

Journal of the Senate

TWENTY-SIXTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 19, 2008—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with forty senators present.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,
The meteorologist says Topeka
Got thirty-two inches of snow;
More than three times than last winter
And the meteorologist ought to know.
When King David prayed for forgiveness,
He said something we ought to know:
He prayed, "Lord, wash me and I
Will be whiter than snow."
Snow is white and symbolizes
How pure we can be cleansed.
Snow is wet and nourishes crops
With the moisture that You send.
Snow is cold and endangers us
When it gets too deep.
Snow is quiet and beautiful,
Leaving memories to keep.
Like many other things, O God,
Snow can be good or bad.
Depending on how we treat it,
It can make us sad or glad.
Remind us to be thankful for
The blessings of Your creation,
And remember to treat them
With respect and appreciation.
I pray in the Name of Jesus Christ,
AMEN

The Pledge of Allegiance was led by President Stephen Morris.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolution were introduced and read by title:

SB 639, An act concerning public records; relating to certain records not required to be open; amending K.S.A. 2007 Supp. 45-221 and repealing the existing section, by Committee on Federal and State Affairs.

SB 640. An act relating to crimes, criminal procedure and punishments; concerning drug crimes; recodification of certain statutes; amending K.S.A. 12-4419, 12-4509, 21-3436, 21-3608a, 21-3718, 21-3826, 21-4203, 21-4204, 21-4226, 21-4502, 21-4603d, 21-4704, 21-4705, 21-4708, 21-4713, 21-4714, 21-4717, 21-4729, 22-2909, 22-3901, 22-4902, 36-601, 36-604, 65-4102 and 65-4127c and K.S.A. 2007 Supp. 8-1567, 12-4104, 60-4104, 72-89c01 and 75-52,144 and repealing the existing sections; also repealing K.S.A. 21-3445, 21-4214, 21-4215, 65-4105a, 65-4141, 65-4142, 65-4155, 65-4158, 65-4162, 65-4163, 65-4164 and 65-4165 and K.S.A. 2007 Supp. 8-1567b, 21-4704b, 65-4150, 65-4151, 65-4152, 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161 and 65-4166, by Committee on Federal and State Affairs.

SB 641. An act concerning the secretary of commerce; creating an outfitter license; prescribing requirements therefor; amending K.S.A. 21-4619 and repealing the existing section, by Committee on Ways and Means.

SB 642. An act concerning the procurement of design and construction services for unified school district improvements contracts; enacting the Kansas unified school district alternative project delivery building construction procurement act, by Committee on Ways and Means.

SB 643. An act concerning food service establishments; relating to licensing fees; amending K.S.A. 2007 Supp. 36-503 and repealing the existing section, by Committee on Ways and Means.

SB 644. An act concerning protection of certain personal information; restricting disclosure or use of certain acts and providing penalties and remedies for violations; amending K.S.A. 2007 Supp. 50-702 and 50-723 and repealing the existing sections, by Committee on Ways and Means.

SENATE CONCURRENT RESOLUTION No. 1619—

By Senators Wagle and D. Schmidt

A PROPOSITION to amend section 5 of article 3 of the constitution of the state of Kansas, relating to the selection of justices of the supreme court.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 5 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

“**§ 5. Selection of justices of the supreme court.** (a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file ~~his~~ *such justice's* declaration of candidacy to ~~succeed himself~~ *be retained in office* as hereinafter required, or failure of a justice to be elected to ~~succeed himself~~ *be retained in office*, shall be filled by appointment by the governor, *with the consent of the senate*, of one of ~~three~~ *six* persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.

(b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to ~~him~~ *the governor*, the chief justice of the supreme court, *with the consent of the senate*, shall make the appointment from such nominees.

(c) *No person appointed pursuant to subsection (a) or (b) of this section shall assume the office of justice of the supreme court until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 30 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 30-day time limitation, the president of the senate shall convene the senate for the sole purpose of voting on such appointment and no other action shall be in order*

during such session. In the event a majority of the senate does not vote to consent to the appointment, the governor may appoint another of the six persons whose names were submitted to the governor pursuant to subsection (a) and such subsequent appointment shall be considered by the senate in the same procedure as provided in this article. If the governor fails to make such subsequent appointment within 15 days after the senate vote on the previous appointee or if all six persons whose names were submitted to the governor pursuant to subsection (a) have been considered by, but did not receive the consent of, the senate, then the chief justice of the supreme court shall make the appointment from such nominees.

- (d) Each justice of the supreme court appointed pursuant to provisions of subsection (a), (b) or (c) of this section *and consented to pursuant to the provisions of subsection (c) of this section* shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of ~~his~~ *such justice's* term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to ~~succeed himself~~ *be retained in office*. If a declaration is not so filed, the position held by such justice shall be open from the expiration of ~~his~~ *such justice's* term of office. If such declaration is filed, ~~his~~ *such justice's* name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

“Shall _____

(Here insert name of justice.)

(Here insert the title of the court.)

be retained in office?”

If a majority of those voting on the question vote against retaining ~~him~~ *such justice* in office, the position or office which ~~he~~ *such justice* holds shall be open upon the expiration of ~~his~~ *such justice's* term of office; otherwise ~~he~~ *such justice* shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term ~~he~~ *such justice* shall, unless by law ~~he~~ *such justice* is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

- (e) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the “supreme court nominating commission.” Said commission shall be organized as hereinafter provided.

- (f) The supreme court nominating commission shall be composed as follows: One member, who shall be ~~chairman~~ *chairperson*, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; ~~and~~ one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district; *one member, who is not a lawyer, appointed by the speaker of the house of representatives; and one member, who is not a lawyer appointed by the president of the senate.*

- (g) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

- (h) No member of the supreme court nominating commission shall, while ~~he~~ *such person* is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for

nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement.* The purpose of this amendment is to require persons appointed by the governor or the chief justice to the office of justice of the supreme court to be consented to by the senate. A procedure is established whereby senate consent would occur with 30 days of receiving the appointment. If the senate does not consent by a majority vote, the supreme court nominating commission would submit six more names to the governor. The governor would then select an appointment which would again go to the senate for consent. The same nomination, appointment and consent procedure would be followed until a valid appointment is made. If the senate fails to vote on an appointment within 30 days, it will be considered that the senate has consented to the appointment.

“A vote for this proposition would provide a procedure whereby the senate, by majority vote, would consent to the appointment, by the governor or chief justice, of supreme court justices.

“A vote against this proposition would continue in effect the current provision whereby the supreme court nominating commission nominates three persons for the office of the supreme court and the governor appoints one of such persons.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2008 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Financial Institutions & Insurance: **SB 637**.

Natural Resources: **HB 2692**.

Ways and Means: **SB 638**.

CHANGE OF REFERENCE

The President withdrew **SB 512** from the calendar under the heading of General Orders and re-referred the bill to the Committee on **Federal and State Affairs**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2689**.

Also, passage of **SB 327**, as amended by House Substitute for **SB 327**.

The House nonconcurrs in Senate amendments to **HB 2578**, requests a conference and appoints Representatives Bethell, Kelsey and Henry as conferees on the part of the House.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2689 was thereupon introduced and read by title.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **SB 525** be passed.

Committee on **Education** recommends **SB 459**, **SB 470** be passed.

Also, **SB 437** be amended on page 1, by striking all in lines 14 through 38 and inserting: “Section 1. (a) As used in this section:

(1) “State board” means the state board of regents.

(2) “ROTC institution” and “selection committee” have the meanings ascribed thereto by K.S.A. 74-3255, and amendments thereto.

(3) “Chief executive officer” means the chief executive officer of a ROTC institution.

(4) "Community college" means a community college established and operating under the provisions of chapter 71 of the Kansas Statutes Annotated.

(5) "Board of trustees" means the board of trustees of a community college.

(b) Subject to the limitations of appropriations therefor and within the limitation on the number of scholarships which may be awarded under K.S.A. 74-3256, and amendments thereto, the selection committee at each ROTC institution may award ROTC scholarships to qualifying students who are enrolled at a community college. Scholarships awarded pursuant to this section shall be awarded in accordance with the memorandum of understanding required by subsection (c) and shall be subject to the requirements of K.S.A. 74-3255 et seq., and amendments thereto, except that such scholarships may be awarded to students enrolled at a community college.

(c) The selection committee shall not award a scholarship under this section to a student enrolled at a community college unless the board of trustees of the community college at which the student is enrolled has entered into a memorandum of understanding with the chief executive officer of the ROTC institution. The memorandum of understanding shall fix the requirements for student eligibility, the procedure for application and any other terms or conditions deemed necessary by the chief executive officer and the board of trustees. Any memorandum of understanding shall be submitted to and approved by the state board.

(d) On or before January 14, 2011, the state board shall submit a report to the legislature relating to the administration of this section. The report shall include the following information for the time period beginning on July 1, 2008 and ending on October 1, 2010:

- (1) The number of scholarships awarded under this section.
- (2) The average amount of scholarships awarded under this section.
- (3) The aggregate amount of scholarships awarded under this section.
- (4) Other information deemed necessary by the state board.
- (e) The provisions of this section shall expire on June 30, 2011.

Sec. 2. Sections 2 through 7, and amendments thereto, shall be known and may be cited as the military service scholarship program act.

Sec. 3. As used in the military service scholarship program act:

(a) "Executive officer" means the chief executive officer of the state board of regents appointed under K.S.A. 74-3203a, and amendments thereto.

(b) "Qualified student" means a person who: (1) Is a resident of the state of Kansas; (2) (A) has served, after September 11, 2001, in military service in Iraq or Afghanistan for at least 90 days or for less than 90 days because of injuries received in Iraq or Afghanistan; or (B) has served, after September 11, 2001, in military service in international waters or on foreign soil in support of military operations in Iraq or Afghanistan for at least 90 days or for less than 90 days because of injuries received during such service; (C) has received an honorable discharge from military service or is still in military service; and (D) has military discharge papers (DD Form 214) or active duty orders that indicate the person has served after September 11, 2001, in one or more of the following military operations: (i) Enduring Freedom; (ii) Nobel Eagle; or (iii) Iraqi Freedom; (3) has been accepted for admission to or is enrolled in a course of instruction in a postsecondary educational institution; and (4) has qualified for the award of a scholarship under the military service scholarship program on the basis of having demonstrated scholastic ability, or who has previously so qualified and remains qualified for renewal of the scholarship on the basis of remaining in good standing and making satisfactory progress toward completion of the requirements of the course of instruction in which enrolled.

(c) "State board" means the state board of regents.

(d) "Postsecondary educational institution" has the meaning ascribed thereto by K.S.A. 74-3201b, and amendments thereto.

(e) "Military service" means any active service in any armed service of the United States and any service as a member in good standing in the Kansas army or air national guard.

(f) "Program" means the military service scholarship program.

Sec. 4. (a) There is hereby established the military service scholarship program. A scholarship may be awarded under the program to any qualified student and may be renewed for each such student who remains qualified for the scholarship. Determination of the students qualified for such scholarships shall be made by the executive officer. Scholarships

shall be awarded on a priority basis to qualified applicants who have the greatest financial need. When determining financial need, the executive officer shall take into consideration federal military educational assistance received by a qualified student, if any.

(b) Within the limitations of appropriations therefor, the number of scholarships awarded and the amount awarded to each applicant shall be determined by the executive officer. The amount awarded shall be specified in the agreement. The amount awarded may vary depending upon the number of hours and the program in which the applicant is enrolled. A scholarship awarded under the program shall provide for payment to a qualified student of an amount not to exceed the amount of the fees and tuition for an academic year at the postsecondary educational institution in which the qualified student is enrolled. Except as provided by this subsection, a qualified student may be awarded a scholarship for not more than four academic years of undergraduate study. If the course of instruction requires a fifth year of undergraduate study, a scholarship may be awarded for the duration of the course of instruction.

(c) If a student is not enrolled on a full-time basis, a student shall complete the course of study within the time period specified in the agreement and shall receive a proportionate amount of the scholarship allowed under subsection (b) based upon the number of hours enrolled in an academic period, and computed as a fraction of the total number of credit hours required for full-time enrollment.

Sec. 5. (a) An applicant for designation as a qualified student and for the award of a scholarship under the military service scholarship program shall provide to the executive officer, on forms supplied by the executive officer, information required by the executive officer.

(b) As a condition to awarding a scholarship under this act, the executive officer and the applicant shall enter into an agreement which shall require the applicant to:

- (1) Complete the required course of instruction; and
- (2) maintain records and make reports to the executive officer as required by the agreement.

Sec. 6. The state board of regents shall adopt rules and regulations for administration of the military service scholarship program and shall establish terms, conditions and obligations which shall be incorporated into the provisions of any agreement entered into between the executive officer and an applicant for the award of a scholarship under the program. The terms, conditions and obligations shall be consistent with the provisions of law relating to the program and shall include, but not be limited to, the circumstances under which eligibility for financial assistance under the program may be terminated and the amount of financial assistance to be provided.

Sec. 7. There is hereby created in the state treasury the military service scholarship program fund. All expenditures from the military service scholarship program fund shall be for scholarships awarded under the military service scholarship program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive officer or by a person designated by the executive officer.”;

And by renumbering the remaining section accordingly;

In the title, in line 10, by striking all after “scholarship”; in line 11, by striking all before the period and inserting “program; establishing the military service scholarship program”; and the bill be passed as amended.

Committee on **Transportation** recommends **SB 523** be passed.

Committee on **Ways and Means** recommends **SB 531** be passed.

COMMITTEE OF THE WHOLE

On motion of Senator D. Schmidt, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Umbarger in the Chair.

On motion of Senator Umbarger the following report was adopted:

Recommended **SB 464**, **SB 481**, **SB 548**, **SB 561** be passed.

The committee also recommended **SB 46** be passed.

A motion by Senator Haley to amend **SB 46** failed and the following amendment was rejected: on page 1, after line 23, by inserting the following:

“New Sec. 2. (a) Deprivation of rights under color of law is the intentional subjection by a person who, under color of any law, statute, county resolution, ordinance or regulation, of any person, to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the state of Kansas, or to different punishments, pains or penalties on account of such person being an alien, or by reason of color or race than are prescribed for the punishment of citizens by: (1) Causing bodily harm to another person or disfigurement of another person; or

(2) causing great bodily harm to another person or disfigurement of another person; or

(3) causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(4) causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(5) causing monetary loss to another person.

(b) (1) Deprivation of rights under color of law as described in section (a)(1) is a class B person misdemeanor.

(2) Deprivation of rights under color of law as defined in subsection (a)(2) is a severity level 4, person felony.

(3) Deprivation of rights under color of law as defined in subsection (a)(3) or (a)(4) is a severity level 7, person felony.

(4) Deprivation of rights under color of law as defined in subsection (a)(5) where the monetary loss is less than \$1,000 is a class A nonperson misdemeanor.

(5) Deprivation of rights under color of law as defined in subsection (a)(5) where the monetary loss is at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony.

(6) Deprivation of rights under color of law as defined in subsection (a)(5) where the monetary loss is \$25,000 or more is a severity level 7, nonperson felony.

(c) A person convicted of deprivation of rights under color of law shall be subject to the provisions of subsection (h) of K.S.A. 21-4704 and amendments thereto.

(d) The provisions of this section shall be part of and supplemental to the Kansas criminal code.”;

And by renumbering sections accordingly;

In the title, in line 9, after the semicolon where it appears for the last time, by inserting “creating crime of deprivation of rights under color of law;”

Recommended a **Substitute for SB 491** and the substitute bill be passed.

SB 457, SB 460, SB 511, SB 514, SB 519, SB 529 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 486 be amended by adoption of committee amendments and further amended by motion of Senator D. Schmidt, as amended by Senate Committee, on page 4, in line 34, by striking “Kansas senate or house of representatives” and inserting “senate committee on confirmation oversight relating to information submitted to the committee pursuant to section 1, and amendments thereto,” and **SB 486** be passed as further amended.

SB 397 be amended by adoption of committee amendments and be further amended by motion of Senator Brungardt, on page 4, after line 22, by inserting the following:

“Sec. 4. K.S.A. 21-3610 is hereby amended to read as follows: 21-3610. (a) Furnishing alcoholic liquor or cereal malt beverage to a minor is directly or indirectly, selling to, buying for, giving or furnishing any alcoholic liquor or cereal malt beverage to any minor.

(b) Furnishing alcoholic liquor or cereal malt beverage to a minor is a class B person misdemeanor for which the minimum fine is \$200.

(c) As used in this section, terms have the meanings provided by K.S.A. 41-102, 41-2601 and 41-2701, and amendments thereto.

(d) It shall be a defense to a prosecution under this section if: (1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; (2) the defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and (3) to purchase

the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, ~~containing~~ *that reasonably appears to contain* a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

(e) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child or ward's parent or legal guardian.

Sec. 5. K.S.A. 2007 Supp. 41-2905 is hereby amended to read as follows: 41-2905. (a) Prior to the sale at retail of any beer in a container having a liquid capacity of four or more gallons, the retailer or the retailer's employee or agent shall affix to the beer container a keg identification number or otherwise uniquely identify the container in accordance with this act and rules and regulations adopted by the secretary. At the time of sale at retail of any such container of beer, the retailer or the retailer's employee or agent shall record the keg number; the date of the sale; the purchaser's name and address; and the number on the purchaser's driver's license, Kansas nondriver's identification card or other official or apparently official document ~~containing~~ *that reasonably appears to contain* both the purchaser's picture and the purchaser's signature, which shall be exhibited at the time of sale. Such record shall be kept by the retailer at the premises where the sale was made. Such record shall be kept by the retailer until the container is returned or until the expiration of six months following the date of the sale.

(b) For the purpose of investigating a violation of laws prohibiting the furnishing to or possession or consumption of beer by persons under the age of 21 and if such violation involves a container required to be registered under the beer and cereal malt beverage keg registration act and if there is reason to believe that a retailer sold such container, such retailer's records relating to the sale of such container which are required to be kept by this section shall be available for inspection by any law enforcement officer during normal business hours of the retailer. Records required to be kept by this section shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or K.S.A. 21-3610 or 41-727, and amendments thereto. Except as specifically provided by this subsection, records required to be kept by this section shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency.

(c) Upon a determination that a retailer or a retailer's employee or agent has violated this section or any rules and regulations adopted pursuant to this section, the director may suspend or revoke the retailer's license in the manner provided by K.S.A. 41-320, and amendments thereto, and may impose a fine as provided by K.S.A. 41-328, and amendments thereto.

(d) It is a class B nonperson misdemeanor for a person who is not a retailer acting in the ordinary course of business to: (1) Remove from a beer container all or part of a keg identification number required pursuant to this section; (2) make unreadable all or any part of a keg identification number required by this section to be affixed to a beer container; or (3) possess a beer container required to be registered under this act that does not have the keg identification number required by this section.

(e) The secretary of revenue shall adopt any rules and regulations necessary to implement the provisions of this section. Such rules and regulations shall include, but shall not be limited to, provisions relating to records and establishing standards for marking and handling containers which are required to be registered by this act.

(f) The secretary of revenue shall provide any keg identification tags or labels required by this section. Such tags or labels shall be designed so that when affixed to a keg, such tags or labels do not mar or otherwise damage the keg. There shall be no charge for such tags or labels.

(g) If a person sold beer in compliance with the provisions of this section and any rules and regulations adopted pursuant thereto, it shall be a defense to any criminal prosecution or proceeding or civil or administrative action under this section.

(h) The provisions of this section shall not apply to sales of kegs by distributors or retailers to clubs, drinking establishments, hotel drinking establishments and caterers licensed under the club and drinking establishment act.

(i) Words or phrases used in this section shall have the meaning ascribed thereto by K.S.A. 41-102, and amendments thereto.

Sec. 6. K.S.A. 2007 Supp. 41-2906 is hereby amended to read as follows: 41-2906. (a) Prior to the sale by a retailer or a retailer's employee or agent of any cereal malt beverage in a container having a liquid capacity of four or more gallons, the retailer or the retailer's employee or agent shall affix to the cereal malt beverage container a keg identification number or otherwise uniquely identify the container in accordance with rules and regulations adopted by the secretary. At the time of sale of any such container of cereal malt beverage, the retailer, or the retailer's employee or agent, shall record the keg number; the date of the sale; the purchaser's name and address; and the number on the purchaser's driver's license, Kansas nondriver's identification card or other official or apparently official document ~~containing~~ *that reasonably appears to contain* both the purchaser's picture and the purchaser's signature, which shall be exhibited at the time of sale. Such record shall be kept by the retailer at the premises where the sale was made. Such record shall be kept by the retailer until the container is returned or until the expiration of six months following the date of the sale.

(b) For the purpose of investigating a violation of laws prohibiting the furnishing to or possession or consumption of cereal malt beverage by persons under the legal age for consumption of cereal malt beverage and if such violation involves a container required to be registered under the beer and cereal malt beverage keg registration act and if there is reason to believe that such retailer sold such container, such retailer's records relating to the sale of such container which are required to be kept by this section shall be available for inspection by any law enforcement officer during normal business hours. Records required to be kept by this section shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or K.S.A. 21-3610 or 41-727, and amendments thereto. Except as specifically provided by this subsection, records required to be kept by this section shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency.

(c) Upon a determination that a retailer or a retailer's employee or agent has violated this section or any rules and regulations adopted pursuant to this section, the board of county commissioners or the governing body of the city may suspend or revoke the retailer's license in the manner provided by K.S.A. 41-2708, and amendments thereto, and may impose a fine pursuant to K.S.A. 41-2711, and amendments thereto.

(d) It is a class B nonperson misdemeanor for a person who is not a retailer acting in the ordinary course of business to: (1) Remove from a cereal malt beverage container all or part of a keg identification number required pursuant to this section; (2) make unreadable all or any part of a keg identification number required by this section to be affixed to a cereal malt beverage container; or (3) possess a cereal malt beverage container required to be registered under this act that does not have the keg identification number required by this section.

(e) The secretary of revenue shall adopt any rules and regulations necessary to implement the provisions of this section. Such rules and regulations shall include, but shall not be limited to, provisions relating to records and establishing standards for marking and handling containers which are required to be registered by this act.

(f) The secretary of revenue shall provide any keg identification tags or labels required by this act. There shall be no charge for such tags or labels. Such tags or labels shall be designed so that when affixed to a keg, such tags or labels do not mar or otherwise damage the keg.

(g) If a person sold cereal malt beverage in compliance with the provisions of this section and any rules and regulations adopted pursuant thereto, it shall be a defense to any criminal prosecution or proceeding or civil or administrative action under this section.

(h) Words and phrases used in this section shall have the meaning ascribed thereto by K.S.A. 41-2701, and amendments thereto.

Sec. 7. K.S.A. 21-3610, 41-346 and 41-2615 and K.S.A. 2007 Supp. 41-719, 41-2905 and 41-2906 are hereby repealed.”;

Also on page 4, by striking all in lines 23 and 24;

And by renumbering the remaining section accordingly;

In the title, in line 12, after “K.S.A.” by inserting “21-3610,”; in line 13, after “41-719” by inserting “, 41-2905 and 41-2906” and **SB 397** be passed as further amended.

ORIGINAL MOTION

On motion of Senator Umbarger, the Senate acceded to the request of the House for a conference on **HB 2578**.

The President appointed Senators Umbarger, V. Schmidt and Kelly as conferees on the part of the Senate.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Wednesday, February 20, 2008.

HELEN MORELAND, CHARLENE BAILEY, PAT MATZEK, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

