

Journal of the Senate

FIFTY-NINTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, April 25, 2007—10:00 a.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-eight senators present.
Senators Haley and Palmer were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Well, we are back for what is called the wrap-up or the veto session. We pray that You are back here with us. Regardless of how long it takes I pray that You, O God, will provide them with whatever it takes to wrap up things in an appropriate package.

Give them energy
To complete each day
With enough left over
To go all the way.

Give them wisdom
So they can decide
If they should attempt
To override.

Give them courage
To stand alone
When fully convinced
God's will is known.

Give them patience
To hold their tongue
When attacked by one
who is high strung.

And finally....
Give them faith
To trust in You,
That when they pray
You'll see them through!

I pray in the name of Your Son, Jesus Christ,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 392. An act concerning law enforcement officers; enacting the law enforcement officers relief act; amending K.S.A. 40-252b and 40-1611 and repealing the existing sections, by Committee on Ways and Means.

CHANGE OF REFERENCE

The President withdrew **HB 2095** from the Committee on Judiciary, and referred the bill to the Committee on Federal and State Affairs.

REPORT ON ENGROSSED BILLS

SB 188; Sub SB 208, Sub SB 391; SCR 1612 reported correctly engrossed April 3, 2007.

Also, **SB 129, SB 192, SB 201, SB 249, SB 284, SB 368** correctly re-engrossed April 3, 2007.

SB 8, SB 55; H Sub for SB 103; SB 112; SCR 1603 reported correctly engrossed April 4, 2007.

Also, **SB 9, SB 34, SB 88, SB 114, SB 115, SB 271, SB 333** correctly re-engrossed April 4, 2007.

SB 362 reported correctly engrossed April 5, 2007.

REPORT ON ENROLLED BILLS

SB 66, SB 67, SB 104, SB 146; H Sub for SB 244; SB 321 reported correctly enrolled, properly signed and presented to the Governor on April 5, 2007.

SR 1856, SR 1858, SR 1859, SR 1860, SR 1861, SR 1862, SR 1863, SR 1864, SR 1865 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on April 5, 2007.

SB 8, SB 34, SB 114, SB 115, SB 129; H Sub for SB 144; SB 188, SB 192, SB 201, SB 202; Sub SB 208; SB 249, SB 284 reported correctly enrolled, properly signed and presented to the Governor on April 9, 2007.

SCR 1603 reported correctly enrolled, properly signed and presented to the Secretary of State April 9, 2007.

SR 1866 reported correctly enrolled, properly signed and presented to the Secretary of the Senate April 9, 2007.

SB 9, SB 55, SB 88; H Sub for SB 103; SB 112, SB 198, SB 271, SB 333, SB 362, SB 368 reported correctly enrolled, properly signed and presented to the Governor on April 10, 2007.

MESSAGE FROM THE GOVERNOR

SB 18, SB 95, SB 137, SB 219, SB 232, SB 235, SB 259 approved on April 5, 2007.

SB 109, SB 179, SB 183, SB 302, SB 308; Sub SB 354; SB 355, SB 360 approved on April 9, 2007.

SB 105, SB 106, SB 255, SB 262; Sub SB 325, Sub SB 334 approved on April 10, 2007.

SB 66 approved on April 11, 2007.

H Sub for SB 244 approved April 12, 2007.

SB 67, SB 104, SB 146, SB 321 approved on April 13, 2007.

SB 202, SB 284 approved on April 16, 2007.

SB 112, SB 115 approved on April 19, 2007.

SB 9, SB 88, SB 198, SB 333, SB 362, SB 368 approved on April 20, 2007.

MESSAGE FROM THE GOVERNOR

SB 8, SB 34; H Sub SB 103; SB 114, SB 129; H Sub SB 144; SB 188, SB 192, SB 201; Sub SB 208; SB 249, SB 271 have been signed into law.

Last year I signed 2006 **SB 396**, which established the Veterans Claims Assistance Program. The goal was to ensure every veteran is able to receive the assistance they deserve, while also improving the coordination of benefits counseling so as to maximize the use of taxpayer resources.

While I believe the positives of **SB 144** outweigh any potential negatives, I am concerned the changes to this program made by this bill may prevent some veterans from receiving prompt attention to their claims and equal access to services. With this concern in mind, I ask the Legislative Post Audit Committee to authorize the mandated audit of the program

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one year after implementation to ensure veterans' receipt of benefits has not been impacted by their service organization membership.

Signed April 18, 2007
Approved Kathleen Sebelius

April 17, 2007

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Directive No. 07-375 for your information.

KATHLEEN SEBELIUS
Governor

The President announced Executive Directive No. 07-375, Authorizing A Personnel Transaction, is on file in the office of the Secretary of the Senate and is available for review at any time.

MESSAGE FROM THE GOVERNOR

There have been instances in the past 34 years where health care providers have caused harm to consumers through the use of deceptive practices and statements, and Kansans were able to use the Kansas Consumer Protection Act to seek redress. This bill, however, would make the entire health care industry immune from liability for such practices. I agree with Attorney General Paul Morrison's statement that "No single industry can justify a special exemption from 'deceptive' and 'unconscionable' acts." One can only expect that other professions would be encouraged to seek their own exemptions should this bill become law.

Current law only allows a consumer protection claim to be made against a health care provider when there's evidence that provider engaged in deceptive or unconscionable acts. These claims have been brought in the past where deceptive practices occurred. Ordinary medical malpractice claims do not involve deceptive practices and cannot not be brought under the Kansas Consumer Protection Act, even after the Kansas Supreme Court's decision in *Williamson v. Amrani*, therefore it is hard to see how the court's decision will result in any increase in litigation.

The vast majority of health care professionals uphold the highest standards and operate in a manner that is beyond reproach. However, as with every industry, there are those who seek to commit deliberate deception. Therefore, to protect Kansans from deceptive practices, pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I veto Senate Bill 55.

Signed April 20, 2007
Approved Kathleen Sebelius, Governor

COMMUNICATIONS FROM STATE OFFICERS

OFFICE OF DEMOCRATIC LEADER

March 5, 2007

In accordance with KSA 74-99b04(d), Senator Anthony Hensley, Minority Leader, appointed Ed McKechnie to the Kansas Bioscience Authority, effective immediately.

DEPARTMENT OF REVENUE

April 1, 2007

As required by KSA 74-50,118(c), Joan Wagnon submitted the Annual Report regarding the Kansas Enterprise Zone Act.

COMMISSION ON JUDICIAL QUALIFICATIONS

Kansas Judicial Center

April 12, 2007

Carol G. Green, Secretary, submitted a copy of the 2006 Annual Report of the Commission on Judicial Qualifications.

OFFICE OF THE ATTORNEY GENERAL
Crime Victims Compensation Board

April 13, 2007

Pursuant to KSA 74-7303, Paul J. Morrison, Attorney General, submitted for confirmation by the Senate appointment of Nan Porter as a member of the Crime Victims Compensation Board. This appointment replaces current member, Paula S. Salazar and will complete her unexpired term. Said term is effective April 2, 2007 and will expire March 15, 2009.

KANSAS HUMAN RIGHTS COMMISSION

April 23, 2007

Pursuant to KSA 44-1004 (13), William V. Minner, Executive Director, submitted the Kansas Human Rights Commission Annual Report for Fiscal Year 2006.

STATE OF THE JUDICIARY

Kay McFarland, Chief Justice, submitted the 2007 Annual Report of the Chief Justice of the Kansas Supreme Court.

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

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator D. Schmidt introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1868—

A RESOLUTION proclaiming and celebrating the sesquicentennial of Humboldt, Kansas.

WHEREAS, Humboldt, Kansas, a Free State town, was founded May 10, 1857, by a German colony, under the auspices of the New England Aid Company whose purpose was to establish Free State towns at a crucial time in the history of our nation when attempts were being made by pro-slavers to cause the Kansas Territory to enter the Union as a slave state; and

WHEREAS, Humboldt's citizens voted for a Free State prior to Kansas' entry into the Union as a Free State; and

WHEREAS, Through diligent efforts of Free Staters J.A. Coffey and N.B. Blanton, Humboldt acquired the U.S. Land Office from 1861 to 1872 and, because of its enterprising Free State citizens and supportive community of Free State farmers, Humboldt grew and prospered, establishing itself as a prominent town in southeast Kansas; and

WHEREAS, Humboldt's women showed great courage, surviving a Confederate raid on September 8, 1861, while their men were fighting bravely in the Civil War in Missouri; and

WHEREAS, Humboldt was a haven for fugitive slaves, although some were found hiding in Humboldt during the September Confederate raid and were captured and returned to Missouri; and

WHEREAS, Humboldt survived, with the help from churches, Masons and other fellow citizens, an attack by Confederate troops on October 14, 1861, which burned residences and businesses and displaced 40 families; and

WHEREAS, Humboldt became the home of Aunt Polly Crosby, who was born to slaves in Alabama during the Battle of Mobile. Crosby came to Humboldt, had many friends among the citizenry of Humboldt, and established the Poplar Grove Baptist Church at her cabin in 1879 and became the first Mother of the Church; and

WHEREAS, Humboldt, throughout its 150 years, has endured panics and enjoyed prosperity, established well-attended, active, and serving churches, produced accomplished and successful graduates in its outstanding schools, developed nationally recognized industries, stores, and other businesses and professions, and maintained service organizations that work together to strengthen their community. Humboldt has been represented in each war involving our nation by service men and women, guided by elected and appointed community leaders, maintained by a police force and protected by volunteer firemen; and

WHEREAS, Humboldt, for 50 years, has celebrated Biblesta, a community sponsored event that exemplifies the faith of Humboldt through music, sharing of food, and a unique

Bible parade, in which participants create floats depicting Old and New Testament scripture: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we do hereby proclaim May 10, 2007, as the sesquicentennial anniversary of Humboldt, Kansas; that we celebrate the rich legacy, progress, and achievements of Humboldt; and that we honor those who helped shape the direction and future of the community; and

Be it further resolved: That the Secretary of the Senate provide 10 enrolled copies of this resolution to Senator Derek Schmidt for presentation to representatives of Humboldt, Kansas.

On emergency motion of Senator D. Schmidt **SR 1868** was adopted unanimously.

Senator D. Schmidt introduced and welcomed Roland Thompson, Linda Thompson, Dorothy Hemphill and Eileen Robertson.

Senators Lynn, Brownlee and Wilson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1869—

A RESOLUTION proclaiming and celebrating the 150th anniversary of the city of Olathe.

WHEREAS, February 20, 2007, marked the sesquicentennial, or 150th anniversary of the city of Olathe, which was granted its official city charter in 1857; and

WHEREAS, Olathe's sesquicentennial observance is one of the grandest celebrations in the city's history, bringing Olathe residents of all ages and backgrounds to pay tribute to Olathe's past, present and future; and

WHEREAS, Olathe will celebrate its 150 years of community with a number of special events throughout the year commemorating its unique and colorful history; and

WHEREAS, Throughout its proud and remarkable past, the city has lived up to its name, Olathe - the Shawnee word for "Beautiful" - and with a population of over 120,000, is one of the premier cities in Kansas; and

WHEREAS, Olathe has produced five Governors over the past 150 years; and

WHEREAS, 150 years after its founding, the city of Olathe is poised for even greater success and growth as it builds its strong heritage, diversity and solid foundation for the future: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we do hereby proclaim the year 2007 as the city of Olathe's sesquicentennial year; we celebrate the rich legacy, progress and achievements of the city of Olathe and honor those who helped shape the direction and future of our community; and we celebrate Olathe, "City Beautiful" as the best place to live, work and raise a family, in its 150th year and beyond; and

Be it further resolved: That the Secretary of the Senate provide 24 enrolled copies of this resolution to Senator Lynn.

On emergency motion of Senator Lynn **SR 1869** was adopted unanimously.

Representing the City of Olathe were: Former Kansas Governor John Anderson; Michael Copeland, Mayor; Michael Wilkes, City Manager; Tim Danneberg, Communications Director; Mike Haskin and Marlene Natoli, Co-Chairs, 150th Anniversary Committee; John Andrade, 150th Anniversary Committee; Diane Costello, Chamber of Commerce; Beth Felski, Chamber of Commerce; Amy Shelton, Design Sense, Inc.; Steve Elstrom, Chamber of Commerce.

Senators Brownlee, Lynn and Wilson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1870—

A RESOLUTION congratulating and commending Westview Elementary School for being awarded the 2006 No Child Left Behind Blue Ribbon School Award.

WHEREAS, The No Child Left Behind Blue Ribbon Schools Program recognizes outstanding public and private schools that are either academically superior in their states or that demonstrate dramatic and consistent gains in student achievement; and

WHEREAS, Schools nominated for the No Child Left Behind Blue Ribbon School Award must have at least 40% of their students come from disadvantaged backgrounds who

show dramatic improvement in student performance on state tests over the past three years in reading or English language arts and mathematics; or be schools whose students, regardless of demographics, achieve in the top 10% on state tests in reading or English language arts and mathematics; and

WHEREAS, Blue Ribbon Schools must also meet adequate yearly progress in reading or English language arts and mathematics, must not be identified as a “Persistently Dangerous” school within the last two years, and must be in compliance with other U.S. Department of Education requirements; and

WHEREAS, Westview Elementary opened its doors in 1954 with approximately 210 students in kindergarten through 4th grade. Now with approximately 240 students in kindergarten through 6th grade, 60% of Westview’s students qualify for free or reduced lunch and 51% of the students represent minority populations. Westview is a district English Language Learner (ELL) Center, with language acquisition support for approximately 70 students. Westview also houses two district Lifeskills classes for children with severe and multiple disabilities; and

WHEREAS, Guided by their mission statement, “WE will encourage a love of learning, respect for self and others, and academic achievement in a safe environment, preparing all students to meet the challenges of *their* future,” the staff and students have worked to achieve success in the classroom. Each year since 2001, the school has demonstrated Adequate Yearly Progress, has twice met the state Standard of Excellence, and has been recognized with four state Challenge Awards for making significant progress in closing the achievement gap. In 2006, Westview Elementary School was awarded the No Child Left Behind Blue Ribbon School Award; Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the faculty, staff and students of Westview Elementary be congratulated and commended for their hard work and diligent efforts in achieving such a high standard of excellence and for receiving the 2006 No Child Left Behind Blue Ribbon School Award.

Be it further resolved: That the Secretary of the Senate provide 75 enrolled copies of this resolution to Senator Brownlee.

On emergency motion of Senator Brownlee **SR 1870** was adopted unanimously.

Senator Brownlee introduced and welcomed Principal, John Harriss, Westview Elementary School, Olathe, Kansas.

Senators Brownlee, Lynn and Wilson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1871—

A RESOLUTION congratulating and commending Regency Place Elementary School for being awarded the 2006 No Child Left Behind Blue Ribbon School Award.

WHEREAS, The No Child Left Behind Blue Ribbon Schools Program recognizes outstanding public and private schools that are either academically superior in their states or that demonstrate dramatic and consistent gains in student achievement; and

WHEREAS, Schools nominated for the No Child Left Behind Blue Ribbon School Award must have at least 40% of their students come from disadvantaged backgrounds who show dramatic improvement in student performance on state tests over the past three years in reading or English language arts and mathematics; or be schools whose students, regardless of demographics, achieve in the top 10% on state tests in reading or English language arts and mathematics; and

WHEREAS, Blue Ribbon Schools must also meet adequate yearly progress in reading or English language arts and mathematics, must not be identified as a “Persistently Dangerous” school within the last two years, and must be in compliance with other U.S. Department of Education requirements; and

WHEREAS, Regency Place Elementary, located in Olathe, Kansas, opened its doors in 1999 with 400 students. The school’s enrollment in the Spring of 2007 was almost 700 students; and

WHEREAS, The Regency team consists of more than 44 certified teaching staff and 16 classified staff and have been nicknamed the “Dream Team” as they have maintained Stan-

dard of Excellence on Kansas Assessments every year. By focusing on continuous improvement and professional learning communities, the Regency staff has been able to differentiate and target instructional strategies to meet the needs of all students; and

WHEREAS, As a result of the efforts of the staff and students, Regency Place Elementary was awarded the 2006 No Child Left Behind Blue Ribbon School Award: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the faculty, staff and students of Regency Place Elementary be congratulated and commended for their hard work and diligent efforts in achieving such a high standard of excellence and for receiving the 2006 No Child Left Behind Blue Ribbon School Award.

Be it further resolved: That the Secretary of the Senate provide 60 enrolled copies of this resolution to Senator Brownlee.

On emergency motion of Senator Brownlee **SR 1871** was adopted unanimously.

Senator Brownlee introduced and welcomed Principal, Greg Oborny, Regency Place Elementary School, Olathe, Kansas.

Senators Brownlee, Lynn and Wilson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1872—

A RESOLUTION congratulating and commending Dennis Burkett and Jeff Zimmerman for being named 2007 Kansas Horizon Award educators.

WHEREAS, The Kansas Horizon Award program, sponsored by the Kansas State Department of Education, identifies and recognizes representatives of excellent teaching in the elementary and secondary classrooms of the state. The mission of the Kansas Horizon Award program is to recognize exemplary first-year teachers who perform in a way that distinguishes them as outstanding; and

WHEREAS, The Kansas Horizon Award program, currently in its fifth year, allows all school districts in the state an opportunity to nominate one elementary and one secondary teacher for the award. To be eligible for a Kansas Horizon Award, teachers must have successfully completed their first year of teaching and have performed in such a way as to distinguish themselves as outstanding. The Kansas Horizon Award program is a regional competition with four regions corresponding to the state's United States congressional districts. Four elementary and four secondary classroom teachers may be selected for the award from each district; and

WHEREAS, Among those receiving this award were two winners from Olathe, Kansas: Dennis Burkett, a chemistry teacher at Olathe South High School, and Jeff Zimmerman, a physical education teacher at Ravenwood Elementary; and

WHEREAS, Dennis obtained his Bachelors degree in Chemistry from Point Loma Nazarene University in 1995, his Masters in Theological Studies from Nazarene Theological Seminary in 2001, and another Bachelor's degree in Secondary Education from the University of Missouri Kansas City in 2005. Jeff graduated from Emporia State University in 2004 with a degree in Physical/Health Education. Both Jeff and Dennis have been teaching in the Olathe school district since 2005: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That Dennis Burkett and Jeff Zimmerman be congratulated and commended for being named 2007 Kansas Horizon Award educators and for such outstanding performances in their first year as teachers; and

Be it further resolved: That the Secretary of the Senate provide 2 copies of this resolution to Senator Brownlee.

On emergency motion of Senator Brownlee **SR 1872** was adopted unanimously.

Senator Brownlee introduced and congratulated teacher, Jeff Zimmerman for being named 2007 Kansas Horizon Award educator.

Senators Brownlee, Lynn and Wilson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1873—

A RESOLUTION congratulating and commending the Olathe East High School girls' softball team for being the 2006 Class 6A State Champions.

WHEREAS, On May 27, 2006, the Olathe East High School girls' softball team became the 2006 Class 6A State Champions by defeating Maize 6 to 1 at Two-Rivers Stadium in Wichita, Kansas; and

WHEREAS, This is the team's 3rd straight State Championship and the 5th Championship in the school's history; and

WHEREAS, In addition to being 2006 Class 6A State Champions, the team also finished their 2006 season as Sunflower League and Regional Champions; and

WHEREAS, The team completed the 2006 season with an impressive overall record of 24 wins and only one loss. In the last three years, the team has an astounding record of 81 wins and only two losses; and

WHEREAS, The Olathe East High School girls' softball team was comprised of Seniors Alex Hupp (1st Team All-American selection) and Ashlyn Smith; Juniors Haley Brown, Kelsea Garthoff and Ashley Guile (1st Team All-American selection); Sophomores Jacqueline Black, Michaela Hupp, Emily Gerstner, Eryn Shorthouse, Ashley Stout, Kristen Rock and Katie Klug; Freshmen Michelle Ingles, Kendall Grimm, and Jessica Brooks; and

WHEREAS, The team was led by Head Coach Jeff Hulse; Assistant Coaches Amber Magee, Kevin Mays, and Lee Sappingfield; and Coach's Assistant Claire Flynn: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Olathe East High School girls' softball team be congratulated and commended for being the 2006 Class 6A State Champions and for achieving such a high standard of excellence in their sport; and

Be it further resolved: That the Secretary of the Senate provide 20 enrolled copies of this resolution to Senator Brownlee.

On emergency motion of Senator Brownlee **SR 1973** was adopted unanimously.

Senator Brownlee along with members of the Senate acknowledged and congratulated coaches and team members.

Senators Brownlee, Lynn and Wilson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1874—

A RESOLUTION congratulating and commending the Olathe East High School girls' Cross Country team for being the 2006 Class 6A State Champions.

WHEREAS, The Olathe East High School girls' Cross Country team became the 2006 Class 6A State Champions with a team total of 74 points outdistancing second place Manhattan High School which had 90 points and third place Blue Valley Northwest which had 97 points; and

WHEREAS, The team is comprised of: Seniors Amanda Miller, Riley Wertenberger, Kourtney Schippers, Sarah Keearns, Stephanie Weir, Natalie King and Kaley Hagemann; Juniors Ashlee Lamar, Jordan Null and Vicki Behnen; Sophomores Casey Epps, Lana Thompson, Bree Bohaty and Nikki Reigel; and Freshmen Kara Bartels, Darci Miller and Brenda Ellis; and

WHEREAS, The team was led by Head Coach Tony Bozarth, Assistant Coaches Glenn Daniels and Shanna Hicks and managed by Michaela Barry; and

WHEREAS, In addition to winning the 2006 Class 6A State Championship, the team also won championships at the Blue Valley Invitational, Olathe North Invitational, Missouri Southern Stampede, Shawnee Mission North Invitational and Haskell Invitational and was the Sunflower League Champions: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Olathe East High School girls' Cross Country team be congratulated and commended for being the 2006 Class 6A State Champions and for achieving a high degree of excellence in their sport; and

Be it further resolved: That the Secretary of the Senate provide 20 enrolled copies of this resolution to Senator Brownlee.

On emergency motion of Senator Brownlee **SR 1874** was adopted unanimously.

Senator Brownlee along with members of the Senate acknowledged and congratulated coaches and team members.

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

AFTERNOON SESSION

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

POINT OF PERSONAL PRIVILEGE

Senator Hensley rose on a Point of Personal Privilege to acknowledge Senator Betts, who was one of three senators named Outstanding Legislator of the Year at the Progressive States Network meeting on April 19, 2007 in Washington, D.C.

Senator Betts, Wichita, Kansas, is the youngest legislator serving in the Kansas Senate.

He was elected to the Kansas House of Representatives at the age of 24 in November 2002 and to the Kansas Senate in 2004.

CHANGE OF CONFERENCE

The President announced the appointment of Senator Hensley as a member of the Conference Committee on **S Sub for Sub HB 2457** to replace Senator Kelly.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Wilson and Hensley introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1867—

A RESOLUTION honoring the memory and legacy of Lamar Hunt, and recognizing his indelible imprint upon Kansas and the world through his creative vision and entrepreneurial spirit.

WHEREAS, Lamar Hunt was born in El Dorado, Arkansas on August 2, 1932. A prep school quarterback, he later played three years Varsity Football at Southern Methodist University and earned a degree in Geology in 1956.

WHEREAS, For nearly 50 years, Lamar Hunt was a guiding force in professional football. Denied the Dallas franchise by the National Football League in 1959, Hunt, with eight other team owners affectionately known as “The Foolish Club,” founded the American Football League. Hunt’s team, the Texans, won the 1962 AFL Championship. He moved the Texans to Kansas City in 1963 and renamed them the Kansas City Chiefs.

WHEREAS, In the 1960’s, Lamar Hunt was directly involved in plans for Arrowhead Stadium, which opened in 1972 as the home of the Chiefs.

WHEREAS, Lamar Hunt played a key role in the 1966 AFL-NFL merger. He is credited with coining the term: “Super Bowl”. The Kansas City Chiefs won the 1966 AFL Championship — and played in the first Super Bowl — against the Green Bay Packers, and defeated the Minnesota Vikings in 1969’s Super Bowl IV.

WHEREAS, The American Football Conference championship trophy, named for Lamar Hunt, was first presented to the Miami Dolphins in 1984.

WHEREAS, Lamar Hunt was also instrumental in developing the North American Soccer League, World Championship Tennis and Major League Soccer. The Hunt family operated the Kansas City Wizards Soccer franchise. The Wizards began playing at Arrowhead Stadium in 1996 and won the 2000 Major League Soccer Cup. Hunt was a founding investor of the six-time World Champion Chicago Bulls.

WHEREAS, Lamar Hunt was inducted into the Halls of Fame of six different sports: Kansas City Chiefs (1970), Pro Football (1972), United States Soccer (1982), Texas (1984), International Tennis (1993) and Missouri (1995). He earned a Lifetime Achievement Award from the U.S. Soccer Foundation in 2005.

WHEREAS, Lamar Hunt’s varied business ventures have been equally successful. He was named to the Texas Business Hall of Fame in 1997 and the Kansas City Business Hall of Fame in 2004. His subterranean industrial park, SubTropolis, is the world’s largest un-

derground business complex. Hunt Midwest Enterprises, Inc. oversees diverse business interests including limestone mining and real estate development.

WHEREAS, Lamar Hunt was the creative force behind Kansas City's Worlds of Fun and Oceans of Fun theme parks. He named many of the rides, and developed the parks' landscaping, thanks to a lifelong love of nature fostered by his mother.

WHEREAS, Lamar Hunt passed away in Dallas, Texas on December 13, 2006, at the age of 74. He is survived by his wife Norma, four children — Lamar, Jr., Sharron Munson, Clark and Daniel — and 14 grandchildren: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we express our heartfelt gratitude to Lamar Hunt for his life of civic service and for the benefits reaped by those fortunate enough to be touched by the wide reach of his many successful enterprises; and we recognize his invaluable contributions to American sports and business — contributions which have changed the ways we live and play; and we are humbled by his lofty example of how one good man who believes in his dreams can change the face of the nation and the world; and

Be it further resolved: That the Secretary of the Senate provide 15 enrolled copies of this resolution to Senator Dennis Wilson for distribution to the Hunt family and to the Chiefs organization.

On emergency motion of Senator Wilson **SR 1867** was adopted unanimously.

Sons Clark and Daniel Hunt were presented with a framed resolution honoring their father, Lamar Hunt. They were honored with a standing ovation.

Also present were Ryan Petikov, Dave Lindstrom, Bill Grigsby, Ed Lothamer, Ricky Siglar, Janice Siglar, Curtis McClinton, Ted McKnight and Kevin Gray.

On motion of Senator D. Schmidt, the Senate recessed until 3:30 p.m.

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

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 393, An act concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; postretirement benefit increase for certain retirants, employer contributions; making and concerning appropriations for the fiscal year ending June 30, 2008; amending K.S.A. 2006 Supp. 74-4920, as amended by section 17 of 2007 Senate Bill No. 362, and repealing the existing section, by Committee on Ways and Means.

MESSAGE FROM THE HOUSE

Announcing the House adopts the conference committee report on **H Sub for SB 11**.

The House adopts the conference committee report on **H Sub for SB 31**.

The House adopts the conference committee report on **SB 52**.

Also, adoption of **SCR 1612**.

The House announces the appointment of Representative Sharp to replace Representative Kelley as a conferee on **S Sub for Sub HB 2457**.

ORIGINAL MOTION

Senator D. Schmidt 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 11; SB 30; H Sub for SB 31; SB 52, SB 324; HB 2363**.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

On motion of Senator Umbarger the Senate nonconcurred in the House amendments to **SB 30** and requested a conference committee be appointed.

The President appointed Senators Brungardt, Reitz and Gilstrap as a conference committee on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 11**, 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 72, after line 28, by inserting:

“(h) Any health care plans offered through any association funded in whole or in part with grants or loans pursuant to this section shall be underwritten by an insurance company or health maintenance organization that holds a valid Kansas certificate of authority as verified by the commissioner of insurance and any such association shall be subject to the provisions of K.S.A. 40-2209, 40-2209a through 40-2209p and 40-2222, and amendments thereto.”;

On page 80, in line 36, by striking “(m)” and inserting “(l)”; in line 43, by striking “(n)” and inserting “(m)”;

On page 81, in line 4, by striking “(o)” and inserting “(n)”;

On page 82, in line 39, by striking “1” and inserting “15”;

On page 83, in line 14, by striking “1” and inserting “15”;

On page 85, in line 25, by striking “1” and inserting “15”;

On page 86, after line 2, by inserting the following:

“Sec. 19. K.S.A. 2006 Supp. 65-2901 is hereby amended to read as follows: 65-2901. As used in article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto:

(a) “Physical therapy” means examining, evaluating and testing individuals with mechanical, anatomical, physiological and developmental impairments, functional limitations and disabilities or other health and movement-related conditions in order to determine a diagnosis solely for physical therapy, prognosis, plan of therapeutic intervention and to assess the ongoing effects of physical therapy intervention. Physical therapy also includes alleviating impairments, functional limitations and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; functional training in community or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; patient-related instruction; reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations and engaging in administration, consultation, education and research. Physical therapy also includes the care and services provided by a physical therapist or a physical therapist assistant under the direction and supervision of a physical therapist that is licensed pursuant to this act. Physical therapy does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, the practice of any branch of the healing arts and the making of a medical diagnosis.

(b) “Physical therapist” means a person who is licensed to practice physical therapy pursuant to this act. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist and may designate or describe oneself as a physical therapist, physiotherapist, licensed physical therapist, P.T., Ph. T., M.P.T., D.P.T. or L.P.T. ~~physical therapists may evaluate patients without physician referral but may initiate treatment only after consultation with and approval by a physician licensed to practice medicine and surgery, a licensed podiatrist, a licensed physician assistant or an advanced registered nurse practitioner working pursuant to the order or direction of a person licensed to practice medicine and surgery, a licensed chiropractor or a licensed dentist in appropriately related cases or a therapeutic licensed optometrist pursuant to subsection (c) of K.S.A. 65-1501, and amendments thereto.~~

(c) "Physical therapist assistant" means a person who is certified pursuant to this act and who works under the direction of a physical therapist, and who assists the physical therapist in selected components of physical therapy intervention. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist assistant, and may designate or describe oneself as a physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst.

(d) "Board" means the state board of healing arts.

(e) "Council" means the physical therapy advisory council.

(f) "Physician" means a person licensed to practice medicine and surgery.

Sec. 20. K.S.A. 2006 Supp. 65-2912 is hereby amended to read as follows: 65-2912. (a) The board may refuse to grant a license to any physical therapist or a certificate to any physical therapist assistant, or may suspend or revoke the license of any licensed physical therapist or certificate of any certified physical therapist assistant, or may limit the license of any licensed physical therapist or certificate of any certified physical therapist assistant or may censure a licensed physical therapist or certified physical therapist assistant for any of the following grounds:

(1) Addiction to or distribution of intoxicating liquors or drugs for other than lawful purposes;

(2) conviction of a felony if the board determines, after investigation, that the physical therapist or physical therapist assistant has not been sufficiently rehabilitated to warrant the public trust;

(3) obtaining or attempting to obtain licensure or certification by fraud or deception;

(4) finding by a court of competent jurisdiction that the physical therapist or physical therapist assistant is a disabled person and has not thereafter been restored to legal capacity;

(5) unprofessional conduct as defined by rules and regulations adopted by the board;

(6) the treatment or attempt to treat ailments or other health conditions of human beings other than by physical therapy and as authorized by this act;

(7) failure to refer patients to other health care providers if symptoms are present for which physical therapy treatment is inadvisable or if symptoms indicate conditions for which treatment is outside the scope of knowledge of the licensed physical therapist;

~~(8) initiating treatment without prior consultation and approval by a physician licensed to practice medicine and surgery, by a licensed podiatrist, by a licensed physician assistant or by an advanced registered nurse practitioner working pursuant to the order or direction of a person licensed to practice medicine and surgery, by a licensed chiropractor, by a licensed dentist or by a therapeutic licensed optometrist pursuant to subsection (c) of K.S.A. 65-1501, and amendments thereto~~

~~(8) evaluating or treating patients in a manner not consistent with section 21 and amendments thereto; and~~

(9) knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement.

(b) All proceedings pursuant to article 29 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof or supplemental thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the act for judicial review and civil enforcement of agency actions.

New Sec. 21. (a) Except as otherwise provided in subsection (b), (c) or (d), a physical therapist may evaluate patients without physician referral but may initiate treatment only after approval by a licensed physician, a licensed podiatrist, a licensed physician assistant or an advanced registered nurse practitioner working pursuant to the order or direction of a licensed physician, a licensed chiropractor, a licensed dentist or licensed optometrist in appropriately related cases. Physical therapists may initiate physical therapy treatment with the approval of a practitioner of the healing arts duly licensed under the laws of another state and may provide such treatment based upon an order by such practitioner in any setting in which physical therapists would be authorized to provide such treatment with the approval of a physician licensed by the board, notwithstanding any provisions of the Kansas healing arts act or any rules and regulations adopted by the board thereunder.

(b) Physical therapists may evaluate and treat a patient for no more than 30 consecutive calendar days without a referral under the following conditions: (1) The patient has previously been referred to a physical therapist for physical therapy services by a person authorized by this section to approve treatment; (2) the patient's referral for physical therapy was made within one year from the date a physical therapist implements a program of physical therapy treatment without a referral; (3) the physical therapy being provided to the patient without referral is for the same injury, disease or condition as indicated in the referral for such previous injury, disease or condition; and (4) the physical therapist transmits to the physician or other practitioner identified by the patient a copy of the initial evaluation no later than five business days after treatment commences. Treatment for more than 30 consecutive calendar days of such patient shall only be upon the approval of a person authorized by this section to approve treatment.

(c) Physical therapists may provide, without a referral, services which do not constitute treatment for a specific condition, disease or injury to: (1) Employees solely for the purpose of education and instruction related to workplace injury prevention; or (2) the public for the purpose of fitness, health promotion and education.

(d) Physical therapists may provide services without a referral to special education students who need physical therapy services to fulfill the provisions of their individualized education plan (IEP) or individualized family service plan (IFSP).

New Sec. 22. The provisions of K.S.A. 65-2901 through 65-2920 and section 21, and amendments thereto, shall be known and may be cited as the physical therapy practice act.

Sec. 23. K.S.A. 2006 Supp. 65-180 is hereby amended to read as follows: 65-180. The secretary of health and environment shall:

(a) Institute and carry on an intensive educational program among physicians, hospitals, public health nurses and the public concerning congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases detectable with the same specimen. This educational program shall include information about the nature of such conditions and examinations for the detection thereof in early infancy in order that measures may be taken to prevent the mental retardation or morbidity resulting from such conditions.

(b) Provide recognized screening tests for phenylketonuria, galactosemia, hypothyroidism and such other diseases as may be appropriately detected with the same specimen. The initial laboratory screening tests for these diseases shall be performed by the department of health and environment or its designee for all infants born in the state. Such services shall be performed without charge for a fee of not more than \$30 per newborn.

(c) Provide a follow-up program by providing test results and other information to identified physicians; locate infants with abnormal newborn screening test results; with parental consent, monitor infants to assure appropriate testing to either confirm or not confirm the disease suggested by the screening test results; with parental consent, monitor therapy and treatment for infants with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria or other genetic diseases being screened under this statute; and establish ongoing education and support activities for individuals with confirmed diagnosis of congenital hypothyroidism, galactosemia, phenylketonuria and other genetic diseases being screened under this statute and for the families of such individuals.

(d) Maintain a registry of cases including information of importance for the purpose of follow-up services to prevent mental retardation or morbidity.

(e) Provide, within the limits of appropriations available therefor, the necessary treatment product for diagnosed cases for as long as medically indicated, when the product is not available through other state agencies. In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual meets medicaid eligibility, such individuals' needs shall be covered under the medicaid state plan. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual is not medicaid eligible, but is below 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of between 50% to 100% of the product cost in accordance with rules and regulations adopted by the secretary of

health and environment. Where the applicable income of the person or persons who have legal responsibility for the diagnosed individual exceeds 300% of the federal poverty level established under the most recent poverty guidelines issued by the United States department of health and human services, the department of health and environment shall provide reimbursement of an amount not to exceed 50% of the product cost in accordance with rules and regulations adopted by the secretary of health and environment.

(f) Provide state assistance to an applicant pursuant to subsection (e) only after it has been shown that the applicant has exhausted all benefits from private third-party payers, medicare, medicaid and other government assistance programs and after consideration of the applicant's income and assets. The secretary of health and environment shall adopt rules and regulations establishing standards for determining eligibility for state assistance under this section.

(g) (1) Except for treatment products provided under subsection (e), if the medically necessary food treatment product for diagnosed cases must be purchased, the purchaser shall be reimbursed by the department of health and environment for costs incurred up to \$1,500 per year per diagnosed child age 18 or younger at 100% of the product cost upon submission of a receipt of purchase identifying the company from which the product was purchased. For a purchaser to be eligible for reimbursement under this subsection (g)(1), the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(2) As an option to reimbursement authorized under subsection (g)(1), the department of health and environment may purchase food treatment products for distribution to diagnosed children in an amount not to exceed \$1,500 per year per diagnosed child age 18 or younger. For a diagnosed child to be eligible for the distribution of food treatment products under this subsection (g)(2), the applicable income of the person or persons who have legal responsibility for the diagnosed child shall not exceed 300% of the poverty level established under the most recent poverty guidelines issued by the federal department of health and human services.

(3) In addition to diagnosed cases under this section, diagnosed cases of maple syrup urine disease shall be included as a diagnosed case under this subsection (g).

(h) The department of health and environment shall continue to receive orders for both necessary treatment products and necessary food treatment products, purchase such products, and shall deliver the products to an address prescribed by the diagnosed individual. The department of health and environment shall bill the person or persons who have legal responsibility for the diagnosed patient for a pro-rata share of the total costs, in accordance with the rules and regulations adopted pursuant to this section. ~~The department of health and environment and the Kansas health policy authority shall combine the purchasing resources for the purpose of this subsection and shall enter into a joint contract for the purchase of all products for both medicaid and nonmedicaid eligible clients.~~

(i) *Not later than July 1, 2008, the secretary of health and environment shall adopt rules and regulations as needed to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American college of medical genetics entitled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by the department of health and environment to provide more appropriate newborn screening guidelines to protect the health and welfare of newborns for treatable disorders.*

(j) *In performing the duties under subsection (i), the secretary of health and environment shall appoint an advisory council to advise the department of health and environment on implementation of subsection (i).*

(k) *The department of health and environment shall periodically review the newborn screening program to determine the efficacy and cost effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening program.*

Sec. 24. K.S.A. 65-1,172 is hereby amended to read as follows: 65-1,172. (a) Confidential data collected pursuant to this act shall be securely locked and used only for the following purposes:

- (1) Ensuring the quality and completeness of the registry data.
- (2) Investigating the nature and cause of abnormal clusterings of cancer and the possible cancer risk related to having an abortion.
- (3) Offering through the personal physician, to persons with cancer, access to cancer diagnostics and treatments not available except through clinical trials. As long as such trials are conducted with the informed, written consent of the cancer patient, the confidential data is approved for release by the secretary for the purpose of such clinical trials and the clinical trials are approved by the clinical entity.
- (4) Releasing data back to the institution or individual which reported cases as long as such release includes only those cases previously reported by the requesting institution or individual.
- (5) As part of an exchange agreement with another state, confidential data collected on a resident of another state may be released to the cancer registry of that person's state of residence if that state has confidentiality requirements that provide assurance of protection of confidentiality equivalent to that provided by Kansas under this act.
- (6) Releasing information upon consent, in writing, of the person who is the subject of the information, or if such person is under 18 years of age, by such person's parent or guardian.

(7) *Follow up for public health purposes. With the approval of the health and environmental institutional review board as provided for in title 45, part 46 of the code of federal regulations, the secretary of health and environment or the secretary's designee, may contact individuals who are the subjects of the reports made pursuant to K.S.A. 65-1,169, and amendments thereto. The secretary shall inform such individuals that the participation in such projects is voluntary and may only be conducted with the written consent of the person who is the subject of the information or with the informed consent of a parent or legal guardian if the person is under 18 years of age. Informed consent is not required if the person who is the subject of the information is deceased.*

(b) *The secretary shall adopt rules and regulations to define who may be authorized to conduct such follow up studies and to develop criteria for obtaining informed consent.*

New Sec. 25. (a) This section shall be cited as the umbilical cord donation information act.

(b) A health care provider providing health care services to a pregnant woman during the last trimester of such pregnancy, which health care services are directly related to such pregnancy, shall whenever practical advise such person of options to donate an umbilical cord following the delivery of a newborn child. Provision in a timely manner of information prepared by the department of health and environment pursuant to subsection (c) shall constitute compliance with this subsection.

(c) The department of health and environment shall, by July 1, 2007, prepare and make information available on its website that includes the following:

- (1) The medical processes involved in the collection of umbilical cords;
- (2) the medical risks to a mother and the newborn child of umbilical cord collection;
- (3) the current and potential future medical uses and benefits of umbilical cord collection to the birth mother, the newborn child and the biological family;
- (4) the current and potential future medical uses and benefits of umbilical cord collection to persons who are not biologically related to the birth mother or the newborn child;
- (5) any costs that may be incurred by a pregnant woman who chooses to make an umbilical cord donation;
- (6) options for ownership and future use of the donated material; and
- (7) the availability in this state of umbilical cord donations.

Sec. 26. K.S.A. 65-3505 is hereby amended to read as follows: 65-3505. (a) Every individual who holds a valid license as an administrator issued by the board shall apply to the board for renewal of such license in accordance with rules and regulations adopted by the board and report any facts requested by the board on forms provided for such purpose.

(b) Upon making an application for a renewal of license, such individual shall pay a renewal fee to be fixed by rules and regulations and shall submit evidence satisfactory to the board that during the period immediately preceding application for renewal the applicant has attended a program or course of study as provided by the rules and regulations of the board. Any individual who submits an application for a renewal of license within 30 days after the date of expiration shall also pay a late renewal fee fixed by rules and regulations. Any individual who submits an application for a renewal of license after the thirty-day period following the date of expiration shall be considered as having a license that has lapsed for failure to renew and shall be reissued a license only after the individual has been reinstated under subsection (d).

(c) Upon receipt of such application for renewal of license, the renewal fee and the evidence required, the board shall issue a license to such administrator.

(d) An administrator who has been duly licensed in this state, whose license has not been revoked or suspended, and whose license has expired because of temporary abandonment of the practice of nursing home administration, or has moved from the state, or for such other reason, may be licensed within the state upon complying with the provisions of this section for renewal of license, filing with the board an application, and submission of a renewal fee and reinstatement fee fixed by rules and regulations.

(e) ~~Notwithstanding the foregoing provisions of this section, the board may enter into reciprocal relations with boards of other states or endorse the training acquired by an applicant whereby licenses may be granted, without examination and upon payment of a licensure fee and a reciprocity fee, to duly licensed administrators from other states, provided the requirements for licensure of the state from which the applicant applies are as high as those in Kansas and the applicant is favorably recommended, in writing, by the board of the state in which the applicant is licensed. The board may grant a license to any person who, at the time of application, is licensed as an adult care home administrator in another jurisdiction if the board determines:~~

(1) *That the requirements of such jurisdiction for such licensure are substantially the equivalent of the requirements of this state; or that the applicant demonstrates on forms provided by the board continuous licensure as an adult care home administrator during the five years immediately preceding the application with at least the minimum professional experience during that time as established by rules and regulations of the board;*

(2) *that the candidate has not had disciplinary actions of a serious nature brought by a licensing board or agency; and*

(3) *that the applicant for a license under this subsection pays a reciprocity application fee and a reciprocity license fee established by the board by rules and regulations, neither of which shall exceed \$200.*

(f) The expiration date of each license issued or renewed shall be established by rules and regulations of the board. Subject to the provisions of this subsection each license shall be renewable on a biennial basis upon the filing of a renewal application prior to the expiration date of the license and upon payment of the renewal fee established pursuant to rules and regulations of the board. To provide for a system of biennial renewal of licenses the board may provide by rules and regulations that licenses issued or renewed for the first time after the effective date of this act may expire less than two years from the date of issuance or renewal. In each case in which a license is issued or renewed for a period of time less than two years, the board shall prorate to the nearest whole month the license or renewal fee established pursuant to rules and regulations. No proration shall be made under this subsection (f) on delinquent license renewals or on temporary licenses.

New Sec. 27. (a) If, upon inspection for compliance with federal law pursuant to oversight by the centers for medicare and medicaid services of a medical care facility, adult care home, assisted living facility or special hospital by an officer of the state fire marshal, deficiencies are found, such medical care facility, adult care home, assisted living facility or special hospital within 10 calendar days after receipt of the statement of deficiencies, may make a written request to the state fire marshal for informal dispute resolution. The medical care facility, adult care home, assisted living facility or special hospital may make not more than one request for a two-tier informal dispute resolution per inspection to dispute any deficiencies with which such medical care facility, adult care home, assisted living facility

or special hospital disagrees, based on the statement of deficiencies and any other materials submitted, except that such medical care facility, adult care home, assisted living facility or special hospital shall have an opportunity to supplement such material prior to a disposition of the claim. The state fire marshal shall hold an informal dispute resolution meeting with such medical care facility, adult care home, assisted living facility or special hospital in person upon request of the medical care facility, adult care home, assisted living facility or special hospital. The first-tier of the informal dispute resolution shall be conducted within 30 days of receipt of the written request from the medical care facility, adult care home, assisted living facility or special hospital. The medical care facility, adult care home, assisted living facility or special hospital shall be notified of the results of the first-tier informal dispute resolution on or before 10 days of the disposition being rendered.

(b) A written request for informal dispute resolution shall:

- (1) State the specific deficiencies being disputed;
- (2) provide a detailed explanation of the basis for the dispute; and
- (3) include any supporting documentation, including any information that was not available at the time of the inspection.

(c) The medical care facility, adult care home, assisted living facility or special hospital may challenge the decision of the first-tier informal dispute resolution and may request completion of the second-tier of informal dispute resolution by a three-person panel appointed by the state fire marshal. No more than one panel member shall be an employee of the state fire marshal, and such member shall not be the person who conducted the first-tier of the informal dispute resolution. At least two panel members shall not be employees of the state fire marshal and shall have suitable expertise to review the disputed deficiency or deficiencies. The second-tier informal dispute resolution shall take place within 30 days of the request by the medical care facility, adult care home, assisted living facility or special hospital. The medical care facility, adult care home, assisted living facility or special hospital shall be notified of the results of the second-tier informal dispute resolution within 10 days of the disposition being rendered.

(d) The state fire marshal may fix, charge and collect a fee from a medical care facility, adult care home, assisted living facility or special hospital requesting a second-tier informal dispute resolution review panel to recover all or part of the costs incurred by state fire marshal for holding such second-tier informal dispute resolution panel under this section that shall not exceed \$250.

(e) Any decision or proposed resolution of the informal dispute resolution panel under this section shall be advisory to the state fire marshal.

(f) The state fire marshal shall adopt rules and regulations to implement the provisions of this section.

(g) As used in this section:

- (1) "Assisted living facility" shall have the meaning ascribed thereto in K.S.A. 39-923, and amendments thereto;
- (2) "medical care facility" shall have the meaning ascribed thereto in K.S.A. 65-425, and amendments thereto;
- (3) "adult care home" shall have the meaning ascribed thereto in K.S.A. 39-923, and amendments thereto; and
- (4) "special hospital" shall have the meaning ascribed thereto in K.S.A. 65-425, and amendments thereto.

Sec. 28. K.S.A. 40-2123 is hereby amended to read as follows: 40-2123. (a) The plan shall offer coverage to every eligible person pursuant to which such person's covered expenses shall be indemnified or reimbursed subject to the provisions of K.S.A. 40-2124 and amendments thereto.

(b) Except for those expenses set forth in subsection (c) of this section, expenses covered under the plan shall include expenses for:

- (1) Services of persons licensed to practice medicine and surgery which are medically necessary for the diagnosis or treatment of injuries, illnesses or conditions;
- (2) services of advanced registered nurse practitioners who hold a certificate of qualification from the board of nursing to practice in an expanded role or physicians assistants acting under the direction of a responsible physician when such services are provided at the

direction of a person licensed to practice medicine and surgery and meet the requirements of paragraph (b)(1) above;

(3) services of licensed dentists when such procedures would otherwise be performed by persons licensed to practice medicine and surgery;

(4) emergency care, surgery and treatment of acute episodes of illness or disease as defined in the plan and provided in a general hospital or ambulatory surgical center as such terms are defined in K.S.A. 65-425, and amendments thereto;

(5) medically necessary diagnostic laboratory and x-ray services;

(6) drugs and controlled substances prescribed by a practitioner, as defined in ~~subsection (x) of~~ K.S.A. 65-1626 and amendments thereto, or drugs and controlled substances prescribed by a mid-level practitioner as defined in ~~subsection (ii) of~~ K.S.A. 65-1626 and amendments thereto. Coverage for outpatient prescriptions shall be subject to a mandatory 50% coinsurance provision, and coverage for prescriptions administered to inpatients shall be subject to a coinsurance provision as established in the plan; and

(7) subject to the approval of the commissioner, the board shall also review and recommend the inclusion of coverage for mental health services and such other primary and preventive health care services as the board determines would not materially impair affordability of the plan.

(c) Expenses not covered under the plan shall include expenses for:

(1) Illness or injury due to an act of war;

(2) services rendered prior to the effective date of coverage under this plan for the person on whose behalf the expense is incurred;

(3) services for which no charge would be made in the absence of insurance or for which the insured bears no legal obligation to pay;

(4) (A) services or charges incurred by the insured which are otherwise covered by:

(i) Medicare or state law or programs;

(ii) medical services provided for members of the United States armed forces and their dependents or for employees of such armed forces;

(iii) military service-connected disability benefits;

(iv) other benefit or entitlement programs provided for by the laws of the United States (except title XIX of the social security act of 1965);

(v) workers compensation or similar programs addressing injuries, diseases, or conditions incurred in the course of employment covered by such programs;

(vi) benefits payable without regard to fault pursuant to any motor vehicle or other liability insurance policy or equivalent self-insurance.

(B) This exclusion shall not apply to services or charges which exceed the benefits payable under the applicable programs listed above and which are otherwise eligible for payment under this section.

(5) Services the provision of which is not within the scope of the license or certificate of the institution or individual rendering such service;

(6) that part of any charge for services or articles rendered or prescribed which exceeds the rate established by K.S.A. 40-2131 and amendments thereto for such services;

(7) services or articles not medically necessary;

(8) care which is primarily custodial or domiciliary in nature;

(9) cosmetic surgery unless provided as the result of an injury or medically necessary surgical procedure;

(10) eye surgery if corrective lenses would alleviate the problem;

(11) experimental services or supplies not generally recognized as the normal mode of treatment for the illness or injury involved;

(12) service of a blood donor and any fee for failure of the insured to replace the first three pints of blood provided in each calendar year; and

(13) personal supplies or services provided by a health care facility or any other non-medical or nonprescribed supply or service.

(d) Except as expressly provided for in this act, no law requiring the coverage or the offer of coverage of a health care service or benefit shall apply to the plan.

(e) A plan may incorporate provisions that will direct covered persons to the most appropriate lowest cost health care provider available.

Sec. 29. K.S.A. 2006 Supp. 60-4403 is hereby amended to read as follows: 60-4403. (a) A licensed health care professional who administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort does not violate K.S.A. 21-3406 and amendments thereto unless the medications or procedures are knowingly administered, prescribed or dispensed with the intent to cause death. A mid-level practitioner as defined in ~~subsection (ii) of~~ K.S.A. 65-1626 and amendments thereto who prescribes medications or procedures to relieve another person's pain or discomfort does not violate K.S.A. 21-3406 and amendments thereto unless the medications or procedures are knowingly prescribed with the intent to cause death.

(b) A licensed health care professional, family member or other legally authorized person who participates in the act of, or the decision making process which results in the withholding or withdrawal of a life-sustaining procedure does not violate K.S.A. 21-3406 and amendments thereto.

(c) Providing spiritual treatment through prayer alone, in lieu of medical treatment, does not violate K.S.A. 21-3406 and amendments thereto.

Sec. 30. K.S.A. 2006 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- (1) A practitioner or pursuant to the lawful direction of a practitioner;
- (2) the patient or research subject at the direction and in the presence of the practitioner; or
- (3) a pharmacist as authorized in K.S.A. 65-1635a and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the internal revenue code, complies with any one of the following: (1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (2) the wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

~~(d)~~ (d) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

~~(e)~~ (e) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

~~(f)~~ (f) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(g) "Chain pharmacy warehouse" means a permanent physical location for drugs or devices, or both, that act as a central warehouse and perform intracompany sales or transfers of prescription drugs or devices to chain pharmacies that have the same ownership or control. Chain pharmacy warehouses must be registered as wholesale distributors.

(h) "Co-licensee" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug and the national drug code on the drug product label shall be used to determine the identity of the drug manufacturer.

~~(i)~~ (i) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

~~(j)~~ (j) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient

degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(k) “Dispense” means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

(l) “Dispenser” means a practitioner or pharmacist who dispenses prescription medication.

(m) “Distribute” means to deliver, other than by administering or dispensing, any drug.

(n) “Distributor” means a person who distributes a drug.

(o) “Drop shipment” means the sale, by a manufacturer, that manufacturer’s co-licensee, that manufacturer’s third party logistics provider, or that manufacturer’s exclusive distributor, of the manufacturer’s prescription drug, to a wholesale distributor whereby the wholesale distributor takes title but not possession of such prescription drug and the wholesale distributor invoices the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug, and the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug receives delivery of the prescription drug directly from the manufacturer, that manufacturer’s co-licensee, that manufacturer’s third party logistics provider, or that manufacturer’s exclusive distributor, of such prescription drug. Drop shipment shall be part of the “normal distribution channel”.

(p) “Drug” means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term “drug” shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated prior to its repeal.

(q) “Durable medical equipment” means technologically sophisticated medical devices that may be used in a residence, including the following: (1) Oxygen and oxygen delivery system; (2) ventilators; (3) respiratory disease management devices; (4) continuous positive airway pressure (CPAP) devices; (5) electronic and computerized wheelchairs and seating systems; (6) apnea monitors; (7) transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss cutaneous pressure management devices; (9) sequential compression devices; (10) feeding pumps; (11) home phototherapy devices; (12) infusion delivery devices; (13) distribution of medical gases to end users for human consumption; (14) hospital beds; (15) nebulizers; (16) other similar equipment determined by the board in rules and regulations adopted by the board.

(r) “Exclusive distributor” means any entity that: (1) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution or other services on behalf of a manufacturer and who takes title to that manufacturer’s prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer’s prescription drug; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must be an authorized distributor of record.

(s) “Electronic transmission” means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(t) “Generic name” means the established chemical name or official name of a drug or drug product.

(u) (1) “Institutional drug room” means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the *revised* Kansas code for care of children and the revised Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(v) "*Intracompany transaction*" means any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership or control of a corporate entity, or any transaction or transfer between co-licensees of a co-licensed product.

~~(w)~~ (w) "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for the mentally retarded.

~~(x)~~ (x) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(y) "Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs and devices.

(z) "Normal distribution channel" means a chain of custody for a prescription-only drug that goes from a manufacturer of the prescription-only drug, from that manufacturer to that manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, directly or by drop shipment, to:

(1) A pharmacy to a patient or to other designated persons authorized by law to dispense or administer such drug to a patient;

(2) a wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

~~(aa)~~ (aa) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

~~(bb)~~ (bb) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

~~(cc)~~ (cc) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time

basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(~~tt~~) (*dd*) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(~~tt~~) (*ee*) "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

(~~tt~~) (*ff*) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other non-discretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(~~tt~~) (*gg*) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(~~tt~~) (*hh*) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(~~tt~~) (*ii*) "Prescription" means, according to the context, either a prescription order or a prescription medication.

(~~tt~~) (*jj*) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(~~tt~~) (*kk*) "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 United States Code section 353, as amended) to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(~~tt~~) (*ll*) "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

(~~tt~~) (*mm*) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(~~tt~~) (*nn*) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

~~(ff)~~ (oo) “Retail dealer” means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

~~(gg)~~ (pp) “Secretary” means the executive secretary of the board.

~~(qq)~~ (qq) “Third party logistics provider” means an entity that: (1) Provides or coordinates warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must also be an authorized distributor of record.

~~(hh)~~ (rr) “Unprofessional conduct” means:

- (1) Fraud in securing a registration or permit;
- (2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;
- (3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;
- (4) intentionally falsifying or altering records or prescriptions;
- (5) unlawful possession of drugs and unlawful diversion of drugs to others;
- (6) willful betrayal of confidential information under K.S.A. 65-1654 and amendments thereto;
- (7) conduct likely to deceive, defraud or harm the public;
- (8) making a false or misleading statement regarding the licensee’s professional practice or the efficacy or value of a drug;
- (9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee’s professional practice; or
- (10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

~~(ii)~~ (ss) “Mid-level practitioner” means an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130 and amendments thereto or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08 and amendments thereto.

~~(jj)~~ (tt) “Vaccination protocol” means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

~~(kk)~~ (uu) “Veterinary medical teaching hospital pharmacy” means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a non-human.

(vv) “Wholesale distributor” means any person engaged in wholesale distribution of prescription drugs or devices in or into the state, including, but not limited to, manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers’ and distributors’ warehouses, co-licensees, exclusive distributors, third party logistics providers, chain pharmacy warehouses that conduct wholesale distributions, and wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distributions. Wholesale distributor shall not include persons engaged in the sale of durable medical equipment to consumers or patients.

(ww) “Wholesale distribution” means the distribution of prescription drugs or devices by wholesale distributors to persons other than consumers or patients, and includes the transfer of prescription drugs by a pharmacy to another pharmacy if the total number of units of transferred drugs during a twelve-month period does not exceed 5% of the total

number of all units dispensed by the pharmacy during the immediately preceding twelve-month period. Wholesale distribution does not include: (1) The sale, purchase or trade of a prescription drug or device, an offer to sell, purchase or trade a prescription drug or device or the dispensing of a prescription drug or device pursuant to a prescription; (2) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device for emergency medical reasons; (3) intracompany transactions, as defined in this section, unless in violation of own use provisions; (4) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device among hospitals, chain pharmacy warehouses, pharmacies or other health care entities that are under common control; (5) the sale, purchase or trade of a prescription drug or device or the offer to sell, purchase or trade a prescription drug or device by a charitable organization described in 503 (c)(3) of the internal revenue code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law; (6) the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a prescription drug or device for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations; (7) the transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing agreement; (8) the sale, purchase or trade of blood and blood components intended for transfusion; (9) the return of recalled, expired, damaged or otherwise non-salable prescription drugs, when conducted by a hospital, health care entity, pharmacy, chain pharmacy warehouse or charitable institution in accordance with the board's rules and regulations; (10) the sale, transfer, merger or consolidation of all or part of the business of a retail pharmacy or pharmacies from or with another retail pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets, in accordance with the board's rules and regulations; (11) the distribution of drug samples by manufacturers' and authorized distributors' representatives; (12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use; or (13) the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a third party returns processor in accordance with the board's rules and regulations.

Sec. 31. K.S.A. 65-1627 is hereby amended to read as follows: 65-1627. (a) The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that:

- (1) The license was obtained by fraudulent means;
- (2) the licensee has been convicted of a felony and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;
- (3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency;
- (4) the licensee is addicted to the liquor or drug habit to such a degree as to render the licensee unfit to practice the profession of pharmacy;
- (5) the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act;
- (6) the licensee is found by the board to have filled a prescription not in strict accordance with the directions of the practitioner or a mid-level practitioner;
- (7) the licensee is found to be mentally or physically incapacitated to such a degree as to render the licensee unfit to practice the profession of pharmacy;
- (8) the licensee has violated any of the provisions of the pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act;
- (9) the licensee has failed to comply with the requirements of the board relating to the continuing education of pharmacists;
- (10) the licensee as a pharmacist in charge or consultant pharmacist under the provisions of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto has failed to comply with the requirements of subsection (c) or (d) of K.S.A. 65-1648 and amendments thereto;

(11) the licensee has knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement;

(12) the licensee has had a license to practice pharmacy revoked, suspended or limited, has been censured or has had other disciplinary action taken, or voluntarily surrendered the license after formal proceedings have been commenced, or has had an application for license denied, by the proper licensing authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;

(13) the licensee has self-administered any controlled substance without a practitioner's prescription order or a mid-level practitioner's prescription order; or

(14) the licensee has assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. ~~2002 Supp.~~ 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. ~~2002 Supp.~~ 60-4405 and amendments thereto; or

(15) the licensee has failed to furnish the board, its investigators or its representatives any information legally requested by the board.

(b) In determining whether or not the licensee has violated subsection (a)(3), (a)(4), (a)(7) or (a)(13), the board upon reasonable suspicion of such violation has authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate. To determine whether reasonable suspicion of such violation exists, the investigative information shall be presented to the board as a whole. Information submitted to the board as a whole and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of pharmacy with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice pharmacy and who shall accept the privilege to practice pharmacy in this state by so practicing or by the making and filing of a renewal application to practice pharmacy in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action under subsection (a) against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) The board may suspend, revoke, place in a probationary status or deny a renewal of any retail dealer's permit issued by the board when information in possession of the board discloses that such operations for which the permit was issued are not being conducted according to law or the rules and regulations of the board.

(e) The board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon a finding that: (1) Such pharmacy has been operated in such manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; (2) the owner or any pharmacist employed at such pharmacy is convicted, subsequent to such

owner's acquisition of or such employee's employment at such pharmacy, of a violation of the pharmacy act or uniform controlled substances act of the state of Kansas, or the federal or state food, drug and cosmetic act; (3) the owner or any pharmacist employed by such pharmacy has fraudulently claimed money for pharmaceutical services; or (4) the registrant has had a registration revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for registration denied, by the proper registering authority of another state, territory, District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(f) A registration to manufacture ~~or~~ drugs, to distribute at wholesale a drug, *to sell durable medical equipment* or a registration for the place of business where any such operation is conducted may be suspended, revoked, placed in a probationary status or the renewal of such registration may be denied by the board upon a finding that the registrant or the registrant's agent: (1) Has materially falsified any application filed pursuant to or required by the pharmacy act of the state of Kansas; (2) has been convicted of a felony under any federal or state law relating to the manufacture or distribution of drugs; (3) has had any federal registration for the manufacture or distribution of drugs suspended or revoked; (4) has refused to permit the board or its duly authorized agents to inspect the registrant's establishment in accordance with the provisions of K.S.A. 65-1629 and amendments thereto; (5) has failed to keep, or has failed to file with the board or has falsified records required to be kept or filed by the provisions of the pharmacy act of the state of Kansas or by the board's rules and regulations; or (6) has violated the pharmacy act of the state of Kansas or rules and regulations adopted by the state board of pharmacy under the pharmacy act of the state of Kansas or has violated the uniform controlled substances act or rules and regulations adopted by the state board of pharmacy under the uniform controlled substances act.

(g) Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

Sec. 32. K.S.A. 2006 Supp. 65-1635a is hereby amended to read as follows: 65-1635a.

(a) A pharmacist *or a pharmacy student or intern who is working under the direct supervision and control of a pharmacist* may administer vaccine to a person 18 years of age or older pursuant to a vaccination protocol if the pharmacist, *pharmacy student or intern* has successfully completed a course of study and training, approved by the accreditation council for pharmacy or the board, in vaccination storage, protocols, injection technique, emergency procedures and recordkeeping *and has taken a course in cardiopulmonary resuscitation (CPR) and has a current CPR certificate when administering vaccine*. A pharmacist *or pharmacy student or intern* who successfully completes such a course of study and training shall maintain proof of completion and, upon request, provide a copy of such proof to the board.

(b) All vaccinees will be given a written immunization record for their personal files. The administering pharmacist *or pharmacist supervising an administering pharmacy student or intern* shall promptly report a record of the immunization to the vaccinee's primary-care provider by electronic facsimile or mail. If the vaccinee does not have a primary care provider, then the administering pharmacist *or pharmacist supervising an administering pharmacy student or intern* shall promptly report a record of the immunization to the person licensed to practice medicine and surgery by the state board of healing arts who has entered into the vaccination protocol with the pharmacist. The immunization will also be reported to appropriate county or state immunization registries.

(c) A pharmacist, *pharmacy student or intern* may not delegate to any person the authority granted under this act to administer a vaccine.

(d) This section shall be a part of and supplemental to the pharmacy act of the state of Kansas.

Sec. 33. K.S.A. 2006 Supp. 65-1643 is hereby amended to read as follows: 65-1643. It shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and

number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board: (1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board; (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; (3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

(e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to mid-level practitioners, to pharmacists or to medical care facilities.

(f) Except as otherwise provided in this subsection (f), for any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection ~~(tt)~~ (dd) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

(g) For any person to sell any drugs manufactured and sold only in the state of Kansas, unless the label and directions on such drugs shall first have been approved by the board.

(h) For any person to operate an institutional drug room without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1637a and amendments thereto and any rules and regulations adopted pursuant thereto.

(i) For any person to be a pharmacy student without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy student registration fee of \$25 to the board.

(j) For any person to operate a veterinary medical teaching hospital pharmacy without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1662 and amendments thereto and any rules and regulations adopted pursuant thereto.

(k) For any person to sell or distribute in a pharmacy a controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, unless:

(1) (A) Such controlled substance is sold or distributed by a licensed pharmacist, a registered pharmacy technician or a pharmacy intern or clerk supervised by a licensed pharmacist; and

(B) any person purchasing, receiving or otherwise acquiring any such controlled substance produces a photo identification showing the date of birth of the person and signs a log. The log or database required by the board shall be available for inspection during regular business hours to the board of pharmacy and any law enforcement officer; or

(2) there is a lawful prescription.

(l) For any person to sell or distribute in a pharmacy four or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, to a specific customer within any seven-day period.

(m) *For any person to sell or lease or offer for sale or lease durable medical equipment without first obtaining a registration from the board, in accordance with rules and regulations adopted by the board, except that this subsection shall not apply to:*

(1) *Sales not made in the regular course of the person's business; or*

(2) *sales by charitable organizations exempt from federal income taxation pursuant to the internal revenue code of 1986, as amended.*

Sec. 34. K.S.A. 65-1645 is hereby amended to read as follows: 65-1645. (a) Application for registrations or permits under K.S.A. 65-1643 and amendments thereto shall be made on a form prescribed and furnished by the board. Applications for registration to distribute at wholesale any drugs shall contain such information as may be required by the board in accordance with the provisions of K.S.A. 65-1655 and amendments thereto. The application shall be accompanied by the fee prescribed by the board under the provisions of this section. When such application and fees are received by the executive secretary of the board on or before the due date, such application shall have the effect of temporarily renewing the applicant's registration or permit until actual issuance or denial of the renewal. However, if at the time of filing a proceeding is pending before the board which may result in the suspension, probation, revocation or denial of the applicant's registration or permit, the board may declare, by emergency order, that such application for renewal shall not have the effect of temporarily renewing such applicant's registration or permit. Separate applications shall be made and separate registrations or permits issued for each separate place at which is carried on any of the operations for which a registration or permit is required by K.S.A. 65-1643 and amendments thereto except that the board may provide for a single registration for a business entity registered to manufacture any drugs or registered to distribute at wholesale any drugs and operating more than one facility within the state, or for a parent entity with divisions, subsidiaries or affiliate companies, or any combination thereof, within the state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(b) The nonrefundable fees required for the issuing of the licenses, registrations or permits under the pharmacy act of the state of Kansas shall be fixed by the board as herein provided, subject to the following:

- (1) Pharmacy, new registration not more than \$150, renewal not more than \$125;
- (2) pharmacist, new license by examination not more than \$350;
- (3) pharmacist, reinstatement application fee not more than \$250;
- (4) pharmacist, biennial renewal fee not more than \$200;
- (5) pharmacist, evaluation fee not more than \$250;
- (6) pharmacist, reciprocal licensure fee not more than \$250;
- (7) pharmacist, penalty fee, not more than \$500;
- (8) manufacturer, new registration not more than \$500, renewal not more than \$400;
- (9) wholesaler, new registration not more than \$500, renewal not more than \$400, except that a wholesaler dealing exclusively in nonprescription drugs, the manufacturing, dis-

tributing or dispensing of which does not require registration under the uniform controlled substances act, shall be assessed a fee for registration and reregistration not to exceed \$50;

- (10) special auction not more than \$50;
- (11) samples distribution not more than \$50;
- (12) institutional drug room, new registration not more than \$40, renewal not more than \$35;
- (13) retail dealer selling more than 12 different nonprescription drug products, new permit not more than \$12, renewal not more than \$12;
- (14) certification of grades for each applicant for examination and registration not more than \$25; ~~or~~
- (15) veterinary medical teaching hospital pharmacy, new registration not more than \$40, renewal not more than \$35; *or*
- (16) *durable medical equipment registration fee, not more than \$300.*

(c) For the purpose of fixing fees, the board may establish classes of retail dealers' permits for retail dealers selling more than 12 different nonprescription drug products, and the board may fix a different fee for each such class of permit.

(d) The board shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing fiscal year and shall fix by rules and regulations the fees authorized for such year at the sum deemed necessary for such purposes. The fees fixed by the board under this section immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(e) The board may deny renewal of any registration or permit required by K.S.A. 65-1643 and amendments thereto on any ground which would authorize the board to suspend, revoke or place on probation a registration or permit previously granted pursuant to the provisions of K.S.A. 65-1643 and amendments thereto. Registrations and permits issued under the provisions of K.S.A. 65-1643 and 65-1644 and amendments thereto shall be conspicuously displayed in the place for which the registration or permit was granted. Such registrations or permits shall not be transferable. All such registrations and permits except retail dealer permits shall expire on June 30 following date of issuance. Retail dealers' permits shall expire on the last day of February. All registrations and permits shall be renewed annually. Application blanks for renewal of registrations and permits shall be mailed by the board to each registrant or permittee at least 30 days prior to expiration of the registration or permit. If application for renewal is not made before 30 days after such expiration, the existing registration or permit shall lapse and become null and void on the date of its expiration, and no new registration or permit shall be granted except upon payment of the required renewal fee plus a penalty equal to the renewal fee. Failure of any registrant or permittee to receive such application blank shall not relieve the registrant or permittee from the penalty hereby imposed if the renewal is not made as prescribed.

(f) In each case in which a license of a pharmacist is issued or renewed for a period of time less than two years, the board shall prorate to the nearest whole month the license or renewal fee established pursuant to ~~K.S.A. 65-1645 and amendments thereto~~ *this section.*

(g) The board may require that fees paid for any examination under the pharmacy act of the state of Kansas be paid directly to the examination service by the person taking the examination.

Sec. 35. K.S.A. 65-1655 is hereby amended to read as follows: 65-1655. (a) The board shall require an applicant for registration to distribute at wholesale any drugs under K.S.A. 65-1643 and amendments thereto, or an applicant for renewal of such a registration, to provide the following information:

- (1) The name, full business address and telephone number of the applicant;
- (2) all trade or business names used by the applicant;
- (3) addresses, telephone numbers, and the names of contact persons for all facilities used by the applicant for the storage, handling and distribution of prescription drugs;
- (4) the type of ownership or operation of the applicant;
- (5) the name of the owner or operator, or both, of the applicant, including:
 - (A) If a person, the name of the person;
 - (B) if a partnership, the name of each partner, and the name of the partnership;

(C) if a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation;

(D) if a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) such other information as the board deems appropriate. Changes in any information in this subsection (a) shall be submitted to the board as required by such board.

(b) In reviewing the qualifications for applicants for initial registration or renewal of registration to distribute at wholesale any drugs, the board shall consider the following factors:

(1) Any convictions of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(2) any felony convictions of the applicant under federal or state laws;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(5) suspension or revocation by federal, state or local government of any license or registration currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with registration requirements under previously granted registrations, if any;

(7) compliance with requirements to maintain or make available to the board or to federal state or local law enforcement officials those records required by federal food, drug and cosmetic act, and rules and regulations adopted pursuant thereto; and

(8) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

(c) After consideration of the qualifications for applicants for registration to distribute at wholesale any drugs, the board may deny an initial application for registration or application for renewal of a registration if the board determines that the granting of such registration would not be in the public interest. The authority of the board under this subsection to deny a registration to distribute at wholesale any drugs shall be in addition to the authority of the board under subsection (e) of K.S.A. 65-1627 and amendments thereto or subsection (e) of K.S.A. 65-1645 and amendments thereto.

(d) The board by rules and regulations shall require that personnel employed by persons registered to distribute at wholesale any drugs have appropriate education or experience, or both, to assume responsibility for positions related to compliance with state registration requirements.

(e) The board by rules and regulations may implement this section to conform to any requirements of the federal prescription drug marketing act of 1987 (21 U.S.C. 321 et seq.) in effect on the effective date of this act.

(f) *Each facility that engages in wholesale distribution must undergo an inspection by the board or a third party recognized by the board to inspect and accredit wholesale distributors for the purpose of inspecting the wholesale distribution operations prior to initial registration and periodically thereafter in accordance with a schedule to be determined by the board but not less than once every three years. The board shall have the authority to waive registration requirements for wholesale distributors that are accredited by an accrediting agency approved by the board. The board shall adopt rules and regulations to establish standards and requirements for the issuance and maintenance of a wholesale distributor registration, including inspections of wholesale distributor facilities domiciled in the state.*

(1) *Individual or third party inspectors must demonstrate to the board that they have received training or demonstrate familiarity with the inspection standards. Evidence such as a letter of certification from a training program, notice from the inspector's employing third party organization or other means recognized by the board shall be accepted as meeting the requirement.*

(2) *The board may register a wholesale distributor that is licensed or registered under the laws of another state if:*

(A) *The requirements of that state are deemed by the board to be substantially equivalent; or*

(B) *the applicant is inspected and accredited by a third party recognized and approved by the board.*

(g) *A person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices engaged in wholesale distribution need only satisfy the minimum federal requirements for licensure provided in federal food and drug administration regulations 21 C.F.R. Part 205 to provide wholesale distribution services.*

(h) *The board by rule and regulation shall establish standards and requirements for the issuance and maintenance of a wholesale distributor registration, including, but not limited to, requirements regarding the following: (1) An application and renewal fee; (2) a surety bond; (3) registration and periodic inspections; (4) certification of a designated representative; (5) designation of a registered agent; (6) storage of drugs and devices; (7) handling, transportation and shipment of drugs and devices; (8) security; (9) examination of drugs and devices and treatment of those found to be unacceptable as defined by the board; (10) due diligence regarding other wholesale distributors; (11) creation and maintenance of records, including transaction records; and (12) procedures for operation.*

(†) (i) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.”;

And by renumbering sections accordingly;

Also on page 86, in line 3, after “K.S.A.” where it appears for the first time by inserting “39-719d, 40-2123,”; also in line 3, after “46-2601” by inserting “, 65-1,172, 65-1627, 65-1645, 65-1655 and 65-3505”; also in line 3, after “Supp.” by inserting “60-4403, 65-180, 65-1626, 65-1626c, 65-1635a, 65-1643, 65-2901, 65-2912.”;

In the title, in line 10, by striking all after “ACT”; by striking all in lines 11 through 14 and inserting: “concerning public health; enacting the foundations of health reform of 2007; relating to administration, review and expansion of state medicaid plans and programs; amending the pharmacy act and the physical therapy practice act; relating to health care information; adult care homes and facilities for safety net clinics; amending K.S.A. 40-2123, 46-2601, 65-1,172, 65-1627, 65-1645, 65-1655 and 65-3505 and K.S.A. 2006 Supp. 60-4403, 65-180, 65-1626, 65-1635a, 65-1643, 65-2901, 65-2912, 75-2973, 75-4319 and 75-7408 and repealing the existing sections; also repealing K.S.A. 39-719d and K.S.A. 2006 Supp. 65-1626c.”;

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

BOB BETHELL
JEFF COLYER
JERRY HENRY
Conferees on part of House

DWAYNE UMBARGER
JIM BARNETT
LAURA KELLY
Conferees on part of Senate

Senator Barnett moved the Senate adopt the Conference Committee Report on **H Sub for SB 11**.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Haley, Palmer.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I do vote yes on **SB 11**. It is a good start to healthcare reform in our

state. However, I have concerns about the premium assistance program and the fiscal impact this will have not only in 2008 but also in the years to come.—JULIA LYNN

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 31**, 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. 31, as amended by House Committee of the Whole, as follows:

On page 1, after line 15, by inserting:

“New Section 1. (a) Cities are authorized to enter into contracts for collection services for debts owed to municipal courts or restitution owed under an order of restitution. On and after July 1, 2007, the cost of collection shall be paid by the defendant as an additional court cost in all cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant’s failure to pay court debt and restitution.

(b) The following terms shall mean:

(1) “Beneficiary under an order of restitution” means the victim or victims of a crime to whom a municipal court has ordered restitution be paid;

(2) “contracting agent” means a person, firm, agency or other entity who contracts hereunder to provide collection services;

(3) “cost of collection” means the fee specified in contracts hereunder to be paid to or retained by a contracting agent for collection services and shall not exceed 33% of the amount collected. The cost of collection shall be paid from the amount collected, but shall not be deducted from the debts owed to municipal courts or restitution. Cost of collection also includes any filing fee required under K.S.A. 60-4303, and amendments thereto; and

(4) “debts owed to municipal courts” means any assessment of court costs, fines, fees, moneys expended by the city in providing counsel and other defense services to indigent defendants or other charges which a municipal court judge has ordered to be paid to the court, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law. “Debts owed to municipal courts” also includes the cost of collection when collection services of a contracting agent hereunder are utilized.

(c) Municipal courts are authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding debts owed the municipal courts.

(d) Any beneficiary under an order of restitution entered by a municipal court is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

(e) Contracts shall provide for the payment of any amounts collected to the clerk of the municipal court for the court in which the debt being collected originated, after first deducting the collection fee. In accounting for amounts collected from any person, the municipal court clerk shall credit the person’s amount owed the amount of the net proceeds collected. The clerk shall not reduce the amount owed by any person that portion of any payment which constitutes the cost of collection pursuant to this section.

(f) When the appropriate cost of collection has been paid to the contracting agent as agreed upon in the contract, the municipal court clerk shall then distribute amounts collected as follows:

(1) When collection services are utilized pursuant to subsection (c), all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt;

(2) when collection services are utilized pursuant to subsection (d), all amounts shall be paid to the beneficiary under the order of restitution designated to receive such restitution, except where that beneficiary has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312, and

amendments thereto, in which case all amounts shall be paid to the board until its subrogation lien is satisfied.

(g) Whenever collection services are being utilized against the same debtor pursuant to both subsections (c) and (d), any amounts collected by a contracting agent shall be first applied to satisfy debts pursuant to an order of restitution. Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy, debts owed to courts.”;

And by renumbering sections accordingly;

On page 7, by striking all in line 43;

On page 8, by striking all in lines 1 through 40;

And by renumbering sections accordingly;

On page 9, by striking all in lines 3 through 43;

On page 10, by striking all in lines 1 through 14;

And by renumbering sections accordingly;

Also on page 10, in line 15, by striking “, 12-4415”; in line 16, by striking “and 22-2908”;

In the title, in line 10, by striking “crimes.”; in line 11, by striking all before the semicolon and inserting “municipal courts; relating to jurisdiction; concerning the collection of fines and restitution.”; also in line 11, by striking the comma; in line 12, by striking “12-4415”; also in line 12, by striking “and 22-2908”;

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

MICHAEL O'NEAL

LANCE KINZER

JANICE L. PAULS

Conferees on part of House

JOHN VRATIL

TERRY BRUCE

GRETA GOODWIN

Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **H Sub for SB 31**.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Haley, Palmer.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 52**, 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 of lines 17 through 42;

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

“New Section 1. (a) As used in this section:

(1) “Patient” means any individual:

(A) Who is receiving services for mental illness and who is admitted, detained, committed, transferred or placed in the custody of the secretary of social and rehabilitation services under the authority of K.S.A. 22-3219, 22-3302, 22-3303, 22-3428a, 22-3429, 22-3430, 59-29a05, 75-5209 and 76-1306, and amendments thereto.

(B) In the custody of the secretary of social and rehabilitation services after being found a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, including any sexually violent predator placed on transitional release.

(2) "Restraints" means the application of any devices, other than human force alone, to any part of the body of the patient for the purpose of preventing the patient from causing injury to self or others.

(3) "Seclusion" means the placement of a patient, alone, in a room, where the patient's freedom to leave is restricted and where the patient is not under continuous observation.

(b) Each patient shall have the following rights:

(1) Upon admission or commitment, be informed orally and in writing of the patient's rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

(2) The right to refuse to perform labor which is of financial benefit to the facility in which the patient is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this subsection. Tasks of a personal housekeeping nature are not considered compensable labor. Patients may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

(A) The specific labor is an integrated part of the patient's treatment plan approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;

(B) the labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

(C) the patient has given written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

(D) the labor involved is evaluated for its appropriateness by the staff of the facility at least once every 120 days.

(3) A right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for such patient's condition, within the limits of available state and federal funds.

(4) Have the right to be informed of such patient's treatment and care and to participate in the planning of such treatment and care.

(5) Have the following rights, under the following procedures, to refuse medication and treatment:

(A) Have the right to refuse all medication and treatment except as ordered by a court or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Except when medication or medical treatment has been ordered by the court or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment.

(B) Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program.

(C) Patients will have the right to have explained the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered.

(6) Except as provided in paragraph (2), have a right to be free from physical restraint and seclusion.

(A) Restraints or seclusion shall not be applied to a patient unless it is determined by the superintendent of the treatment facility or a physician or licensed psychologist to be necessary to prevent immediate substantial bodily injury to the patient or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. Restraint or seclusion shall never be used as a punishment or for the convenience of staff. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent such injury to the patient or others, and the use of restraint or seclusion in a treatment facility shall not exceed three hours without medical reevaluation. When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or licensed psychologist, which shall be

no less than once per each 15 minutes. The superintendent of the treatment facility or a physician or licensed psychologist shall sign a statement explaining the treatment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the patient.

(B) The provisions of clause (A) shall not prevent:

(i) The use of seclusion as part of a treatment methodology that calls for time out when the patient is refusing to participate in a treatment or has become disruptive of a treatment process.

(ii) Patients may be restrained for security reasons during transport to or from the patient's building, including transport to another treatment facility. Any patient committed or transferred to a hospital or other health care facility for medical care may be isolated for security reasons within locked facilities in the hospital.

(iii) Patients may be locked or restricted in such patient's room during the night shift, if such patient resides in a unit in which each room is equipped with a toilet and sink or if the patients who do not have toilets in the rooms shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.

(iv) Patients may be locked in such patient's room for a period of time no longer than one hour during each change of shift by staff to permit staff review of patient needs.

(v) Patients may also be locked in such patient's room on a unit-wide or facility-wide basis as an emergency measure as needed for security purposes to deal with an escape or attempted escape, the discovery of a dangerous weapon in the unit or facility or the receipt of reliable information that a dangerous weapon is in the unit or facility, or to prevent or control a riot or the taking of a hostage. A unit-wide or facility-wide emergency isolation order may only be authorized by the superintendent of the facility where the order is applicable or the superintendent's designee. A unit-wide or facility-wide emergency isolation order shall be approved within one hour after it is authorized by the superintendent or the superintendent's designee. An emergency order for unit-wide or facility-wide isolation may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit-wide or facility-wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. The facility shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required.

(vi) Individual patients who are referred by the court or correctional facilities for criminal evaluations may be placed in administrative confinement for security reasons and to maintain proper institutional management when treatment can not be addressed through routine psychiatric methods. Administrative confinement of individuals shall be limited to only patients that demonstrate or threaten substantial injury to other patients or staff and when there are no clinical interventions available that will be effective to maintain a safe and therapeutic environment for both patients and staff. Administrative confinement shall not be used for any patient who is actively psychotic or likely to be psychologically harmed. The status of each patient shall be reviewed every 15 minutes to ensure the safety and comfort of the patient. The patient shall be afforded all patient rights including being offered a minimum of one hour of supervised opportunity for personal hygiene, exercise and to meet other personal needs.

(7) The right not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient or the written consent of a parent or legal guardian, if such patient is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose.

(8) The right to individual religious worship within the facility if the patient desires such an opportunity. The provisions for worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(9) A right to a humane psychological and physical environment within the hospital facilities. All facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(10) The right to confidentiality of all treatment records, and as permitted by other applicable state or federal laws, have the right to inspect and to receive a copy of such records.

(11) Except as otherwise provided, have a right to not be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is legally incompetent, such consent shall be granted on behalf of the patient by the patient's guardian. A patient may be filmed or taped for security purposes without the patient's consent.

(12) The right to be informed in writing upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

(13) The right to be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility.

(14) Patients have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, the secretary of social and rehabilitation services, the superintendent of the treatment facility, the agency designated as the developmental disabilities protection and advocacy agency pursuant to P.L. 94-103, as amended, private physicians and licensed psychologists, and have reasonable access to letter-writing materials.

(15) The right as specified under clause (A) to send and receive sealed mail, subject to the limitations specified under clause (B):

(A) A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients or staff. The officers and staff of a facility may not read any mail covered by this clause.

(B) The above rights to send and receive sealed and confidential mail are subject to the following limitations:

(i) An officer or employee of the facility at which the patient is placed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband outside the presence of the patient; or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy.

(ii) The superintendent of the facility or the superintendent's designee may, in accordance with the standards and the procedure under subsection (c) for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the superintendent or the superintendent's designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of the patient or others.

(iii) Residents may be restricted in receiving in the mail items deemed to be pornographic, offensive or which is deemed to jeopardize their individual treatment or that of others.

(16) Reasonable access to a telephone to make and receive telephone calls within reasonable limits.

(17) Be permitted to use and wear such patient's own clothing and personal possessions, including toilet articles, or be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

(18) Be provided a reasonable amount of individual secure storage space for private use.

(19) Reasonable protection of privacy in such matters as toileting and bathing.

(20) Be permitted to see a reasonable number of visitors who do not pose a threat to the security or therapeutic climate of other patients or the facility.

(21) The right to present grievances under the procedures established by each facility on the patient's own behalf or that of others to the staff or superintendent of the treatment facility without justifiable fear of reprisal and to communicate, subject to paragraph (14), with public officials or with any other person without justifiable fear of reprisal.

(22) The right to spend such patient's money as such patient chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the patient's estate or a representative payee. A treatment facility may, as a part of its security procedures, use a patient trust account in lieu of currency that is held by a patient and may establish reasonable policies governing patient account transactions.

(c) A patient's rights guaranteed under subsections (b)(15) to (b)(21) may be denied for cause after review by the superintendent of the facility or the superintendent's designee, and may be denied when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist in the patient's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the superintendent of the facility or the superintendent's designee. There shall be documentation of the grounds for withdrawal of rights in the patient's treatment record. After an informal hearing is held, a patient or such patient's representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in subsection (d).

(d) The department of social and rehabilitation services shall establish procedures to assure protection of patients' rights guaranteed under this section.

(e) No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any state official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section.

(f) This section shall be a part of and supplemental to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 2. (a) There is hereby created in the state treasury the sexually violent predator expense fund which shall be administered by the attorney general. All moneys credited to such fund shall be used to reimburse counties under K.S.A. 59-29a04, and amendments thereto, responsible for the costs related to determining whether a person may be a sexually violent predator.

(b) All expenditures from the sexually violent predator expense fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.

Sec. 3. K.S.A. 59-2978 is hereby amended to read as follows: 59-2978. (a) Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear the patient's own clothes, keep and use the patient's own personal possessions including toilet articles and keep and be allowed to spend the patient's own money;

(2) to communicate by all reasonable means with a reasonable number of persons at reasonable hours of the day and night, including both to make and receive confidential telephone calls, and by letter, both to mail and receive unopened correspondence, except that if the head of the treatment facility should deny a patient's right to mail or to receive unopened correspondence under the provisions of subsection (b), such correspondence shall be opened and examined in the presence of the patient;

(3) to conjugal visits if facilities are available for such visits;

(4) to receive visitors in reasonable numbers and at reasonable times each day;

(5) to refuse involuntary labor other than the housekeeping of the patient's own bedroom and bathroom, provided that nothing herein shall be construed so as to prohibit a patient from performing labor as a part of a therapeutic program to which the patient has given their written consent and for which the patient receives reasonable compensation;

(6) not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient or the written consent of a parent or legal guardian, if such patient is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose;

(7) to have explained, the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered;

(8) to communicate by letter with the secretary of social and rehabilitation services, the head of the treatment facility and any court, attorney, physician, psychologist, or minister of religion, including a Christian Science practitioner. All such communications shall be forwarded at once to the addressee without examination and communications from such persons shall be delivered to the patient without examination;

(9) to contact or consult privately with the patient's physician or psychologist, minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(10) to be visited by the patient's physician, psychologist, minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(11) to be informed orally and in writing of their rights under this section upon admission to a treatment facility; and

(12) to be treated humanely consistent with generally accepted ethics and practices.

(b) The head of the treatment facility may, for good cause only, restrict a patient's rights under this section, except that the rights enumerated in subsections (a)(5) through (a)(12), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the head of the treatment facility under any circumstances. Each treatment facility shall adopt regulations governing the conduct of all patients being treated in such treatment facility, which regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and copies of such statement shall be made available to the patient or to the parent, or legal guardian if such patient is a minor or has a legal guardian, and to the patient's attorney. In addition, notice of any restriction of a patient's rights shall be communicated to the patient in a timely fashion.

(c) Any person willfully depriving any patient of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b) or in accordance with a properly obtained court order, shall be guilty of a class C misdemeanor.

(d) *The provisions of this section do not apply to persons civilly committed to a treatment facility as a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.*

Sec. 4. K.S.A. 59-29a04 is hereby amended to read as follows: 59-29a04. (a) When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection (e) of K.S.A. 59-29a03, and amendments thereto, has determined that the person meets the definition of a sexually violent predator, the attorney general, within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03, and amendments thereto, may file a petition in the county where the person was convicted of or charged with a sexually violent offense alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

(b) The provisions of this section are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 et seq., and amendments thereto.

(c) *Whenever a determination is made regarding whether a person may be a sexually violent predator, the county responsible for the costs incurred, including, but not limited to costs of investigation, prosecution, defense, juries, witness fees and expenses, expert fees and expenses and other expenses related to determining whether a person may be a sexually*

violent predator shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

Sec. 5. K.S.A. 59-29a08 is hereby amended to read as follows: 59-29a08. (a) Each person committed under K.S.A. 59-29a01 et seq., and amendments thereto, shall have a current examination of the person's mental condition made once every year. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The court that committed the person under K.S.A. 59-29a01 et seq., and amendments thereto, shall then conduct an annual review of the status of the committed person's mental condition. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) Nothing contained in K.S.A. 59-29a01 et seq., and amendments thereto, shall prohibit the person from otherwise petitioning the court for discharge at this hearing.

(c) (1) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue.

(2) *The court may order and hold a hearing when: (A) There is current evidence from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, that renders the committed person unable to commit a sexually violent offense and this change is permanent; and*

(B) the evidence presents a change in condition since the person's last hearing.

(3) At ~~the~~ either hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at ~~the~~ either hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

(d) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(f) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court by not later than 5:00 p.m. of

the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(g) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

Sec. 6. K.S.A. 59-29a12 is hereby amended to read as follows: 59-29a12. (a) *For state budgetary purposes*, the secretary shall be responsible for all cost relating to the evaluation and treatment of persons committed to the secretary's custody under any provision of this act. *Payment for the maintenance, care and treatment of any such committed person shall be paid by the person, by the conservator of such person's estate or by any person bound by law to support such person.* Reimbursement may be obtained by the secretary for the cost of care and treatment, including placement in transitional release, of persons committed to the secretary's custody pursuant to K.S.A. 59-2006, and amendments thereto.

(b) *When a court orders a person committed to the secretary's custody under any provision of this act to appear at a court proceeding, the county where such court is located shall be responsible for the transportation, security and control of such person and all costs involved. The secretary shall not be required to provide an employee to travel with the committed person.*

(c) *Except as provided further, when a court proceeding is initiated by the committed person, such person shall be responsible for making all arrangements concerning the transportation, security and control of such person and all costs involved. The secretary shall review and approve all arrangements prior to the court proceeding. The secretary may deny the arrangements if such arrangements fail to meet security standards. The provisions of this subsection shall not apply to a hearing pursuant to K.S.A. 59-29a08, and amendments thereto.*

(d) *The secretary shall adopt rules and regulations to implement this section.*

Sec. 7. K.S.A. 59-2978, 59-29a04, 59-29a08 and 59-29a12 are hereby repealed.

Sec. 8. 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 in lines 12 through 14 and inserting “AN ACT concerning the civil commitment of certain persons; relating to sexually violent predators; relating to rights of such predators; providing for reimbursement for costs of determination; amending K.S.A. 59-2978, 59-29a04, 59-29a08 and 59-29a12 and repealing the existing sections.”;

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

MICHAEL O'NEAL
LANCE KINZER
JANICE L. PAULS
Conferees on part of House

JOHN VRATIL
TERRY BRUCE
GRETA GOODWIN
Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 52**.

On roll call, the vote was: Yeas 32, Nays 6, Present and Passing 0, Absent or Not Voting 2.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Jordan, Kelly, Lee, McGinn, Morris, Petersen, Pine,

Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson, Wysong.

Nays: Huelskamp, Journey, Lynn, Ostmeyer, Pyle, Wagle.

Absent or Not Voting: Haley, Palmer.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on the conference committee report for **SB 52**. While the bill goes a long way to outline the rules of conduct and rights for sexually violent predators, it does not protect their right to communicate to Legislators about conditions of the facility. Recent inspections of the Larned facility have proven conditions need improvement. As a state elected official, I have the obligation to make sure the conditions of our state's mental institutions are humane and sanitary for both the convicted and those determined to be mentally unstable.—SUSAN WAGLE

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 324**, 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 23 through 43;

On page 2, by striking all in lines 1 through 42 and inserting:

"Section 1. K.S.A. 2006 Supp. 21-3437 is hereby amended to read as follows: 21-3437.

(a) Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person; or

(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

(b) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(c) For purposes of this section: "Dependent adult" means an individual 18 years of age or older who is unable to protect their own interest. Such term shall include:

(1) Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

(2) any adult cared for in a private residence;

(3) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;

(5) any individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(6) any individual kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(d) (1) Mistreatment of a dependent adult as defined in subsection (a)(1) is a severity level 6, person felony.

(2) *Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 6, person felony if the aggregate amount of the value of the resources is \$100,000 or more.*

~~(2)~~ (3) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is *at least \$25,000 or more but less than \$100,000*.

~~(3)~~ (4) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least \$1,000 but less than \$25,000.

~~(4)~~ (5) Mistreatment of a dependent adult as defined in subsection (a)(2) is a class A person misdemeanor if the aggregate amount of the value of the resources is less than \$1,000.

~~(5)~~ (6) Mistreatment of a dependent adult as defined in subsection (a)(3) is a class A person misdemeanor.

~~(6)~~ (7) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is less than \$1,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of a dependent adult two or more times.

Sec. 2. K.S.A. 2006 Supp. 21-3520 is hereby amended to read as follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) the offender is an employee or *volunteer* of the department of corrections, or the employee or *volunteer* of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate; or

(2) the offender is a parole officer, *volunteer for the department of corrections* or the employee or *volunteer* of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender; or

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such jail; or

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house; or

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility; or

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is 16 years of age or older and (A) released on conditional release from a juvenile correctional facility under the supervision and control of the juvenile justice authority or juvenile community supervision agency or (B) placed in the custody of the juvenile justice authority under the supervision and control of the juvenile justice authority or juvenile community supervision agency and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide services in a social and rehabilitation services institution and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502, and amendments thereto, lewd fondling or touching, or sodomy, not otherwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments thereto, is a person 16 years of age or older who is a patient in such institution;

(8) the offender is a teacher or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, *not otherwise subject to subsection (a)(2) of K.S.A. 21-3502 or subsection (a)(1) of K.S.A. 21-3504, and amendments thereto*, lewd fondling or touching, *not otherwise subject to K.S.A. 21-3503 or subsection (a)(2) or (a)(3) of K.S.A. 21-3504, and amendments thereto*, or sodomy, *not otherwise subject to K.S.A. 21-3505 or subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto*, is ~~16 or 17 years of age~~ and a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of K.S.A. 21-3603, and amendments thereto, shall apply, not this subsection;

(9) the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services; or

(10) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision of community corrections.

(b) For purposes of this act:

(1) "Correctional institution" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(2) "inmate" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(3) "parole officer" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(4) "postrelease supervision" means the same as prescribed in the Kansas sentencing guidelines act in K.S.A. 21-4703, and amendments thereto;

(5) "juvenile detention facility" means the same as prescribed by K.S.A. 2006 Supp. 38-2302, and amendments thereto;

(6) "juvenile correctional facility" means the same as prescribed by K.S.A. 2006 Supp. 38-2302, and amendments thereto;

(7) "sanctions house" means the same as prescribed by K.S.A. 2006 Supp. 38-2302, and amendments thereto;

(8) "institution" means the same as prescribed by K.S.A. 76-12a01, and amendments thereto; and

(9) "teacher" means and includes teachers, supervisors, principals, superintendents and any other professional employee in any public or private school *offering any of grades kindergarten through 12*;

(10) "community corrections" means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the Kansas juvenile justice code, K.S.A. 38-1601 et seq., and amendments thereto;

(11) “court services” means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state;

(12) “law enforcement officer” means the same as prescribed by K.S.A. 21-3110, and amendments thereto; and

(13) “juvenile community supervision agency” means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the juvenile justice authority.

(c) Unlawful sexual relations is a severity level 10, person felony.

Sec. 3. K.S.A. 2006 Supp. 21-3437 and 21-3520 are hereby repealed.”;

And by renumbering sections accordingly;

In the title, in line 17, by striking “certain”; also in line 17, by striking “relating to”; by striking all in lines 18 and 19; in line 20, by striking all before the period and inserting “amending K.S.A. 2006 Supp. 21-3437 and 21-3520 and repealing the existing sections”;

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

MICHAEL O’NEAL

LANCE KINZER

JANICE L. PAULS

Conferees on part of House

JOHN VRATIL

TERRY BRUCE

GRETA GOODWIN

Conferees on part of Senate

Senator Vratil moved the Senate adopt the Conference Committee Report on **SB 324**.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeyer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Haley, Palmer.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2363**, 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 6, in line 42, by striking all after “be” and inserting “entitled to notice. Such notice”;

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

JOHN VRATIL

TERRY BRUCE

GRETA GOODWIN

Conferees on part of Senate

MICHAEL O’NEAL

LANCE KINZER

JANICE L. PAULS

Conferees on part of House

Senator Vratil moved the Senate adopt the Conference Committee Report on **HB 2363**.

On roll call, the vote was: Yeas 38, Nays 0, Present and Passing 0, Absent or Not Voting 2.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, Lynn, McGinn, Morris, Ostmeier, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Haley, Palmer.

The Conference Committee report was adopted.

REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **HB 2144**, as amended by House Committee; **HB 2421**, **HB 2423** be passed.

Also, **HB 2237** be amended by substituting a new bill to be designated as "Senate Substitute for HOUSE BILL No. 2237," as follows:

SENATE Substitute for HOUSE BILL No. 2237

By Committee on Ways and Means

AN ACT concerning the infrastructure needs of postsecondary educational institutions and the financing thereof; making and concerning appropriations for the fiscal years ending June 30, 2007, June 30, 2008, June 30, 2009, June 30, 2010, June 30, 2011, and June 30, 2012; amending K.S.A. 76-719, as amended by section 11 of chapter 132 of the 2006 Session Laws of Kansas, and 76-753 and K.S.A. 2006 Supp. 75-4209, and repealing the existing sections.";

and the substitute bill be passed.

HB 2422, as amended by House Committee of the Whole, be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2422," as follows:

"SENATE Substitute for HOUSE BILL No. 2422

By Committee on Ways and Means

"AN ACT concerning income taxation; relating to credits; taxpayer contributions to community colleges, technical schools or state educational institutions for capital improvements.";

and the substitute bill be passed.

HB 2542, as amended by House Committee of the Whole, be amended by substituting a new bill to be designated as "Senate Substitute for HOUSE BILL No. 2542," as follows:

"SENATE Substitute for HOUSE BILL No. 2542

By Committee on Ways and Means

AN ACT making and concerning appropriations for the fiscal years ending June 30, 2007, June 30, 2008, June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 76-719, as amended by section 11 of chapter 132 of the 2006 Session Laws of Kansas, and 76-753 and K.S.A. 2006 Supp. 75-4209 and 75-6702 and section 211 of 2007 House Bill No. 2368 and repealing the existing sections.";

and the substitute bill be passed.

MESSAGE FROM THE HOUSE

Announcing the House adopts the conference committee report on **HB 2062**.

The House adopts the conference committee report on **HB 2185**.

The House adopts the conference committee report on **HB 2267**.

The House adopts the conference committee report on **HB 2393**.

On motion of Senator D. Schmidt the Senate adjourned until 10:00 a.m., Thursday, April 26, 2007.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

