or wastewater treatment systems, facilities or equipment. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping.*

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Sec. 9. K.S.A. 2001 Supp. 45-221 is hereby repealed.”;

By renumbering the remaining section accordingly;

In the title, on page 1, in line 10, by striking all following “ACT”; by striking all of lines 13 through 15; in line 16, by striking all before the semicolon and inserting the following “concerning the disclosure of information; relating to open records; pertaining to certain consulting contracts”; in line 17, by striking “2000 Supp. 74-616” and inserting “2001 Supp. 45-221”;

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

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

STAN CLARK
JAY SCOTT EMLER
JIM BARONE
Conferees on part of Senate

Senator Clark moved the Senate not adopt the Conference Committee Report on **H Sub for SB 112** and requested a new conference committee be appointed.

The President appointed Senators Clark, Emler and Barone as a Conference Committee on the part of the Senate on **H Sub for SB 112**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on House amendments to **SB 481**, 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 3, in line 40, by striking “choose”; in line 41 by striking “three school districts” and inserting “allow every school district”; in line 42, after “process” where it appears for the second time by inserting a period; also in line 42, by striking “pilot pro-”; by striking all of line 43;

On page 4, by striking all of lines 1 through 4 and inserting the following: “The state board of education shall develop guidelines and procedures for those school districts choosing to use these procurement processes.

(b) The school board of any school district desiring to utilize on-line bidding or reverse auctioning must first conduct a public hearing to determine whether or not the administration of that school district will utilize such procedures for purchasing services, materials, goods or wares.”;

Also on page 4, in line 5, by striking “(b)” and inserting “(c)”; also in line 5, by striking “a pilot project” and inserting “any”; in line 7 by striking “services,”; in line 9, by striking “services,”; in line 12, by striking “services,”; in line 13, by striking “(b)” and inserting “(d)”; also in line 13, by striking “a pilot project” and inserting “any”; in line 21, by striking “(c)” and inserting “(e)”; also in line 21, by striking “pilot project”; in line 25, by striking “conducted”; in line 26, by striking “(d)” and inserting “(f)”; in line 29, by striking “(e)” and inserting “(g)”; in line 33, by striking all after “the” the first time it appears; in line 34, by striking all before the period and inserting the following: “state board of education. The report shall include a comparison of the final pricing offered, the percentage in the increase or decrease of the number of bidders participating in the bidding, the number of bidders outside the state of Kansas, the number of bid protests and any other information deemed appropriate by the state board of education.”;

Also on page 4, in line 35, by striking “(f)” and inserting “(h)”; in line 37, by striking “services,”;

On page 5, in line 29, by striking all after “(g)”; by striking all in lines 30 through 33 and inserting the following: “Any state agency that offers or provides the option of using an electronic signature to persons doing business with that state agency shall establish written standards governing the use of those electronic signatures as follows:

(1) On or before December 31, 2002, for electronic signature applications that are in use by the state agency before July 1, 2002; or

(2) before offering or providing the option of using an electronic signature for any applications implemented on or after July 1, 2002.”;

Also on page 5, in line 36, by striking all after “(i)”; by striking all in lines 37 through 39 and inserting the following: “The secretary of state shall adopt rules and regulations governing the use of digital signatures by state agencies. Each state agency offering or providing the option of using a digital signature to persons doing business with that state agency shall implement digital signatures in a manner consistent with the regulations of the secretary of state, except that the state agency may adopt rules and regulations governing that agency’s use of digital signatures that exceed the minimum standards established by the rules and regulations of the secretary of state.”; in line 40, by striking “16-605” and inserting “16-1605”;

In the title, on page 1, in line 20, by striking “16-605” and inserting “16-1605”;

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

DEENA HORST
JOHN FABER
DOUG GATEWOOD
Conferees on part of House

KARIN BROWNLEE
NICK JORDAN
JIM BARONE
Conferees on part of Senate

Senator Brownlee moved the Senate adopt the Conference Committee Report on **SB 481**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelkamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O’Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

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 FELECIANO, JR.
Conferees on part of Senate

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

Senator Morris moved the Senate adopt the Conference Committee Report on **HB 2575**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huel-skamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

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. 5. 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

Senator Brownlee moved the Senate adopt the Conference Committee Report on **HB 2719**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huel-skamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

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 garnisher 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 amend-

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

Senator Vratil moved the Senate adopt the Conference Committee Report on **HB 2771**.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Gooch.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

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;

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

JOHN VRATIL
DAVID ADKINS
GRETA GOODWIN
Conferees on part of Senate

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

Senator Vratil moved the Senate adopt the Conference Committee Report on **HB 2802**.
On roll call, the vote was: Yeas 27, Nays 11, Present and Passing 1, Absent or Not Voting

1.
Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Jackson, Jenkins, Jordan, Kerr, Morris, Oleen, Praeger, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil.
Nays: Barone, Feleciano, Haley, Harrington, Hensley, Huelskamp, Lyon, O'Connor, Pugh, Tyson, Wagle.

Present and Passing: Lee.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2817**, 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 1, by striking all in lines 15 through 43;

By striking all on page 2;

On page 3, by striking all in lines 1 through 35 and inserting the following:

“New Section 1. On and after July 1, 2007: (a) Except as otherwise provided by this act, all of the powers, duties and functions of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act are hereby transferred to and conferred and imposed upon the office of administrative hearings and the director established by this act.

(b) Except as otherwise provided by this act, the office of administrative hearings and the director established by this act shall be the successor in every way to the powers, duties and functions of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act in which the same were vested prior to the effective date of this section. Every act performed in the exercise of such powers, duties and functions by or under the authority of the office of administrative hearings and the director concerning adjudicative proceedings of the Kansas administrative procedure act established by this act shall be deemed to have the same force and effect as if performed by the office of administrative hearings within the department of administration and the secretary of administration, respectively, in which such powers, duties and functions were vested prior to the effective date of this section.

(c) Except as otherwise provided by this act, whenever the office of administrative hearings within the department of administration and the secretary of administration, or words of like effect concerning adjudicative proceedings of the Kansas administrative procedure act, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the office of administrative hearings established by this act.

(d) Except as otherwise provided by this act, whenever the secretary of administration, or words of like effect concerning adjudicative proceedings of the Kansas administrative

procedure act, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the director established by this act.

(e) All rules and regulations of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act in existence on the effective date of this section shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the director of the office of administrative hearings established by this act until revised, amended, revoked or nullified pursuant to law.

(f) All orders and directives of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act in existence on the effective date of this section shall continue to be effective and shall be deemed to be orders and directives of the director of the office of administrative hearings established by this act until revised, amended or nullified pursuant to law.

(g) On the effective date of this section, the director of the office of administrative hearings established by this act shall succeed to whatever right, title or interest the department of administration has acquired in any real property in this state concerning adjudicative proceedings of the Kansas administrative procedure act, and the director of the office of administrative hearings shall hold the same for and in the name of the state of Kansas. On and after the effective date of this section, whenever any statute, contract, deed or other document concerns the power or authority of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act to acquire, hold or dispose of real property or any interest therein, the office of administrative hearings and the director as established by this act shall succeed to such power or authority.

(h) The office of administrative hearings and the director established by this act shall be continuations of the office of administrative hearings within the department of administration and the secretary of administration concerning adjudicative proceedings of the Kansas administrative procedure act.

New Sec. 2. Except as otherwise provided in this act, on July 1, 2007, any presiding officer in the administrative hearings section of all agencies which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551, and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings established under this act. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

New Sec. 3. On and after July 1, 2007:

(a) When any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The office of administrative hearings shall succeed to all property and records which were used for or pertain to the performance of the powers, duties and functions transferred to the office of administrative hearings. Any conflict as to the proper disposition of property or records arising under this section, and resulting from the transfer or attachment of any state agency, or all or part of the powers, duties and functions thereof, shall be determined by the governor, whose decision shall be final.

New Sec. 4. On and after July 1, 2007:

(a) The office of administrative hearings shall have the legal custody of all records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the office of administrative hearings within the depart-

ment of administration concerning adjudicative proceedings of the Kansas administrative procedure act and any agency or office transferred thereto under this act.

(b) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(c) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this act.

New Sec. 5. (a) On and after July 1, 2007, the balance of all funds appropriated and reappropriated to the office of administrative hearings within the department of administration concerning adjudicative proceedings of the Kansas administrative procedure act is hereby transferred to the office of administrative hearings and shall be used only for the purpose for which the appropriation was originally made.

(b) On and after July 1, 2007, the liability for all accrued compensation or salaries of officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the office of administrative hearings within the department of administration concerning adjudicative proceedings of the Kansas administrative procedure act, or who become a part of the office of administrative hearings established by this act, or the powers, duties and functions of which are transferred to the office of administrative hearings provided for by this act, shall be assumed and paid by the office of administrative hearings established by this act.

Sec. 6. On and after July 1, 2006, K.S.A. 2-1208a is hereby amended to read as follows: 2-1208a. (a) If it shall appear to the secretary or an authorized representative of the secretary from examination or analysis of an official sample of a commercial fertilizer that the commercial fertilizer is falsely labeled or fails to comply with the provisions of this act, the secretary shall cause notice to be given to the person in possession of the commercial fertilizer and the registrant that a hearing in relation thereto will be held at a date and place named in such notice. Whereupon the secretary or ~~an authorized representative of the secretary~~ *a presiding officer from the office of administrative hearings* shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act.

(b) If it is established at the hearing to the satisfaction of the secretary, or ~~an authorized representative of the secretary~~ *a presiding officer from the office of administrative hearings*, that any commercial fertilizer has been registered in error, or has been sold in violation of any of the provisions of this act, or that any provision of this act has been violated, the secretary shall have power to cancel the registration of such brand or brands of commercial fertilizer, and may report the facts to the proper prosecuting attorney and furnish that officer with an official report of the record of such hearing and a copy of the result of any analysis or other examination which may have a bearing on the case. Prosecution may be instituted under the provisions of this act in the district court of the county where the offense is alleged to have been committed, upon complaint of the secretary or an authorized representative of the secretary or any citizen of this state, or by any county attorney and shall be prosecuted by the county attorney in the name of the state of Kansas.

Sec. 7. On and after July 1, 2006, K.S.A. 2-3311 is hereby amended to read as follows: 2-3311. Before any chemigation user registration or chemigation user's permit shall be revoked, denied renewal or before it shall be suspended for any cause, the secretary shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The notice of hearing shall be sent to the registrant or permit holder at least 15 days prior to the hearing date and shall be served upon the registrant or permit holder by letter sent to such person's address as shown by the records of the secretary, setting out the time and place of the hearing and alleged grounds for revocation or suspension. The registrant or permit holder shall have the right to appear in person and by counsel and to testify and introduce evidence. If such person fails to appear, the matter may be heard in such person's absence. Any such hearing may be conducted by the secretary or ~~by a hearing officer duly appointed by the secretary~~ *a presiding officer from the office of administrative hearings*.

Sec. 8. On and after July 1, 2004, K.S.A. 8-2426 is hereby amended to read as follows: 8-2426. Violation of K.S.A. 8-2406 and amendments thereto or K.S.A. 8-2425 and amendments thereto is unlawful, and any person violating any provision thereof shall be subject to civil penalty of not less than \$350 and not to exceed \$1,000, as determined by the director of vehicles or a ~~person appointed by the director~~ *presiding officer from the office of administrative hearings* after notice and hearing in accordance with the provisions of the Kansas administrative procedure act. The provisions of this section shall not affect the authority of the secretary of revenue or any officer of the department of revenue in enforcing any provision of the vehicle dealers and manufacturers licensing act, of which K.S.A. 8-2425 and amendments thereto and this section shall be a part.

Sec. 9. On and after July 1, 2003, K.S.A. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

- (1) "Act" includes a failure or omission to take action.
- (2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.
- (3) "Conduct" means an act or a series of acts, and the accompanying mental state.
- (4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.
- (5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.
- (6) To "deprive permanently" means to:
 - (a) Take from the owner the possession, use or benefit of his or her property, without an intent to restore the same; or
 - (b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
 - (c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.
- (7) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.
- (8) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.
- (9) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.
- (10) "Law enforcement officer" means any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes or any officer of the Kansas department of corrections or for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415 and subsection (a)(2) of K.S.A. 21-3413 and amendments thereto, any employee of the Kansas department of corrections.
- (11) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.
- (12) "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.
- (13) "Owner" means a person who has any interest in property.
- (14) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.
- (15) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.
- (16) "Property" means anything of value, tangible or intangible, real or personal.
- (17) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

(18) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(19) "Public officer" includes the following, whether elected or appointed:

(a) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.

(b) A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.

(c) A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.

(d) A hearing officer or *presiding officer*, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(e) A law enforcement officer.

(f) Any other person exercising the functions of a public officer under color of right.

(20) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

(21) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

(22) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(23) "Stolen property" means property over which control has been obtained by theft.

(24) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

(25) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Sec. 10. On and after July 1, 2007, K.S.A. 31-140 is hereby amended to read as follows: 31-140. Any person aggrieved by any order or ruling issued pursuant to the provisions of this act may appeal such order or ruling to the state fire marshal within 15 days from the date of the service of such order by filing a notice of such appeal in the office of the state fire marshal. The state fire marshal or ~~the state fire marshal's authorized representative~~ *a presiding officer from the office of administrative hearings* shall hear such person within 30 days after the receipt of such notice of appeal, and the hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. The state fire marshal shall file a decision thereon and, unless by authority of the state fire marshal the order is revoked or modified, the order shall be complied with within the time fixed in such decision.

Sec. 11. On and after July 1, 2005, K.S.A. 36-509 is hereby amended to read as follows: 36-509. (a) Whenever a timely request for a hearing shall be filed with the secretary pursuant to the provisions of this act the secretary shall set a time and place for such hearing which shall be held within not to exceed 20 days of the request therefor. Upon such hearing, the secretary or a ~~person designated by the secretary as a hearing officer~~ *presiding officer from the office of administrative hearings* may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. At the hearing, the applicant shall have the right to be represented by counsel, to present witnesses and evidence in own behalf and to cross-examine adverse witnesses.

(b) Upon completion of the hearing, the secretary may affirm, rescind or modify the order denying, suspending or revoking the applicant's license. Any person aggrieved by any such decision of the secretary may appeal to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

Sec. 12. On and after July 1, 2007, K.S.A. 40-2,137 is hereby amended to read as follows: 40-2,137. (a) The costs incurred by the department of insurance in conducting any

administrative hearing authorized by article 33 of chapter 40 of the Kansas Statutes Annotated and ~~subsection (c) of K.S.A. 40-929, subsection (a) of K.S.A. 40-930, K.S.A. 40-939, K.S.A. 40-940, subsections (g) and (h) of K.S.A. 40-1113, subsection (a) of K.S.A. 40-1114 and K.S.A. 40-1120,~~ and amendments thereto, shall be assessed against insurers or rating organizations that are parties to the hearing in such proportion as the commissioner of insurance may determine upon consideration of all relevant circumstances including: (1) The nature of the hearing; (2) whether the hearing was instigated by, or for the benefit of a particular party or parties; (3) whether there is a successful party on the merits of the proceeding; (4) the relative levels of participation by the parties; and (5) with the exception of hearings held under article 33 of chapter 40 of the Kansas Statutes Annotated, only when the disapproval of rates in question is upheld, a rating organization's license is suspended or revoked or a penalty is imposed as a result of the hearing.

(b) For purposes of this section costs incurred shall mean the ~~hearing presiding officer~~ fees, cost of making a record and publishing notices, and travel expenses of department of insurance officers and employees, but costs incurred shall not include ~~hearing presiding officer fees or cost of making a record unless the department has retained the services of independent contractors~~ *the office of administrative hearings* or outside experts to perform such functions.

(c) Any costs assessed hereunder shall be made by the commissioner as part of the final order or decision arising out of the proceeding. Such order or decision shall include findings and conclusions in support of the assessment of costs. This section shall not be construed as permitting the payment of travel expenses unless calculated in accordance with the applicable laws and rules and regulations of the state of Kansas. The commissioner as part of such order or decision may require all assessments for ~~hearing presiding officer fees and cost of making a record, if any, to be paid directly to the hearing officer or court reporter~~ *office of administrative hearings* by the party or parties assessed for such costs.

Sec. 13. On and after July 1, 2006, K.S.A. 44-322a is hereby amended to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the secretary of human resources, the secretary or the secretary's authorized representative shall investigate the claim as provided in K.S.A. 44-322 and amendments thereto to determine if a dispute exists between the parties to the claim. If the secretary or the secretary's authorized representative determines that a dispute does exist and that the parties are unable to resolve their differences, the secretary or ~~the secretary's authorized representative~~ *a presiding officer from the office of administrative hearings* shall establish a time and place for a hearing on the matter. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Upon the completion of the hearing, the presiding officer shall determine whether the claim for unpaid wages is a valid claim under K.S.A. 44-313 through 44-326, and amendments thereto. If the presiding officer determines the claim for unpaid wages is valid, the amount of unpaid wages owed together with any damages which may be assessed under K.S.A. 44-315 and amendments thereto, if applicable, also shall be determined by the presiding officer. If the presiding officer determines the claim for unpaid wages is valid, the presiding officer shall order that the unpaid wages and any applicable damages be paid by the party responsible for their payment. Any initial order under this section shall be reviewed by the secretary ~~or the secretary's authorized representative~~ in accordance with K.S.A. 77-527 and amendments thereto. The decision of the secretary ~~or the secretary's authorized representative~~ shall be final and the amount of any unpaid wages and applicable damages determined by the secretary ~~or the secretary's authorized representative~~ to be valid shall be due and payable unless judicial review is sought within the time allowed by law.

(c) Any agency action under this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 14. On and after July 1, 2003, K.S.A. 44-1005 is hereby amended to read as follows: 44-1005. (a) Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice, and who can articulate a prima facie case pursuant to a recognized legal theory of discrimination, may, personally or by an attorney-at-law, make, sign and file with the commission a verified complaint in writing, articulating the prima facie case, which shall also state the name and address of the person,

employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the name and address of the person alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission.

(b) The commission upon its own initiative or the attorney general may, in like manner, make, sign and file such complaint. Whenever the attorney general has sufficient reason to believe that any person as herein defined is engaged in a practice of discrimination, segregation or separation in violation of this act, the attorney general may make, sign and file a complaint. Any employer whose employees or some of whom, refuse or threaten to refuse to cooperate with the provisions of this act, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

(c) Whenever any problem of discrimination because of race, religion, color, sex, disability, national origin or ancestry arises, or whenever the commission has, in its own judgment, reason to believe that any person has engaged in an unlawful employment practice or an unlawful discriminatory practice in violation of this act, or has engaged in a pattern or practice of discrimination, the commission may conduct an investigation without filing a complaint and shall have the same powers during such investigation as provided for the investigation of complaints. The person to be investigated shall be advised of the nature and scope of such investigation prior to its commencement. The purpose of the investigation shall be to resolve any such problems promptly. In the event such problems cannot be resolved within a reasonable time, the commission may issue a complaint whenever the investigation has revealed a violation of the Kansas act against discrimination has occurred. The information gathered in the course of the first investigation may be used in processing the complaint.

(d) After the filing of any complaint by an aggrieved individual, by the commission, or by the attorney general, the commission shall, within seven days after the filing of the complaint, serve a copy on each of the parties alleged to have violated this act, and shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation of the alleged act of discrimination. If the commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, such commissioner, within 10 business days from such determination, shall cause to be issued and served upon the complainant and respondent written notice of such determination.

(e) If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the commissioner or such other commissioner as the commission may designate, shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation. The complainant, respondent and commission shall have 45 days from the date respondent is notified in writing of a finding of probable cause to enter into a conciliation agreement signed by all parties in interest. The parties may amend a conciliation agreement at any time prior to the date of entering into such agreement. Upon agreement by the parties the time for entering into such agreement may be extended. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.

(f) In case of failure to eliminate such practices by conference and conciliation, or in advance thereof, if in the judgment of the commissioner or the commission circumstances so warrant, the commissioner or the commission shall commence a hearing in accordance with the provisions of the Kansas administrative procedure act naming as parties the complainant and the person, employer, labor organization, employment agency, realtor or financial institution named in such complaint, hereinafter referred to as respondent. A copy of the complaint shall be served on the respondent. At least four commissioners, ~~a staff hearing examiner or a contract hearing examiner~~ or a *presiding officer from the office of administrative hearings* shall be designated as the presiding officer. The place of such hearing shall be in the county where respondent is doing business and the acts complained of occurred.

(g) The complainant or respondent may apply to the presiding officer for the issuance of a subpoena for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the presiding officer shall issue such subpoena.

(h) The case in support of the complaint shall be presented before the presiding officer by one of the commission's attorneys or agents, or by private counsel, if any, of the complainant, and the commissioner who shall have previously made the investigation shall not participate in the hearing except as a witness. Any endeavors at conciliation shall not be received in evidence.

(i) Any complaint filed pursuant to this act must be so filed within six months after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination. Complaints filed with the commission on or after July 1, 1996, may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. The commission shall mail written notice to all parties of dismissal of a complaint within five days of dismissal. Complaints filed with the commission before July 1, 1996, shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the commission which shall be deemed to exhaust all administrative remedies under the Kansas act against discrimination for the purpose of allowing subsequent filing of the matter in court by the complainant, without the requirement of filing a petition for reconsideration pursuant to K.S.A. 44-1010 and amendments thereto. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review by any court under the provisions of K.S.A. 44-1011 and amendments thereto. The provisions of this section shall not apply to complaints alleging discriminatory housing practices filed with the commission pursuant to K.S.A. 44-1015 et seq. and amendments thereto.

(j) The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant shall appear at such hearing in person, with or without counsel, and submit testimony. The presiding officer or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend such respondent's answer. The presiding officer shall be bound by the rules of evidence prevailing in courts of law or equity, and only relevant evidence of reasonable probative value shall be received.

(k) If the presiding officer finds a respondent has engaged in or is engaging in any unlawful employment practice or unlawful discriminatory practice as defined in this act, the presiding officer shall render an order requiring such respondent to cease and desist from such unlawful employment practice or such unlawful discriminatory practice and to take such affirmative action, including but not limited to the hiring, reinstatement, or upgrading of employees, with or without back pay, and the admission or restoration to membership in any respondent labor organizations; the admission to and full and equal enjoyment of the goods, services, facilities, and accommodations offered by any respondent place of public accommodation denied in violation of this act, as, in the judgment of the presiding officer, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. Such order may also include an award of damages for pain, suffering and humiliation which are incidental to the act of discrimination, except that an award for such pain, suffering and humiliation shall in no event exceed the sum of \$2,000.

(l) Any state, county or municipal agency may pay a complainant back pay if it has entered into a conciliation agreement for such purposes with the commission, and may pay such back pay if it is ordered to do so by the commission.

(m) If the presiding officer finds that a respondent has not engaged in any such unlawful employment practice, or any such unlawful discriminatory practice, the presiding officer shall render an order dismissing the complaint as to such respondent.

(n) The commission shall review an initial order rendered under subsection (k) or (m). In addition to the parties, a copy of any final order shall be served on the attorney general and such other public officers as the commission may deem proper.

(o) The commission shall, except as otherwise provided, establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. The rules of practice shall be available, upon written request, within 30 days after the date of adoption.

Sec. 15. On and after July 1, 2006, K.S.A. 49-606 is hereby amended to read as follows: 49-606. (a) The director, with the approval of the commission, may deny issuance or renewal of a license for repeated or willful violation of the provisions of this act or for failure to comply with any provision of a reclamation plan.

(b) The director, with the approval of the commission, may suspend or revoke a license for repeated or willful violation of any of the provisions of this act or for failure to comply with any provision of a reclamation plan. Proceedings for the suspension or revocation of a license pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act by the director or a hearing officer appointed by the director *presiding officer from the office of administrative hearings*.

Sec. 16. On and after July 1, 2005, K.S.A. 2001 Supp. 65-163 is hereby amended to read as follows: 65-163. (a) (1) No person shall operate a public water supply system within the state without a public water supply system permit from the secretary. An application for a public water supply system permit shall be submitted for review and approval prior to construction and shall include: (A) A copy of the plans and specifications for the construction of the public water supply system or the extension thereof; (B) a description of the source from which the water supply is to be derived; (C) the proposed manner of storage, purification or treatment for the supply; and (D) such other data and information as required by the secretary of health and environment. No source of water supply in substitution for or in addition to the source described in the application or in any subsequent application for which a public water supply system permit is issued shall be used by a public water supply system, nor shall any change be made in the manner of storage, purification or treatment of the water supply without an additional public water supply system permit obtained in a manner similar to that prescribed by this section from the secretary.

(2) Whenever application is made to the secretary for a public water supply system permit under the provisions of this section, it shall be the duty of the secretary to examine the application without delay and, as soon as possible thereafter, to grant or deny the public water supply system permit subject to any conditions which may be imposed by the secretary to protect the public health and welfare.

(3) The secretary may adopt rules and regulations establishing a program of annual certification by public water supply systems that have staff qualified to approve the extension of distribution systems without the necessity of securing an additional permit for the extension provided the plans for the extension are prepared by a professional engineer as defined by K.S.A. 74-7003, and amendments thereto.

(b) (1) Whenever a complaint is made to the secretary by any city of the state, by a local health officer, or by a county or joint board of health concerning the sanitary quality of any water supplied to the public within the county in which the city, local health officer or county or joint board of health is located, the secretary shall investigate the public water supply system about which the complaint is made. Whenever the secretary has reason to believe that a public water supply system within the state is being operated in violation of an applicable state law or an applicable rule and regulation of the secretary, the secretary may investigate the public water supply system.

(2) Whenever an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water

supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary.

(c) (1) As used in this subsection (c), "municipal water treatment residues" means any solid, semisolid or liquid residue generated during the treatment of water in a public water supply system treatment works.

(2) A public water supply system may place or store municipal water treatment residues resulting from sedimentation, coagulation or softening treatment processes in basins on land under the ownership and control of the public water supply system operator provided that such storage or placement is approved and permitted by the secretary under this section as part of the public water supply system.

(3) The secretary shall adopt uniform and comprehensive rules and regulations for the location, design and operation of such basins. Such rules and regulations shall require permit applications by the public water suppliers for such basins to include a copy of the plans and specifications for the location and construction of each basin, the means of conveyance of the treatment residues to such basins, the content of treatment residues, the proposed method of basin operation and closure, the method of any anticipated expansion and any other data and information required by the secretary.

(4) Whenever complaint is made to the secretary by the mayor of any city of the state, by a local health officer or by a county or joint board of health, or whenever an investigation is undertaken at the initiative of the secretary, relating to any alleged violation of the provisions of the permit for placement or storage of municipal water treatment residues in such basins, the public water supply system operator shall furnish all information the secretary requires. If the secretary finds that there is any violation of the terms of the permit, that the means of placement and storage exceed the terms of the permit or that any other condition exists by reason of the means of placement and storage that may be detrimental to the health of any inhabitants of the state or to the environment, the secretary shall have the authority to issue an order amending the permit or otherwise requiring the operator to perform remedial measures to curtail or prevent such detrimental conditions.

(d) *Orders of the secretary under this section, and hearings thereon, shall be subject to the provisions of the Kansas administrative procedure act.* Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The court on review shall hear the case without delay.

(e) The secretary shall establish by rule and regulation a system of fees for the inspection and regulation of public water supplies. No such fee shall exceed \$.002 per 1,000 gallons of water sold at retail by a public water supply system. All such fees shall be paid quarterly in the manner provided for fees imposed on retail sales by public water supply systems pursuant to K.S.A. 82a-954, and amendments thereto. The secretary shall remit all moneys collected for such fees 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 public water supply fee fund created by K.S.A. 65-163c, and amendments thereto.

(f) There is hereby created an advisory committee to make recommendations regarding: (1) Fees to be adopted by the secretary under subsection (e); (2) means of strengthening on-site technical assistance to public water supply systems; (3) standards for on-site and classroom water treatment operator certification programs; (4) other matters concerning public water supplies; and (5) to advise the secretary regarding expenditure of moneys in the public water supply fee fund created by K.S.A. 65-163c, and amendments thereto. Such advisory committee shall consist of one member appointed by the secretary to represent the department of health and environment, one member appointed by the director of the Kansas water office to represent such office and two members appointed by the secretary as follows: One from three nominations submitted by the Kansas section of the American waterworks association, and one from three nominations submitted by the Kansas rural water association. Members of the advisory committee shall serve without compensation or re-

imbursement of expenses. The advisory committee shall meet at least four times each year on call of the secretary or a majority of the members of the committee.

Sec. 17. On and after July 1, 2005, K.S.A. 65-163a is hereby amended to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver water through pipes and mains to any premises where a condition exists which might lead to the contamination of the public water supply system and may continue to refuse the delivery of water to the premises until the condition is remedied.

(b) The secretary may order a supplier of water: (1) To cease the delivery of water through pipes and mains to a premise or premises where a condition exists which might lead to the contamination of the public water supply system; or (2) to cease an activity which would result in a violation of the state primary drinking water standards; or (3) to cease an activity which results in a continuing violation of the state primary drinking water standards; or (4) to comply with any combination of these orders. The supplier of water shall immediately comply with an order issued by the secretary under this section.

(c) *Orders of the secretary under this section, and hearings thereon, shall be subject to the provisions of the Kansas administrative procedure act.* Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The court on review shall hear the appeal without delay.

Sec. 18. On and after July 1, 2005, K.S.A. 2001 Supp. 65-525 is hereby amended to read as follows: 65-525. (a) Records in the possession of the department of health and environment or its agents regarding child care facilities, maternity centers or family day care homes shall not be released publicly in a manner that would identify individuals, unless required by law.

(b) Records containing the name, address and telephone number of a child care facility, maternity center or family day care home in the possession of the department of health and environment or its agents shall not be released publicly unless required by law.

(c) Records that cannot be released by subsection (a) or (b) may be released to: (1) An agency or organization authorized to receive notice under K.S.A. 65-506, and amendments thereto; (2) a criminal justice agency; (3) any state or federal agency that provides child care services, funding for child care or child protective services; (4) any federal agency for the purposes of compliance with federal funding requirements; (5) any local fire department; (6) any child and adult care food program sponsoring agency; or (7) any local disaster agency.

(d) Any state or federal agency or any person receiving records under subsection (a) or (b) shall not disseminate the records without the consent of the person whose records will be disseminated unless required by law. Any state or federal agency or any person receiving records under subsection (e) may disseminate the information contained in the records without the consent of the person whose records will be disseminated.

(e) The secretary of health and environment may release the name, address and telephone number of a maternity center, child care facility or family day care home when the secretary determines that the release of the information is necessary to protect the health, safety or welfare of the public or the patients or children enrolled in the maternity center, child care facility or family day care home.

(f) Any records under subsection (a) or (b) shall be available to any member of the standing committee on appropriations of the house of representatives or the standing committee on ways and means of the senate carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by $\frac{2}{3}$ of the members of such committee, records received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. Such records shall not identify individuals but shall include data and contract information concerning specific facilities.

(g) In any hearings conducted under the licensing or regulation provisions of K.S.A. 65-501 *et seq.* and amendments thereto, the ~~hearing~~ *presiding* officer may close the hearing to the public to prevent public disclosure of matters relating to persons restricted by other laws.

Sec. 19. On and after July 1, 2005, K.S.A. 2001 Supp. 65-526 is hereby amended to read as follows: 65-526. (a) The secretary of health and environment, in addition to any

other penalty prescribed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, may assess a civil fine, after proper notice and an opportunity to be heard *in accordance with the Kansas administrative procedure act*, against a licensee or registrant for each violation of such provisions or rules and regulations adopted pursuant thereto which affect significantly and adversely the health, safety or sanitation of children in a child care facility or family day care home. Each civil fine assessed under this section shall not exceed \$500. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) All fines assessed and collected under this section 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 to the credit of the state general fund.

Sec. 20. On and after July 1, 2005, K.S.A. 65-673 is hereby amended to read as follows: 65-673. (a) The authority to promulgate rules and regulations for the efficient enforcement of this act is hereby vested in the secretary. The secretary is hereby authorized to make the regulations promulgated under this act conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this act shall be conducted by the secretary or by a ~~hearing officer designated by the secretary~~ *presiding officer from the office of administrative hearings* for this purpose. The secretary shall prescribe by rule and regulation the procedure for conducting hearings. The ~~hearing~~ *presiding* officer shall have the same powers in conducting a hearing as the secretary. In conducting a hearing the secretary or the ~~hearing~~ *presiding* officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the ~~hearing~~ *presiding* officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. Notwithstanding the foregoing provisions of this subsection, hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Before promulgating any rules and regulations contemplated by K.S.A. 65-663, 65-665, 65-666, 65-669, or 65-672, and amendments thereto, the secretary shall give appropriate notice of the proposal and of the time and place for a hearing as provided in this act. Such rules and regulations may be amended or revoked in the same manner as is provided by law for adoption.

Sec. 21. On and after July 1, 2005, K.S.A. 65-2305 is hereby amended to read as follows: 65-2305. (a) The secretary of health and environment shall have the power and authority and is hereby charged with the duty of enforcing the provisions of this act, and the secretary is hereby authorized and directed to make, amend or revoke rules and regulations and orders for the efficient enforcement of this act.

(b) In the event of findings by the secretary that there is an existing or imminent shortage of any ingredient required to enrich flour, white bread or rolls in order to comply with this act, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this act, the secretary shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if the secretary finds it necessary or appropriate, excepting such foods from the labeling requirements of this act until the further order of the secretary. Any such findings may be made without hearing on the basis of an order or of factual information supplied by the appropriate agency or officer. In the absence of any such order of the appropriate agency or factual information supplied by it, the secretary on the secretary's own motion may, and upon receiving the sworn statement of 10 or more persons subject to this act that they believe such a shortage exists or is imminent shall hold a public hearing as provided in subsection (f) with respect thereto, at which any interested person may present evidence; and shall make findings based upon the evidence presented.

(c) Whenever the secretary has reason to believe that such shortage no longer exists, the secretary shall hold a public hearing as provided in subsection (f), after notice shall have been given as provided in K.S.A. 77-421 prior to adoption of rules and regulations, at which any interested person may present evidence, and the secretary shall make findings based upon the evidence so presented. If the secretary's findings be that such shortage no longer exists, the secretary shall issue an order revoking such previous order. Undisposed flour stocks of flour on hand at the effective date of such revocation order, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of.

(d) All orders and rules and regulations adopted by the secretary pursuant to this act shall become effective as provided by law.

(e) For the purposes of this act, the secretary is authorized to take samples for analysis and to conduct examinations and investigations through any officers or employees under the secretary's supervision, and all such officers and employees shall have authority to enter, at reasonable times, any factory, mill, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread or rolls therein, and all pertinent equipment, materials, containers and labeling.

(f) ~~The secretary shall prescribe by rule and regulation the procedure for conducting a hearing under this section and may designate a hearing officer to conduct the hearing. The hearing officer shall have the same powers in conducting the hearing as the secretary. All administrative proceedings conducted pursuant to article 23 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedures act and the act for judicial review and civil enforcement of agency actions.~~ In conducting the hearing the secretary or the ~~hearing~~ *presiding* officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the ~~hearing~~ *presiding* officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter *about* which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

Sec. 22. On and after July 1, 2005, K.S.A. 65-3483 is hereby amended to read as follows: 65-3483. (a) If, within 150 days after receipt of an application, the secretary has not denied the application, the secretary shall notify the board of county commissioners and the governing bodies of all cities located within a ten-mile radius of the proposed facility. The secretary also shall notify the state corporation commission and the secretary of wildlife and parks of the proposed facility.

(b) If the secretary determines that such application should be approved, the secretary shall immediately notify the county commissioners and the governing bodies of all cities located within a ten-mile radius of the proposed facility.

(c) Within 10 days after the secretary has determined that such application should be approved, the secretary shall:

(1) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed facility. Such hearing shall be in the county in which the proposed facility will be located. Additional hearings may be held at such other places as the secretary deems suitable. At such hearing or hearings, the applicant may present testimony in favor of the application. Any person may appear or be represented by counsel to present testimony in support of or opposition to the application. The public notice shall:

(A) Contain a map indicating the location of the proposed facility, a description of the proposed action and the location where the application may be reviewed and where copies may be obtained.

(B) Identify the time, place and location for the public hearing held to receive public comment and input on the application.

(2) Publish the notice not less than 30 days before the date of the public hearing.

(d) Comment and input on the proposed facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the secretary for 15 days after the public hearing date.

(e) The secretary shall consider the impact of the proposed facility on the surrounding area in which it is to be located and make a final determination on the application.

(f) The secretary shall consider, at a minimum:

(1) The risk and impact of accident during the transportation of PCB;

(2) the risk and impact of contamination of ground and surface water by leaching and runoff from the proposed facility;

(3) the risk of fires or explosions from improper storage and disposal methods;

(4) the impact on the surrounding area where the proposed facility is to be located in terms of the health, safety, cost and consistency with local planning and existing development. The secretary also shall consider local ordinances, permits or other requirements and their potential relationship to the proposed facility;

(5) an evaluation of measures to mitigate adverse effects;

(6) the nature of the probable environmental impact including the specification of the predictable adverse effects on the following:

(A) The natural environment and ecology;

(B) public health and safety;

(C) scenic, historic, cultural and recreational value; and

(D) water and air quality and wildlife.

(g) The secretary also shall consider the concerns and objections submitted by the public. The secretary shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the proposed site and operation at that site. The secretary, to the fullest extent practicable, shall integrate by stipulation the provisions of the local ordinances, permits or requirements.

(h) The secretary may seek the advice, which shall be given in writing and entered into the public record of the public hearing, of any person in order to render a decision to approve or deny the application.

(i) *The public hearing required under subsection (c) shall be conducted in accordance with the provisions of the Kansas administrative procedure act.*

Sec. 23. On and after July 1, 2005, K.S.A. 65-3488 is hereby amended to read as follows: 65-3488. (a) Permits for PCB disposal facilities shall be issued for fixed terms not to exceed 10 years.

(b) Plans, designs and relevant data for the construction of PCB disposal facilities shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, modification or operation of such a facility.

(c) Permits granted by the secretary, as provided in this act, shall be revocable or subject to suspension whenever the secretary determines that the PCB disposal facility is, or has been constructed in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating a hazard to the public health or safety or to the environment, or for failure to make payment of any fee to any funds created under this act.

(d) In case any permit is denied, suspended or revoked any person aggrieved by such decision may request a hearing before the secretary in the same manner provided by K.S.A. 65-3440, and amendments thereto. *Such hearings shall be conducted in accordance with the Kansas administrative procedure act.*

Sec. 24. On and after July 1, 2005, K.S.A. 65-3490 is hereby amended to read as follows: 65-3490. (a) The secretary or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act or any rule and regulation adopted by the secretary pursuant to this act may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the

violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of receipt of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, and shall give not less than 10 days' written notice of the time and place of the hearing. Within 30 days after such hearing and receipt of briefs or oral arguments, unless such time period is waived or extended by written consent of all parties or by a showing of good cause, the secretary shall affirm, reverse or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance of formal rules of evidence or pleading at any hearing before the secretary or director. Hearings under this subsection shall be conducted in accordance with the Kansas administrative procedure act.

(c) Any party aggrieved by an order under this section shall have the right of appeal in the same manner provided by K.S.A. 65-3440, and amendments thereto may obtain review of such order in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 25. On and after July 1, 2006, K.S.A. 2001 Supp. 66-1,117 is hereby amended to read as follows: 66-1,117. The corporation commission shall prescribe forms of applications for certificates, permits and licenses for the use of prospective applicants and shall make regulations for the filing thereof. The commission may designate one of its attorneys use a presiding officer from the office of administrative hearings as a presiding officer for any hearing that may be required concerning any application for a certificate or license and the presiding officer shall make written findings and recommendations to the commission.

Sec. 26. On and after July 1, 2005, K.S.A. 2001 Supp. 74-4904 is hereby amended to read as follows: 74-4904. (1) The system may sue and be sued in its official name, but its trustees, officers, employees and agents shall not be personally liable for acts of the system unless such person acted with willful, wanton or fraudulent misconduct or intentionally tortious conduct. Any agreement in settlement of litigation involving the system and the investment of moneys of the fund is a public record as provided in K.S.A. 45-215 *et seq.* and amendments thereto and subject to the provisions of that act. The service of all legal process and of all notices which may be required to be in writing, whether legal proceedings or otherwise, shall be had on the executive director at such executive director's office. All actions or proceedings directly or indirectly against the system shall be brought in Shawnee county.

(2) Any person aggrieved by any order or decision of the board made without a hearing, may, within 30 days after notice of the order or decision of the board make written request to the board for a hearing thereon. The board shall hear such party or parties in accordance with the provisions of the Kansas administrative procedure act at its next regular meeting or at a special meeting within 60 days after receipt of such request. For the purpose of any hearing under this section, the board may appoint one or more presiding officers. Any such presiding officer shall be a member of the board, an employee of the board or any other person designated by the board to serve as such presiding officer. Any such appointment shall apply to a particular hearing or to a set or class of hearings as specified by the board in making such appointment use a presiding officer from the office of administrative hearing. The board shall review an initial order resulting from a hearing under this section. Any member of the board who serves as a presiding officer shall be reimbursed for actual and necessary expenses and shall receive compensation in an amount fixed by the board not to exceed the per diem compensation allowable for members of the board. The board is hereby authorized to enter into a contract with any other person designated by the board to serve as a presiding officer who is not a member or employee of the board the office of administrative hearing and to provide for reimbursement for actual and necessary expenses and compensation for such person serving as a presiding officer.

Sec. 27. On and after July 1, 2005, K.S.A. 2001 Supp. 74-8804 is hereby amended to read as follows: 74-8804. (a) During race meetings, the commission and its designated employees may observe and inspect all racetrack facilities operated by licensees and all

racetracks simulcasting races to racetrack facilities in Kansas, including but not limited to all machines, equipment and facilities used for parimutuel wagering.

(b) Commission members and ~~hearing presiding officers designated by the commission~~ may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was in aid of a civil action in the district court.

(c) The commission may examine, or cause to be examined by any agent or representative designated by the commission, any books, papers, records or memoranda of any licensee, or of any racetrack or business involved in simulcasting races to racetrack facilities in Kansas, for the purpose of ascertaining compliance with any provision of this act or any rule and regulation adopted hereunder.

(d) The commission may issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any licensee or officer, member, employee or agent of any licensee, or to compel the appearance of any licensee or officer, member, employee or agent of any licensee, or of any racetrack or business involved in simulcasting races to racetrack facilities in this state, for the purpose of ascertaining compliance with any of the provisions of this act or any rule and regulation adopted hereunder. Subpoenas issued pursuant to this subsection may be served upon individuals and corporations in the same manner provided in K.S.A. 60-304 and amendments thereto for the service of process by any officer authorized to serve subpoenas in civil actions or by the commission or an agent or representative designated by the commission. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

(e) The commission shall allocate equitably race meeting dates, racing days and hours to all organization licensees and assign such dates and hours so as to minimize conflicting dates and hours within the same geographic market area.

(f) The commission shall have the authority, after notice and an opportunity for hearing in accordance with rules and regulations adopted by the commission, to exclude, or cause to be expelled, from any race meeting or racetrack facility, or to prohibit a licensee from conducting business with any person:

(1) Who has violated the provisions of this act or any rule and regulation or order of the commission;

(2) who has been convicted of a violation of the racing or gambling laws of this or any other state or of the United States or has been adjudicated of committing as a juvenile an act which, if committed by an adult, would constitute such a violation; or

(3) whose presence, in the opinion of the commission, reflects adversely on the honesty and integrity of horse or greyhound racing or interferes with the orderly conduct of a race meeting.

(g) The commission shall review and approve all proposed construction and major renovations to racetrack facilities owned or leased by licensees.

(h) The commission shall review and approve all proposed contracts with racetracks or businesses involved in simulcasting races to racetrack facilities in Kansas.

(i) The commission may suspend a horse or greyhound from participation in races if such horse or greyhound has been involved in any violation of the provisions of this act or any rule and regulation or order of the commission.

(j) The commission, within 72 hours after any action taken by a steward or racing judge and upon appeal by any interested party or upon its own initiative, may overrule any decision of a steward or racing judge, other than a decision regarding disqualifications for interference during the running of a race, if the preponderance of evidence indicates that:

(1) The steward or racing judge mistakenly interpreted the law;

(2) new evidence of a convincing nature is produced; or

(3) the best interests of racing and the state may be better served.

A decision of the commission to overrule any decision of a steward or racing judge shall not change the distribution of parimutuel pools to the holders of winning tickets. A decision of the commission which would affect the distribution of purses in any race shall not result in a change in that distribution unless a written claim is submitted to the commission within 48 hours after completion of the contested race by one of the owners or trainers of a horse

or greyhound which participated in such race and a preponderance of evidence clearly indicates to the commission that one or more of the grounds for protest, as provided for in rules and regulations of the commission, has been substantiated.

(k) The commission, after notice and a hearing in accordance with rules and regulations adopted by the commission, may impose a civil fine not exceeding \$5,000 for each violation of any provision of this act, or any rule and regulation of the commission, for which no other penalty is provided.

(l) The commission shall adopt rules and regulations specifying and regulating:

(1) Those drugs and medications which may be administered, and possessed for administration, to a horse or greyhound within the confines of a racetrack facility; and

(2) that equipment for administering drugs or medications to horses or greyhounds which may be possessed within the confines of a racetrack facility.

(m) The commission may adopt rules and regulations providing for the testing of any licensees of the commission, and any officers, directors and employees thereof, to determine whether they are users of any controlled substances.

(n) The commission shall require fingerprinting of all persons necessary to verify qualification for employment by the commission or to verify qualification for any license, including a simulcasting license, issued pursuant to this act. The commission shall submit such fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such persons and obtaining records of criminal arrests and convictions.

(o) The commission may receive from commission security personnel, the Kansas bureau of investigation or other criminal justice agencies, including but not limited to the federal bureau of investigation and the federal internal revenue service, such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining qualifications of licensees of the commission, employees of the commission, applicants for employment by the commission, and applicants for licensure by the commission, including applicants for simulcasting licenses. Upon the written request of the chairperson of the commission, the commission may receive from the district courts such information relating to juvenile proceedings as necessary for the purpose of determining qualifications of employees of and applicants for employment by the commission and determining qualifications of licensees of and applicants for licensure by the commission. Such information, other than conviction data, shall be confidential and shall not be disclosed except to members and employees of the commission as necessary to determine qualifications of such licensees, employees and applicants. Any other disclosure of such confidential information is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act.

(p) The commission, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to receive and discuss information received by the commission pursuant to subsection (o) and to negotiate with licensees of or applicants for licensure by the commission regarding any such information.

(q) The commission may enter into agreements with the federal bureau of investigation, the federal internal revenue service, the Kansas attorney general or any state, federal or local agency as necessary to carry out the duties of the commission under this act.

(r) The commission shall adopt such rules and regulations as necessary to implement and enforce the provisions of this act.

Sec. 28. On and after July 1, 2005, K.S.A. 2001 Supp. 74-8816 is hereby amended to read as follows: 74-8816. (a) The commission shall require occupation licenses for:

(1) Any owner of a horse or greyhound participating in a race conducted by an organization licensee;

(2) any person whose work, in whole or in part, is conducted within a racetrack facility owned or leased by an organization licensee, including trainers, jockeys, agents, apprentices, grooms, exercise persons, veterinarians, valets, blacksmiths, stewards, racing judges, starters, timers, supervisors of mutuels, parimutuel tellers and clerks, guards and such other personnel designated by the commission.

(b) An occupation license shall be obtained from the commission prior to the time a person engages in activities for which such license is required, regardless of whether a race meeting is being conducted.

(c) A person required to be licensed pursuant to subsection (a) shall apply for such license in a manner and upon forms prescribed and furnished by the commission. The commission may require the applicant to submit to fingerprinting. Occupation licenses shall be issued for a period established by the commission but not less than one year or more than three years. The commission shall establish the amount of application fees and license fees for different types of occupation licenses, but no such fee shall exceed \$200 a year. The application fee shall not be refundable if the applicant fails to qualify for a license and shall include the cost of processing fingerprints if they are required by the commission.

(d) The commission may require an applicant for an occupation license as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the commission to search without warrant the licensee's person, personal property and work premises while within the racetrack facility or adjacent facilities under the control of the organization licensee for the purpose of investigating possible criminal violations of this act or violations of rules and regulations of the commission.

(e) Denial of an occupation license by the commission shall be in accordance with the Kansas administrative procedure act. The commission may refuse to issue an occupation license to any person who:

(1) Has been convicted of a felony by a court of any state or of the United States or has been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute a felony;

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances or has been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute such a violation;

(3) is not qualified to perform the duties associated with the license being applied for;

(4) fails to disclose any material fact or provides information, knowing such information to be false, when applying for the license;

(5) has been found by the commission to have violated any provision of this act or any rule and regulation of the commission;

(6) has had an occupation license suspended, revoked or denied for just cause in any other jurisdiction;

(7) has committed two or more acts of violence within the past two years as established by a court of competent jurisdiction of any state or of the United States; or

(8) has failed to meet any monetary or tax obligation to the federal government or to any state or local government, whether or not relating to the conduct or operation of a race meet held in this state or any other jurisdiction.

(f) The commission may suspend or revoke an occupation license for any reason which would justify refusal to issue such a license and may impose a fine not exceeding \$5,000 for each violation upon any occupation licensee found to have violated any provision of this act or any rule and regulation of the commission. Such fine may be imposed in addition to or in lieu of suspending or revoking such person's occupation license. Proceedings for the suspension or revocation of an occupation license or imposition of a fine pursuant to this subsection shall be conducted by the commission or ~~its appointed hearing officer~~ *a presiding officer from the office of administrative hearings* in accordance with the Kansas administrative procedure act, except that, and notwithstanding the provision of K.S.A. 77-512, subsection (b) of K.S.A. 77-526 and subsection (b)(3) of K.S.A. 77-530 ~~(b)(3)~~, and amendments thereto, any order entered by a ~~hearing officer appointed by the commission~~ *presiding officer* imposing such a fine or suspension shall be a final order and effective when served.

(g) The commission may provide by rules and regulations for the temporary suspension of an occupation license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license

shall be restored unless the license has been suspended or revoked pursuant to subsection (f).

(h) The stewards at any horse race meeting and the racing judges at any greyhound race meeting may impose on an occupation licensee a civil fine not exceeding \$500 or may suspend any occupation licensee's license for a period not exceeding 15 days upon a finding by at least two of the stewards or racing judges that there is probable cause to believe that the occupation licensee has violated the provisions of this act or any rule or regulation of the commission. No such fine or suspension shall be ordered except after notice and opportunity for hearing in accordance with procedures established by rules and regulations of the commission. Any order imposing such a fine or suspension is effective when rendered. The order shall be subject to appeal to the commission, and may be stayed pending such appeal, as provided by rules and regulations of the commission. Proceedings on appeal shall be in accordance with the provisions of the Kansas administrative procedure act.

Sec. 29. On and after July 1, 2005, K.S.A. 2001 Supp. 74-8817 is hereby amended to read as follows: 74-8817. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to sell goods or services within a racetrack facility where the organization licensee conducts race meetings unless such business has been issued a concessionaire license by the commission.

(b) Businesses required to be licensed pursuant to this section shall apply for concessionaire licenses in a manner and upon forms prescribed and furnished by the commission. The commission shall require disclosure of information about the owners and officers of each applicant and may require such owners and officers to submit to fingerprinting. The commission also may require disclosure of information about and fingerprinting of such employees of each applicant as the commission considers necessary. Concessionaire licenses shall be issued for a period of time established by the commission but not to exceed 10 years. The commission shall establish a schedule of application fees and license fees for concessionaire licenses based upon the type and size of business. The application fee shall not be refundable if the business fails to qualify for a license. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

(c) The commission may require applicants as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the commission to search without warrant the licensee's premises and personal property and the persons of its owners, officers and employees while engaged in the licensee's business within the racetrack facility or adjacent facilities under the control of the organization licensee for the purpose of investigating criminal violations of this act or violations of rules and regulations of the commission.

(d) Denial of a concessionaire license by the commission shall be in accordance with the Kansas administrative procedure act. The commission may refuse to issue a concessionaire license to any business if any person having an ownership interest in such business, any person who is an officer of such business or any person employed by such business within the racetrack facility:

(1) Has been convicted of a felony in a court of any state or of the United States or has been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute a felony;

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances or has been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute such a violation;

(3) fails to disclose any material fact or provides information, knowing such information to be false, in connection with the application for the license;

(4) has been found by the commission to have violated any provision of this act or any rule and regulation of the commission; or

(5) has failed to meet any monetary or tax obligation to the federal government or to any state or local government, whether or not relating to the conduct or operation of a race meet held in this state or any other jurisdiction.

(e) The commission may suspend or revoke the concessionaire license of any business for any reason which would justify refusal to issue such a license. Proceedings to suspend or revoke such license shall be conducted by the commission or ~~its appointed hearing officer~~ *a presiding officer from the office of administrative hearings* in accordance with the provisions of the Kansas administrative procedure act.

(f) The commission may provide by rules and regulations for the temporary suspension of a concessionaire license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been suspended or revoked as a result of proceedings conducted pursuant to subsection (e).

Sec. 30. On and after July 1, 2005, K.S.A. 2001 Supp. 74-8837 is hereby amended to read as follows: 74-8837. (a) No organization licensee or facility manager licensee shall permit any business not owned and operated by the organization licensee to provide integral racing or wagering equipment or services, as designated by the commission, to an organization licensee unless such business has been issued a racing or wagering equipment or services license by the commission. Such equipment and services include but are not limited to totalisator, photo finish, video replay and video reception and transmission equipment or services.

(b) Businesses required to be licensed pursuant to this section shall apply for racing or wagering equipment or services licenses in a manner and upon forms prescribed and furnished by the commission. The commission shall require disclosure of information about the owners and officers of each applicant and may require such owners and officers to submit to fingerprinting. The commission also may require disclosure of information about and fingerprinting of such employees of each applicant as the commission considers necessary. Racing or wagering equipment or services licenses shall be issued for a period of time established by the commission but not to exceed 10 years. The commission shall establish a schedule of application fees and license fees for racing or wagering equipment or services licenses based upon the type and size of business. The application fee shall not be refundable if the business fails to qualify for a license. If the application fee is insufficient to pay the reasonable expenses of processing the application and investigating the applicant's qualifications for licensure, the commission shall require the applicant to pay to the commission, at such times and in such form as required by the commission, any additional amounts necessary to pay such expenses. No license shall be issued to an applicant until the applicant has paid such additional amounts in full, and such amounts shall not be refundable except to the extent that they exceed the actual expenses of processing the application and investigating the applicant's qualifications for licensure.

(c) The commission may require applicants as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the commission to search without warrant the licensee's premises and personal property and the persons of its owners, officers and employees while engaged in the licensee's business within the race-track facility or adjacent facilities under the control of the organization licensee for the purpose of investigating criminal violations of this act or violations of rules and regulations of the commission.

(d) Denial of a racing or wagering equipment or services license by the commission shall be in accordance with the Kansas administrative procedure act. The commission may refuse to issue a racing or wagering equipment or services license to any business if any person having an ownership interest in such business, any person who is an officer of such business or any person employed by such business within the racetrack facility:

(1) Has been convicted of a felony in a court of any state or of the United States or has been adjudicated in the last five years, in any such court of committing as a juvenile an act which, if committed by an adult, would constitute a felony;

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances or has been adjudicated in the last five years in any such court of committing as a juvenile an act which, if committed by an adult, would constitute such a violation;

(3) fails to disclose any material fact or provides information, knowing such information to be false, in connection with the application for the license;

(4) has been found by the commission to have violated any provision of this act or any rule and regulation of the commission; or

(5) has failed to meet any monetary or tax obligation to the federal government or to any state or local government, whether or not relating to the conduct or operation of a race meet held in this state or any other jurisdiction.

(e) The commission may suspend or revoke the racing or wagering equipment or services license of any business for any reason which would justify refusal to issue such a license. Proceedings to suspend or revoke such license shall be conducted by the commission or ~~its appointed hearing officer~~ *a presiding officer from the office of administrative hearings* in accordance with the provisions of the Kansas administrative procedure act.

(f) The commission may provide by rules and regulations for the temporary suspension of a racing or wagering equipment or services license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been suspended or revoked as a result of proceedings conducted pursuant to subsection (e).

(g) This section shall be part of and supplemental to the Kansas parimutuel racing act. Sec. 31. On and after July 1, 2003, K.S.A. 2001 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121. ~~On and after July 1, 1999:~~ (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. *The director shall be in the unclassified service under the Kansas civil service act.*

(b) The office ~~shall~~ *may* employ ~~administrative law judges~~ *presiding officers*, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the ~~department of social and rehabilitation services~~ *state agencies, boards and commissions specified in subsection (h)*. The office shall conduct adjudicative proceedings of the ~~department of social and rehabilitation services~~ *which are not under the Kansas administrative procedure act any state agency which is specified in subsection (h)* when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as ~~an administrative law judge~~ *a presiding officer*. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its ~~administrative law judges~~ *presiding officers* in response to the ~~department of social and rehabilitation services~~ *a requesting agency's* request, the director shall designate in writing a full-time employee of an agency other than the ~~department of social and rehabilitation services~~ *requesting agency* to serve as ~~administrative law judge~~ *presiding officer* for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of ~~administrative law judges~~ *presiding officers* employed by the office.

(d) The director may furnish ~~administrative law judges~~ *presiding officers* on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection ~~(b)~~ *(h)*.

(e) ~~On or before January 1, 1999;~~ The ~~department~~ *secretary* of administration ~~shall~~ *may* adopt rules and regulations:

(1) To establish further qualifications for administrative law judges, procedures by which candidates will be considered for employment, and the manner in which public notice of vacancies in the staff of the office will be given;

~~(2) to establish procedures for agencies to request and for the director to assign administrative law judges. The department of social and rehabilitation services presiding officers. An agency may neither select nor reject any individual administrative law judge presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;~~

~~(3) (2) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern administrative law judges, presiding officers; and~~

~~(4) to establish standards and procedures for the evaluation, training, promotion and discipline of administrative law judges, and~~

~~(5) (3) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.~~

(f) The director may:

~~(1) Maintain a staff of reporters and other personnel; and~~

~~(2) implement the provisions of this section and rules and regulations adopted under its authority.~~

(g) The department secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using an administrative law judge a presiding officer.

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for adjudicative proceedings in which the presiding officer is not the agency head or one or more members of the agency head:

(1) On and after July 1, 2003: Department of social and rehabilitation services, juvenile justice authority, department on aging, state board of pharmacy, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, emergency medical services board, Kansas dental board, emergency medical services council and Kansas human rights commission.

(2) On and after July 1, 2004: Kansas department of wildlife and parks, department of revenue, state board of veterinary examiners, behavioral sciences regulatory board, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, state board of cosmetology, Kansas board of barbering, state board of technical professions and state board of tax appeals.

(3) On and after July 1, 2005: Department of health and environment, state board of healing arts, Kansas lottery, Kansas racing commission, Kansas state banking board, state department of credit unions, office of the securities commissioner of Kansas, Kansas public employees retirement system, board of adult care home administrators, state treasurer, board of accountancy and pooled money investment board.

(4) On and after July 1, 2006: Department of agriculture except water transfer hearings pursuant to K.S.A. 82a-1501a et seq., and amendments thereto, department of human resources, state corporation commission, state conservation commission, Kansas water office, agricultural labor relations board, Kansas animal health department and citizens' utility rate payor board.

(i) Effective July 1, 1998, personnel in the administrative hearings section of the department of social and rehabilitation services and support personnel for such administrative law judges, shall be transferred to the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state, and such person's services shall be deemed to have been continuous. This act shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(j) (1) Effective July 1, 2003, any presiding officer in the administrative hearings section of all agencies specified in subsection (h)(1) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and

shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(2) Effective July 1, 2004, any presiding officer in the administrative hearings section of all agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(3) Effective July 1, 2005, any presiding officer in the administrative hearings section of all agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(4) Effective July 1, 2006, any presiding officer in the administrative hearings section of all agencies specified in subsection (h)(4) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 75-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

Sec. 32. On and after July 1, 2003, K.S.A. 75-6207 is hereby amended to read as follows: 75-6207. (a) If the director receives a timely written request for a hearing under K.S.A. 75-6206 and amendments thereto, the director shall request ~~the secretary of administration to~~ ~~appoint~~ a presiding officer from the office of administrative hearings who shall hold a hearing in accordance with the provisions of the Kansas administrative procedure act to determine whether the debt claim is valid. Subject to the provisions of subsection (b), the presiding officer shall determine whether the claimed sum asserted as due and owing is correct, and if not, shall order an adjustment to the debt claim which shall be forwarded to the director and to the state agency, foreign state agency or municipality to which the debt is owed. No

issue may be considered at the hearing which has been previously litigated and no collateral attack on any judgment shall be permitted at the hearing. The order of the presiding officer shall inform the debtor of the amount determined as due, if any, and that setoff procedures have been ordered to proceed in accordance with this act. If the setoff is to be made against earnings of the debtor, the order shall include a statement that the setoff may be postponed in accordance with K.S.A. 75-6208 and amendments thereto. Orders under this section shall not be subject to administrative review.

(b) In cases where there is only one known present or future payment due from the state to the alleged debtor, the presiding officer may limit the hearing issue to a determination of whether the debt owed the state agency, foreign state agency or municipality is at least equal to the amount of the payment owed to the debtor by the state.

(c) Pending final determination in the order of the presiding officer of the validity of the debt asserted by the state agency, foreign state agency or municipality, no action shall be taken in furtherance of collection through the setoff procedure allowed under this act.

(d) Judicial review of an order under this section shall be in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. In any such review, except as provided in subsection (e), the department of administration and the secretary of administration shall not be named parties to the proceedings.

(e) Parties to an action for review of an order under this section shall be: (1) The debtor; (2) the state agency, foreign state agency or municipality which requested assistance in collecting the debt or which certified the debt; and (3) any party the district court permits to intervene in the action. Applications for a stay or other temporary remedies shall be to the district court.

Sec. 33. On and after July 1, 2003, K.S.A. 76-3110 is hereby amended to read as follows: 76-3110. (a) The KPR board may initiate a proceeding to effect termination of a postsecondary institution's participation in federal student aid programs by serving written notice upon the institution that the board has determined that the institution should not be eligible for participation in such programs. The notice shall include a statement of the reasons for the determination and a statement that the institution may contest the finding before a ~~hearing~~ *presiding* officer upon written request filed with the KPR board. The request to be heard must be filed within 15 days from the date of the notice of the board's determination. Upon receipt of a request by an institution to be heard, the KPR board shall notify the secretary of human resources that the appointment of a ~~hearing~~ *presiding* officer is required. Within 10 days after receipt of notification from the KPR board, the secretary of human resources shall ~~appoint request a hearing presiding officer from a list, which shall be compiled and maintained by the secretary of human resources, of impartial persons who are representative of the public and who are qualified to serve as hearing officers.~~

(b) Any hearing requested by a postsecondary institution as provided in subsection (a) shall be commenced within 15 calendar days after the ~~hearing presiding~~ officer is ~~appointed requested~~ and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Within 30 days after close of the hearing, the ~~hearing presiding~~ officer shall render a written opinion setting forth the ~~hearing presiding~~ officer's findings of fact and recommendation as to the determination of the matter. The opinion shall be submitted to the KPR board and to the postsecondary institution. If, after receipt of the ~~hearing presiding~~ officer's opinion, the KPR board concludes that the board's determination that the institution should not be eligible for participation in federal student aid programs was warranted, the board shall notify the institution and the secretary of education of the determination and the reasons therefor.

Sec. 34. On and after July 1, 2003, K.S.A. 77-505 is hereby amended to read as follows: 77-505. Nothing in ~~this the Kansas administrative procedure act shall preclude informal settlement of matters that may make unnecessary more elaborate proceedings under this act parties from settling a matter at any time. In addition, nothing in the Kansas administrative procedure act shall preclude use of alternative dispute resolution, with consent of the agency and all parties.~~

Sec. 35. On and after July 1, 2003, K.S.A. 2001 Supp. 77-514 is hereby amended to read as follows: 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-37,121, and amendments thereto, the agency head, one or more members of the agency head, an ad-~~

~~administrative law judge or a presiding officer assigned by the office of administrative hearings; or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head may~~ shall be the presiding officer. *For all other agencies, the agency head, one or more members of the agency head, a presiding officer assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head shall be the presiding officer.*

(b) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

(c) Any party may petition for the disqualification of a person promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(d) A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

(f) If the office of administrative hearings cannot provide a presiding officer, a state agency may enter into agreements with another state agency to provide presiding officers to conduct proceedings under this act.

(g) Notwithstanding any quorum requirements, if the agency head of a professional or occupational licensing agency is a body of individuals, the agency head, unless prohibited by law, may designate one or more members of the agency head to serve as presiding officer and to render a final order in the proceeding.

(h) *Notwithstanding subsection (a) the agency head or one or more members of the agency head who will serve as a presiding officer may designate any other person to serve as a presiding officer to determine procedural matters that may arise prior to the hearing on the merits, including but not limited to, conducting prehearing conferences pursuant to K.S.A. 77-516 and 77-517 and amendments thereto.*

Sec. 36. On and after July 1, 2007, K.S.A. 2001 Supp. 77-514, as amended by section 35 of this act, is hereby amended to read as follows: 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-37, 121, and amendments thereto,~~ The agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings shall be the presiding officer. ~~For all other agencies, the agency head, one or more members of the agency head, a presiding officer assigned by the office of administrative hearings, or, unless prohibited by K.S.A. 77-551, and amendments thereto, one or more other persons designated by the agency head shall be the presiding officer.~~

(b) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

(c) Any party may petition for the disqualification of a person promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(d) A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

(f) If the office of administrative hearings cannot provide a presiding officer, a state agency may enter into agreements with another state agency to provide presiding officers to conduct proceedings under this act.

(g) Notwithstanding any quorum requirements, if the agency head of a professional or occupational licensing agency is a body of individuals, the agency head, unless prohibited by law, may designate one or more members of the agency head to serve as presiding officer and to render a final order in the proceeding.

(h) *Notwithstanding subsection (a) the agency head or one or more members of the agency head who will serve as a presiding officer may designate any other person to serve as a presiding officer to determine procedural matters that may arise prior to the hearing*

on the merits, including but not limited to, conducting prehearing conferences pursuant to K.S.A. 77-516 and 77-517 and amendments thereto.

Sec. 37. On and after July 1, 2004, K.S.A. 77-549 is hereby amended to read as follows: 77-549. (a) The filing of a return with the director of taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, shall not be deemed an application for an order under the Kansas administrative procedure act.

(b) A determination by the division of taxation or the audit services bureau of the department of revenue concerning tax liability under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, which is made prior to the opportunity for a hearing or prior to the opportunity for an informal conference before the secretary or the secretary's designee on such tax liability, shall not require an adjudicative proceeding under the Kansas administrative procedure act.

(c) For purposes of the Kansas administrative procedure act, the secretary of revenue may designate the director of the division of taxation or ~~other designee~~ *a presiding officer from the office of administrative hearings* as agency head.

(d) Final orders of the director of taxation pursuant to K.S.A. 77-526, and amendments thereto, shall be rendered in writing and served within 120 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) of K.S.A. 77-526, and amendments thereto, unless this period is waived or extended with the written consent of all parties or for good cause shown. If extended for good cause, such good cause shall be set forth in writing on or before the expiration of the 120 days.

Sec. 38. On and after July 1, 2004, K.S.A. 77-550 is hereby amended to read as follows: 77-550. For purposes of administrative proceedings of the division of property valuation under the Kansas administrative procedure act, the secretary of revenue may designate the director of the division of property valuation or ~~other designee~~ *a presiding officer from the office of administrative hearings* as agency head.

Sec. 39. On and after July 1, 2003, K.S.A. 77-551 is hereby amended to read as follows: 77-551. ~~On and after July 1, 1998:~~ (a) ~~Except as provided in subsection (b), in all hearings of the department of social and rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927, 75-3306 and 75-3340, and amendments thereto, any state agency specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto, that are required to be conducted in accordance with the provisions of the Kansas administrative procedure act, the presiding officer shall be the agency head, one or more members of the agency head or an administrative law judge~~ *a presiding officer assigned by the office of administrative hearings.*

(b) *The provisions of this section shall not apply to: (1) The employment security law, pursuant to K.S.A. 44-701 et seq., and amendments thereto; (2) article 5 of chapter 44 of Kansas Statutes Annotated and amendments thereto, except K.S.A. 44-532 and 44-5,120 and amendments thereto, concerning the workers compensation act; or (3) water transfer hearing panels, pursuant to K.S.A. 82a-1501a et seq., and amendments thereto.*

(c) *Notwithstanding subsection (a) the agency head or one or more members of the agency head who will serve as a presiding officer may designate any other person to serve as a presiding officer to determine procedural matters that may arise prior to the hearing on the merits, including but not limited to conducting prehearing conferences pursuant to K.S.A. 77-516 and 77-517, and amendments thereto.*

(d) This section shall be part of and supplemental to the Kansas administrative procedure act.

Sec. 40. On and after July 1, 2007, K.S.A. 77-551, as amended by section 39 of this act, is hereby amended to read as follows: 77-551. (a) Except as provided in subsection (b), in all hearings of any state agency ~~specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto,~~ that are required to be conducted in accordance with the provisions of the Kansas administrative procedure act, the presiding officer shall be the agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings.

(b) The provisions of this section shall not apply to: (1) The employment security law, pursuant to K.S.A. 44-701 et seq., and amendments thereto; (2) article 5 of chapter 44 of

Kansas Statutes Annotated, and amendments thereto, except K.S.A. 44-532 and 44-5,120 and amendments thereto, concerning the workers compensation act; or (3) water transfer hearing panels, pursuant to K.S.A. 82a-1501a *et seq.*, and amendments thereto.

(c) Notwithstanding subsection (a) the agency head or one or more members of the agency head who will serve as a presiding officer may designate any other person to serve as a presiding officer to determine procedural matters that may arise prior to the hearing on the merits, including but not limited to conducting prehearing conferences pursuant to K.S.A. 77-516 and 77-517, and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas administrative procedure act.

Sec. 41. On and after July 1, 2004, K.S.A. 79-3313 is hereby amended to read as follows: 79-3313. All cigarettes sold in this state shall be in packages, and each of the packages shall bear evidence of payment of the tax thereon except that any railroad or sleeping car company licensed as a retailer is hereby authorized to sell cigarettes upon its cars without affixing stamps to the packages of cigarettes provided that monthly reports and payment of the tax due is made directly to the director in the manner and under the terms provided for by the director. In addition, manufacturers are hereby authorized to distribute in the state, through their authorized representatives or wholesale dealers, free sample packages of cigarettes containing less than 20 cigarettes without affixing stamps to the packages provided that monthly reports and payment of a tax at the rates prescribed by law are made directly to the director. No wholesale dealer or manufacturers' authorized representatives shall sell or distribute cigarettes, except free sample packages, to any person in the state of Kansas not holding a dealer's license as provided in this act. Such packages of sample cigarettes shall bear the word "sample" or "not for sale" and "state tax paid" in letters easily read.

Whenever the director shall have reason to believe that any manufacturer has violated the provisions of this section or the conditions provided by the director, the director shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act ~~in the office of the director at Topeka~~. If upon the basis of such hearing it appears to the satisfaction of the director that such manufacturer has violated any of the provisions of this section or the conditions provided by the director, the director is hereby authorized to suspend or revoke the authorization to the manufacturer for such period as the director determines is necessary but in no case for more than one year.

Sec. 42. On and after July 1, 2006, K.S.A. 82a-1405 is hereby amended to read as follows: 82a-1405. (a) At the direction of the authority, the director may issue licenses for weather modification activities, as provided for in this act, but any licensee shall be limited in the exercise of activities under the license to the specified method or methods of weather modification activity within the area of expertise of the licensee.

(b) At the direction of the authority, the director may issue a permit for each specific weather modification project or program, which may be comprised of one or more weather modification activities. Every such permit shall describe:

- (1) The geographic area within which such activities are to be carried out;
- (2) the geographic area to be affected; and
- (3) the duration of the weather modification activities of the project or program, which period may be noncontinuous but which may not have a total duration exceeding one calendar year from the day of its issuance.

The director shall issue a permit only after it has been established that the project or program, as conceived, will provide substantial benefits or that it will advance scientific knowledge.

(c) The director shall make any studies or investigations, obtain any information and hold any hearings that the director considers necessary or proper to assist in exercising the powers or administering or enforcing the provisions of this act.

~~The director may appoint a hearing officer to conduct any hearings required by this act.~~ The hearings shall be conducted under the provisions and within any limitations of rules and regulations adopted by the authority.

(d) In order to assist in expanding the theoretical and practical knowledge of weather modification, the authority, to the extent that funds are available therefor, may cooperate

with, support, participate in and promote research, development and operational programs in:

(1) The theory and development of weather modification, including those aspects relating to procedures, materials, ecological effects and the attendant legal and social problems;

(2) the utilization of weather modification for domestic, municipal, agricultural, industrial, recreational and other beneficial purposes; and

(3) the protection of life, health, property and the general environment.

(e) Subject to any limitations imposed by law, to further the purposes of this act, the authority may utilize available funds from the state and may accept federal grants, private gifts and donations from any source. Except as otherwise provided by law, the authority may use any such moneys:

(1) For the administration of this act;

(2) to encourage research and development projects by public or private agencies through grants, contracts or cooperative arrangements;

(3) to contract for and support local efforts in weather modification activities to seek relief from or to avoid droughts, hail, storms, fires, fog or other naturally undesirable conditions.

(f) Under the direction of the authority, the director shall represent the state in matters pertaining to plans, procedures, or negotiations for cooperative agreements, or intergovernmental arrangements relating to weather modification.

Sec. 43. On and after July 1, 2003, K.S.A. 21-3110, 44-1005, 75-37,122, 75-5611a, 75-6207, 76-3110, 77-505 and 77-551 and K.S.A. 2001 Supp. 75-37,121 and 77-514 are hereby repealed.

Sec. 44. On and after July 1, 2004, K.S.A. 8-2426, 77-549, 77-550 and 79-3313 are hereby repealed.

Sec. 45. On and after July 1, 2005, K.S.A. 36-509, 65-163a, 65-673, 65-2305, 65-3483, 65-3488 and 65-3490 and K.S.A. 2001 Supp. 65-163, 65-525, 65-526, 74-4904, 74-8804, 74-8816, 74-8817 and 74-8837 are hereby repealed.

Sec. 46. On and after July 1, 2006, K.S.A. 2-1208a, 2-3311, 44-322a, 49-606, 82a-1405 and K.S.A. 2001 Supp. 66-1,117 are hereby repealed.

Sec. 47. On and after July 1, 2007, K.S.A. 31-140, 40-2,137, and K.S.A. 77-551, as amended by section 39 of this act, and K.S.A. 2001 Supp. 77-514, as amended by section 35 of this act, are hereby repealed.

Sec. 48. This act shall take effect and be in force from and after July 1, 2003, and its publication in the statute book.”;

On page 1, in the title, in line 10, by striking all after “concerning”; by striking all in line 11; in line 12, by striking all before the period and inserting “administrative procedure; concerning presiding officers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, 31-140, 36-509, 40-2,137, 44-322a, 44-1005, 49-606, 65-163a, 65-673, 65-2305, 65-3483, 65-3488, 65-3490, 75-6207, 76-3110, 77-505, 77-549, 77-550, 77-551, 77-551, as amended by section 39 of this act, 79-3313 and 82a-1405, and K.S.A. 2001 Supp. 65-163, 65-525, 65-526, 66-1,117, 74-4904, 74-8804, 74-8816, 74-8817, 74-8837, 75-37,121, 77-514 and 77-514 as amended by section 35 of this act and repealing the existing sections; also repealing K.S.A. 75-37,122 and 75-5611a”;

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

JOHN VRATIL
DEREK SCHMIDT
GRETA GOODWIN
Conferees on part of Senate

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

Senator Vratil moved the Senate adopt the Conference Committee Report on **HB 2817**.

Senator Brownlee offered a substitute motion to not adopt the conference committee report and requested a new conference committee be appointed.

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

On roll call, the vote was: Yeas 21, Nays 18, Present and Passing 0, Absent or Not Voting 1.

Yeas: Barone, Brownlee, Clark, Emler, Feleciano, Gilstrap, Gooch, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Lee, Lyon, O'Connor, Pugh, Salmans, Taddiken, Tyson, Wagle.

Nays: Adkins, Allen, Barnett, Brungardt, Corbin, Donovan, Downey, Goodwin, Jenkins, Kerr, Morris, Oleen, Praeger, Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Absent or Not Voting: Steineger.

The motion passed and the President appointed Senators Vratil, Schmidt and Goodwin as second conferees on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2828**, 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 1, by striking all after line 17;

By striking all on pages 2 through 11 and inserting the following:

"Section 1. K.S.A. 2001 Supp. 41-501 is hereby amended to read as follows: 41-501.

(a) As used in this section and K.S.A. 41-501a, and amendments thereto:

(1) "Gallon" means wine gallon.

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

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

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of ~~\$-15~~ \$.24 per gallon on beer and cereal malt beverage; ~~\$-20~~ \$.27 per gallon on all wort or liquid malt; ~~\$-10~~ \$.13 per pound on all malt syrup or malt extract; ~~\$-30~~ \$.40 per gallon on wine containing 14% or less alcohol by volume; ~~\$-75~~ \$1.00 per gallon on wine containing more than 14% alcohol by volume; and ~~\$2.50~~ \$3.30 per gallon on alcohol and spirits.

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

(c) Manufacturers, microbreweries, farm wineries or distributors at wholesale of alcoholic liquor or cereal malt beverage shall be exempt from the payment of the gallonage tax imposed on alcoholic liquor and cereal malt beverage, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires, that the liquor or cereal malt beverage was manufactured in this state but was shipped out of the state for sale and consumption outside the state.

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

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

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

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

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

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

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

(i) The director shall collect the taxes imposed by this section and shall account for and remit all moneys collected from the tax to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit ~~7~~ 7.58% of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and shall credit the balance of the moneys collected to the state general fund.

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

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

New Sec. 2. On July 1, 2002, a tax at the rate of \$.06 per gallon on all beer and cereal malt beverage, \$.10 per gallon for wine containing 14% or less of alcohol by volume, \$.25 per gallon for wine containing more than 14% of alcohol by volume, \$.80 per gallon on alcohol and spirits, \$.07 per gallon on wort and liquid malt, and \$.03 per pound of malt syrup and malt extract, is hereby imposed on the manufacture, use, sale, storage or purchase of such alcoholic liquors owned at 12:01 a.m. on July 1, 2002, by a licensed distributor or retail dealer as to which the tax has been imposed as provided in K.S.A. 41-501, and amendments thereto. Such tax shall be paid by the licensed distributor or retail dealer owning such alcoholic liquors, cereal malt beverage or beer at such time and date. On or before July 1, 2002, every such distributor and retail dealer shall make a report to the director on a form prescribed and furnished by the director showing the total number of gallons of such alcoholic liquors, cereal malt beverage or beer so owned at 12:01 a.m. on July 1, 2002, and such report shall be accompanied by a remittance of 33⅓% of the tax due. The remainder of such tax shall be remitted in equal installments on September 1, 2002, and December 1, 2002.

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

Sec. 3. K.S.A. 2001 Supp. 41-501 is hereby repealed.

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

In the title, in line 12, by striking all after “to”; by striking all in lines 13 through 15 and inserting “taxation of cereal malt beverages and alcoholic liquor; amending K.S.A. 2001 Supp. 41-501 and repealing the existing section.”;

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

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

JOHN EDMONDS
DAVID HUFF
BRUCE LARKIN
Conferees on part of House

Senator Corbin moved the Senate adopt the Conference Committee Report on **HB 2828**.

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

Yeas: Allen, Barnett, Corbin, Downey, Emler, Goodwin, Jackson, Jenkins, Kerr, Morris, Oleen, Praeger, Salmans, Schodorf, Teichman, Umbarger, Vratil.

Nays: Adkins, Barone, Brownlee, Brungardt, Clark, Donovan, Feleciano, Gilstrap, Gooch, Haley, Harrington, Hensley, Huelskamp, Lee, Lyon, O'Connor, Pugh, Schmidt, Taddiken, Tyson, Wagle.

Present and Passing: Jordan.

Absent or Not Voting: Steineger.

The Conference Committee report was not adopted.

ORIGINAL MOTION

On motion of Senator Corbin, the Senate acceded to the request of the House for a conference on **SB 472**.

The Vice-President appointed Senators Corbin, Jenkins and Lee as third conferees on the part of the Senate.

On motion of Senator Oleen, the Senate recessed until 7:00 p.m.

EVENING SESSION

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

MESSAGE FROM THE HOUSE

Announcing the House adopts the conference committee report on **SB 472**.

The House adopts the conference committee report on **SB 509**.

The House accedes to the request of the Senate for a conference on **House Substitute for SB 112** and has appointed Representatives Holmes, Sloan and McClure as third conferees on the part of the House.

The House not adopts the conference committee report on **SB 35**, requests a conference and has appointed Representatives O'Neal, Loyd and Pauls as second conferees on the part of the House.

The House adopts the conference committee report on **HB 2575**.

The House adopts the conference committee report on **HB 2719**.

The House adopts the conference committee report on **HB 2771**.

The House adopts the conference committee report on **HB 2802**.

ORIGINAL MOTION

Senator Oleen moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **H Sub for SB 152; SB 459, SB 472, SB 482, SB 506, SB 509; HB 2050; S Sub for HB 2545; HB 3009**.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Oleen moved the Senate nonconcur in house amendments to **H Sub for SB 152**.

Senator Pugh offered a substitute motion to concur in house amendments to **H Sub for SB 152**.

H Sub for SB 152, An act concerning congressional districts; providing for the redistricting thereof; repealing K.S.A. 4-128, 4-133 and 4-135.

On roll call, the vote was: Yeas 16, Nays 20, Present and Passing 3, Absent or Not Voting 1.

Yeas: Brownlee, Clark, Corbin, Donovan, Gilstrap, Harrington, Huelskamp, Jackson, Jordan, Lyon, O'Connor, Pugh, Salmans, Taddiken, Tyson, Wagle.

Nays: Adkins, Allen, Barnett, Brungardt, Downey, Feleciano, Gooch, Goodwin, Hensley, Jenkins, Kerr, Lee, Morris, Oleen, Praeger, Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Present and Passing: Barone, Emler, Haley.

Absent or Not Voting: Steineger.

The motion failed.

Having voted on the prevailing side Senator Oleen moved the Senate reconsider its adverse action on **H Sub for SB 152**. The motion carried.

Senator Oleen moved the Senate nonconcur on **H Sub for SB 152** and a conference committee be appointed.

The President appointed Senators Allen, Jenkins and Hensley as a conference committee on the part of the Senate.

Senator Wagle moved the Senate concur in house amendments to **SB 482**.

SB 482, An act concerning the pharmacy act of the state of Kansas; licensure and fees relating thereto; civil fines; amending K.S.A. 2001 Supp. 65-1631, 65-1632, 65-1645 and 65-1658 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huel-

skamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Senate concurred.

Senator Donovan moved the Senate concur in house amendments to **SB 506**.

SB 506. An act relating to motor vehicles; concerning certain distinctive license plates; amending K.S.A. 8-147, 8-1,140, 8-1,141 and 8-1,142 and repealing the existing sections.

On roll call, the vote was: Yeas 4, Nays 34, Present and Passing 1, Absent or Not Voting 1.

Yeas: Brungardt, Jackson, O'Connor, Schodorf.

Nays: Adkins, Allen, Barnett, Barone, Brownlee, Clark, Corbin, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, Oleen, Praeger, Pugh, Salmans, Schmidt, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Present and Passing: Donovan.

Absent or Not Voting: Steineger.

The motion to concur failed and **SB 506** remains in conference.

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 THOMLINSON
STANLEY DREHER
NANCY A. KIRK
Conferees on part of House

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

Senator Praeger moved the Senate adopt the Conference Committee Report on **SB 459**.
On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting

1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huel-skamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

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

The Senate accedes to all House amendments to the bill, and your committee on con-ference 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 mod-ernize 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 agree-ment. 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 regula-tions 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 deter-

mination 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* 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 EDMONDS
DAVID HUFF
BRUCE LARKIN
Conferees on part of House

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

Senator Corbin moved the Senate adopt the Conference Committee Report on **SB 472**.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Jenkins,

Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Feleciano, Huelskamp, Lyon.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote yes on **SB 472** and wish to explain that the intent of Sec. 5(D) that refers to providing "false information" is possibly in need of a technical correction to insure that the false information refers only to an intentional or fraudulent act.—KAY O'CONNOR

Senator Jenkins requests the record to show she concurs with the "Explanation of Vote" offered by Senator O'Connor on **SB 472**.

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 FELECiano, JR.
Conferees on part of Senate

Senator Morris moved the Senate adopt the Conference Committee Report on **SB 509**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huel-skamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2050**, 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 1, by striking all in lines 19 through 43;

On page 2, by striking all in lines 1 through 26, and inserting the following:

“Section 1. K.S.A. 2001 Supp. 72-6410 is hereby amended to read as follows: 72-6410.

(a) “State financial aid” means an amount equal to the product obtained by multiplying base state aid per pupil by the adjusted enrollment of a district.

(b) “Base state aid per pupil” means an amount of state financial aid per pupil. Subject to the other provisions of this subsection, the amount of base state aid per pupil is ~~\$3,870~~ \$3,890. The amount of base state aid per pupil is subject to reduction commensurate with any reduction under K.S.A. 75-6704, and amendments thereto, in the amount of the appropriation from the state general fund for general state aid. If the amount of appropriations for general state aid is insufficient to pay in full the amount each district is entitled to receive for any school year, the amount of base state aid per pupil for such school year is subject to reduction commensurate with the amount of the insufficiency.

(c) “Local effort” means the sum of an amount equal to the proceeds from the tax levied under authority of K.S.A. 72-6431, and amendments thereto, and an amount equal to any unexpended and unencumbered balance remaining in the general fund of the district, except amounts received by the district and authorized to be expended for the purposes specified in K.S.A. 72-6430, and amendments thereto, and an amount equal to any unexpended and unencumbered balances remaining in the program weighted funds of the district, except any amount in the vocational education fund of the district if the district is operating an area vocational school, and an amount equal to any remaining proceeds from taxes levied under authority of K.S.A. 72-7056 and 72-7072, and amendments thereto, prior to the repeal of such statutory sections, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district under the provisions of subsection (a) of K.S.A. 72-1046a, and amendments thereto, and an amount equal to the amount deposited in the general fund in the current school year from amounts received in such year by the district pursuant to contracts made and entered into under authority of K.S.A. 72-6757, and amendments thereto, and an amount equal to the amount credited to the general fund in the current school year from amounts distributed in such year to the district under the provisions of articles 17 and 34 of chapter 12 of Kansas Statutes Annotated and under the provisions of articles 42 and 51 of chapter 79 of Kansas Statutes Annotated, and an amount equal to the amount of payments received by the district under the provisions of K.S.A. 72-979, and amendments thereto, and an amount equal to the amount of a grant, if any, received by the district under the provisions of K.S.A. 2001 Supp. 72-983, and amendments thereto, and an amount equal to 75% of the federal impact aid of the district.

(d) “Federal impact aid” means an amount equal to the federally qualified percentage of the amount of moneys a district receives in the current school year under the provisions of title I of public law 874 and congressional appropriations therefor, excluding amounts received for assistance in cases of major disaster and amounts received under the low-rent housing program. The amount of federal impact aid defined herein as an amount equal to the federally qualified percentage of the amount of moneys provided for the district under title I of public law 874 shall be determined by the state board in accordance with terms and conditions imposed under the provisions of the public law and rules and regulations thereunder.

Sec. 2. K.S.A. 2001 Supp. 72-6410 is hereby repealed.”;

In the title, on page 1, by striking all in lines 13 through 16 and inserting “school districts; amending K.S.A. 2001 Supp. 72-6410 and repealing the existing section.”;

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

DWAYNE UMBARGER
JOHN VRATIL
ANTHONY HENSLEY
Conferees on part of Senate

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

Senator Umbarger moved the Senate adopt the Conference Committee Report on **HB 2050**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelkamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2545**, 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 1, in line 22, after "2002" by striking the comma and inserting "and"; in line 23, by striking all after "2003,"; by striking all in lines 31 through 34; in line 35, by striking "(d)" and inserting "(c)"; by striking all in lines 37 through 43;

By striking all on pages 2 through 13;

On page 14, by striking all in lines 1 through 24; after line 24 by inserting the following: "Sec. 2.

ATTORNEY GENERAL

(a) On and after the effective date of this act, there shall be no expenditures made by the attorney general from moneys appropriated from the state general fund or any special revenue funds for fiscal year 2002 or fiscal year 2003 as authorized by chapter 144 or chapter 216 of the 2001 Session Laws of Kansas or by this or other appropriation act of the 2002 regular session of the legislature, for the purposes of the state of New York, *ex. rel.* Attorney General Elliot Spitzer, *et al. v.* Microsoft corporation litigation.";

And by renumbering the remaining section accordingly;

On page 1, in the title, in line 11, after "2002" by striking the comma and inserting "and"; also in line 11, by striking all after "2003,"; in line 12, by striking all before the semicolon; in line 15, by striking all after "foregoing"; by striking all in lines 16 through 18; in line 19, by striking all before the period;

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

STEPHEN R. MORRIS
LARRY D. SALMANS
PAUL FELECIANO, JR.
Conferees on part of Senate

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

Senator Morris moved the Senate adopt the Conference Committee Report on **S Sub for HB 2545**.

On roll call, the vote was: Yeas 19, Nays 17, Present and Passing 3, Absent or Not Voting 1.

Yeas: Barone, Brownlee, Clark, Corbin, Donovan, Feleciano, Gilstrap, Haley, Harrington, Hensley, Huelskamp, Jackson, Jordan, Lee, Lyon, O'Connor, Pugh, Tyson, Wagle.

Nays: Allen, Barnett, Brungardt, Downey, Emler, Goodwin, Jenkins, Kerr, Oleen, Praeger, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Present and Passing: Adkins, Gooch, Morris.

Absent or Not Voting: Steineger.

The Conference Committee report was not adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on the Conference Report for **HB 2545**. Whatever the merits or demerits of the State of Kansas pending litigation against Microsoft Corporation, the legislature should not invade the attorney general's judgment in ongoing litigation. She is the constitutional officer elected by the people to make this prosecutorial decisions. The message sent by this conference report is that any defendant powerful enough to win 21 votes in the Senate and 63 votes in the House and a governor's signature can escape or terminate prosecution in the State of Kansas. This is bad precedent that would open the door to banana republic justice in the state of Kansas.—DEREK SCHMIDT

Senator Vratil requests the record to show he concurs with the "Explanation of Vote" offered by Senator Schmidt on **HB 2545**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 3009**, 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 7, by striking all in lines 41 through 43;

By striking all on pages 8 and 9;

On page 10, by striking all in lines 1 through 39;

And by renumbering the remaining sections accordingly;

On page 15, in line 36, by striking all after "75-4510a"; in line 37, by striking "5523, 75-5530 and 75-5531" and inserting "and 75-6406"; also in line 37, by striking "75-"; in line 38, by striking "5525 and";

In the title, on page 1, in line 13, by striking "certain payroll deductions;"; in line 15, after "75-4508" by striking the comma and inserting "and"; also in line 15, by striking all after "75-4510a; in line 16, by striking "75-5531"; also in line 16, by striking "75-5525 and"; in line 17, after "sections" by inserting "; also repealing K.S.A. 75-6406";

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

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

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

Senator Morris moved the Senate adopt the Conference Committee Report on **HB 3009**.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was adopted.

ORIGINAL MOTION

On motion of Senator Vratil, the Senate acceded to the request of the House for a conference on **SB 35**.

The President appointed Senators Vratil, Schmidt and Goodwin as second conferees on the part of the Senate.

ORIGINAL MOTION

Having voted on the prevailing side on Final Action on **S Sub for HB 2545**, Senator Kerr moved the Senate reconsider its adverse action on **S Sub for HB 2545**. The motion carried and the bill was returned to Final Action.

On roll call, the vote was: Yeas 1, Nays 31, Present and Passing 7, Absent or Not Voting 1.

Yeas: Kerr.

Nays: Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jenkins, Jordan, Lee, Lyon, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Teichman, Tyson, Umbarger, Vratil.

Present and Passing: Adkins, Huelskamp, Jackson, Morris, Praeger, Taddiken, Wagle.

Absent or Not Voting: Steineger.

The Conference Committee report was not adopted.

MESSAGE FROM THE HOUSE

Announcing, the House accedes to the request of the Senate for a conference on **House Substitute for SB 152** and has appointed Representatives O'Neal, Mays and Findley as conferees on the part of the House.

On motion of Senator Oleen the Senate adjourned until 10:00 a.m., Thursday, May 16, 2002.

HELEN A. MORELAND, *Journal Clerk*.

PAT SAVILLE, *Secretary of Senate*.

