

Journal of the Senate

FIFTIETH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, March 26, 2008—2:30 p.m.

The Senate was called to order by Vice President John Vratil.

The roll was called with forty senators present.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Today I ask You to bless the Chairpersons of the Senate Standing Committees:

Senator Taddiken: Agriculture

Senator Allen: Assessment and Taxation

Senator Brownlee: Commerce

Senator Derek Schmidt: Confirmation Oversight

Senator Schodorf: Education

Senator Huelskamp: Elections and Local Government

Senator Brungardt: Federal and State Affairs

Senator Teichman: Financial Institutions and Insurance

Senator Wagle: Health Care Strategies

Senator Morris: Interstate Cooperation; Organization, Calendar & Rules

Senator Vratil: Judiciary

Senator McGinn: Natural Resources

Senator Barnett: Public Health and Welfare

Senator Donovan: Transportation

Senator Emler: Utilities

Senator Umbarger: Ways and Means

Lord, give them wisdom as they deliberate over the issues pertaining to the spiritual, material, and physical welfare of our State.

And Lord, You know I try to be bipartisan, so I will be asking You tomorrow to bless the Ranking Minority Members of each committee, unless You instruct me to pray for them on another day.

I pray in the Name of Jesus Christ,

AMEN

The Pledge of Allegiance was led by Vice President John Vratil.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 698, An act concerning Wilson county; relating to certain capital improvement projects; financing thereof through issuance of revenue bonds by the Kansas development finance authority; countywide retailers sales tax authority; distribution of moneys from oil and gas depletion trust fund; amending K.S.A. 2007 Supp. 12-187, 12-189, 12-192 and 79-4231 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 699, An act concerning surplus property of the state; amending K.S.A. 2007 Supp. 75-6606 and repealing the existing section, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Federal and State Affairs: **SB 696**.

Ways and Means: **SB 697**.

CHANGE OF REFERENCE

The Vice President withdrew **HB 2106** from the Committee on **Financial Institutions and Insurance**, and referred the bill to the **Committee on Ways and Means**.

The Vice President withdrew **HB 2634** from the Committee on **Utilities**, and referred the bill to the **Committee on Ways and Means**.

MESSAGE FROM THE GOVERNOR

SB 267, SB 412, SB 431, SB 432, SB 441 approved on March 26, 2008.

MESSAGE FROM THE HOUSE

Announcing passage of **Substitute HB 2752**.

Also, passage of **SB 226, as amended by House Substitute for SB 226; SB 418, SB 423, SB 424, SB 465, SB 521, as amended, SB 522, as amended**.

Adoption of **SCR 1624**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

Substitute HB 2752 was thereupon introduced and read by title.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Emler moved the Senate concur in house amendments to **SB 49**.

SB 49, An act concerning telecommunications; relating to the Kansas universal service fund; amending K.S.A. 2007 Supp. 66-2008 and repealing the existing section.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The Senate concurred.

Senator McGinn moved the Senate concur in house amendments to **SB 474**.

SB 474, An act concerning wildlife and parks; relating to controlled shooting areas; field trials; amending K.S.A. 32-919 and 32-954 and repealing the existing sections.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The Senate concurred.

On motion of Senator Wagle the Senate nonconcurred in the House amendments to **H Sub for SB 81** and requested a conference committee be appointed.

The Vice President appointed Senators Wagle, Brungardt and Haley as a conference committee on the part of the Senate.

On motion of Senator Bruce the Senate nonconcurred in the House amendments to **SB 449** and requested a conference committee be appointed.

The President appointed Senators Vratil, Bruce and Goodwin as a conference committee on the part of the Senate.

FINAL ACTION ON CONSENT CALENDAR

HB 2804 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

HB 2804, An act concerning the Shawnee county fair association; pertaining to the election of directors; amending K.S.A. 2007 Supp. 2-158 and repealing the existing section.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

APPOINTMENT REFERRED TO COMMITTEE

The Vice Present withdrew the appointment of John Carmichael, Kansas Human Rights Commission, from the calendar under the heading of Consideration of Appointments and referred the appointment to the Committee on **Federal and State Affairs**.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 544, An act concerning reduced ignition propensity cigarettes, was considered on final action.

On roll call, the vote was: Yeas 36, Nays 4, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Bruce, Huelskamp, Ostmeyer, Pyle.

The bill passed, as amended.

SB 566, An act concerning the department of social and rehabilitation services; relating to attendant care workers who provide home and community based services; providing for a study,

was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

SB 675, An act concerning cities; relating to the use of credit cards by persons to pay certain taxes, fees and exactions, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

SCR 1618, A concurrent resolution memorializing Congress to allow states greater flexibility in the use of federal health care funding, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The resolution was adopted.

SR 1832, A resolution urging the State Corporation Commission to examine the appropriateness of locations and the quality of service provided by third party pay stations for utility payments and to open a docket, if appropriate, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The resolution was adopted.

Sub HB 2018, An act creating the state court of tax appeals and abolishing the state board of tax appeals; amending K.S.A. 9-1402, 12-110a, 12-631, 12-1664, 12-16,109, 12-1737, 12-1742, 12-1744a, 12-1744b, 12-1744c, 12-1744d, 12-1755, 12-1934, 12-3206, 12-3805, 14-1060, 17-1374, 19-236, 19-431, 19-15,103, 19-15,106, 19-15,116, 19-15,123, 19-2106f, 19-2653, 19-2752a, 19-3554, 19-4420, 19-4442, 20-356, 20-363, 20-626, 24-133, 24-665, 24-1219, 31-144, 38-549, 68-151n, 72-4142, 72-6443, 72-8203b, 74-2426, 74-2433a, 74-2433b, 74-2433c, 74-2433d, 74-2433e, 74-2433f, 74-2433g, 74-2434, 74-2435, 74-2436, 74-2437, 74-2437a, 74-2437b, 74-2438, 74-2439, 74-2442, 75-430, 75-5104, 75-5107, 75-5121, 79-213a, 79-425a, 79-6a14, 79-1404a, 79-1409, 79-1410, 79-1413a, 79-1422, 79-1426, 79-1478, 79-1478a, 79-1479, 79-1481, 79-1489, 79-1703, 79-1704, 79-1964a, 79-1964b, 79-2416d, 79-2925a, 79-2938, 79-2939, 79-2940, 79-2941, 79-2951, 79-3107c, 79-3221, 79-32,193 and K.S.A. 2007 Supp. 2-131e, 72-6441, 72-6451, 74-2433, 74-2438a, 74-4911f, 75-37,121, 75-4201, 77-529, 79-210, 79-213, 79-332a, 79-5a27, 79-1427a, 79-1437f, 79-1448, 79-1476, 79-1609, 79-1611, 79-1701, 79-1702, 79-2005, 79-2977, 79-3226, 79-3233g, 79-3694, 79-5205, 80-119, 80-808, 80-1920 and 82a-1030 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 29, Nays 11, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Barnett, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Jordan, Kelly, McGinn, Morris, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Apple, Barone, Hensley, Huelskamp, Journey, Lee, Lynn, Ostmeyer, Palmer, Pyle, Steineger.

The substitute bill passed, as amended.

S Sub for HB 2037, An act concerning apportionment of business income; amending K.S.A. 2007 Supp. 79-3279 and repealing the existing section, was considered on final action.

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

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

Nays: Steineger.

The substitute bill passed.

HB 2188, An act concerning civil procedure; relating to medical and professional malpractice screening panels; amending K.S.A. 60-3502, 60-3503, 60-3505, 60-3508, 65-4901, 65-4902, 65-4904 and 65-4907 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

S Sub for HB 2434. An act concerning property taxation; relating to public utilities; late filing of returns, penalties; exemptions, duties of county appraiser, assessed valuation; amending K.S.A. 79-1803 and K.S.A. 2007 Supp. 79-5a27 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The substitute bill passed.

HB 2520. An act concerning real property; relating to conversion of convertible lands; liability for real property taxes and other expenses; amending K.S.A. 58-3115a and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed.

S Sub for HB 2529. An act concerning income taxation; relating to credits; property tax paid by certain taxpayers, was considered on final action.

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

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

Present and Passing: Francisco.

The substitute bill passed, as amended.

S Sub for HB 2541. An act concerning rural housing; creating the housing development grant program; exempting certain cities from certain requirements for rural housing incentive district financing; amending K.S.A. 12-5246 and K.S.A. 2007 Supp. 12-5242, and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 30, Nays 10, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Jordan, Journey, Kelly, Lee, McGinn, Morris, Palmer, Petersen, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Teichman, Umbarger, Vratil, Wilson, Wysong.

Nays: Brownlee, Bruce, Haley, Huelskamp, Lynn, Ostmeyer, Pyle, Steineger, Taddiken, Wagle.

The substitute bill passed.

Sub HB 2562. An act relating to veterans; concerning veterans preference; amending K.S.A. 73-201 and repealing the existing section, was considered on final action. On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The substitute bill passed, as amended.

S Sub for HB 2590. An act concerning Wilson county; relating to certain capital improvement projects; financing thereof through issuance of revenue bonds by the Kansas development finance authority; countywide retailers sales tax authority; distribution of moneys from oil and gas depletion trust fund; amending K.S.A. 2007 Supp. 12-187, 12-189, 12-192 and 79-4231 and repealing the existing sections, was considered on final action.

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

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

Nays: Huelskamp, Wilson.

The substitute bill passed.

HB 2642, An act concerning the commission on judicial performance; relating to access to court records; immunity from liability; amending K.S.A. 20-3202, 20-3204, 20-3205, 20-3206, 25-4169a, 59-2122, 60-3104 and 60-31a04 and K.S.A. 2007 Supp. 38-2211, 38-2309 and 59-2979 and repealing the existing sections, was considered on final action.

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

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

Nays: Huelskamp, Pyle.

The bill passed, as amended.

HB 2643, An act concerning civil procedure; relating to answers of garnishment; amending K.S.A. 60-736 and K.S.A. 2007 Supp. 40-218 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

HB 2700, An act concerning community corrections; relating to placement of offenders; amending K.S.A. 2007 Supp. 75-5291 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

HB 2707, An act relating to crimes and punishments; concerning theft of property and criminal deprivation of property; intent to deprive; providing substance abuse treatment for certain offenders; amending K.S.A. 21-3702, 21-3705 and 21-4704 and K.S.A. 2007 Supp. 75-5210 and 75-5220 and repealing the existing sections; also repealing K.S.A. 21-4704b, was considered on final action.

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

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

Nays: Haley.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I vote NO on **HB 2707**. Despite the positive provisions of the underlying bill, the addition of many of the provisions of **SB 409** (the so-called Three Strikes

law) which I previously voted against this session makes this untenable. Kansas cannot afford the 350 prison bed space impact projected by a Three Strikes law; especially one designed to lockup primarily nonviolent offenders.—DAVID HALEY

HB 2714, An act enacting the interstate compact on educational opportunity for military children, was considered on final action.

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

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

Nays: Taddiken.

The bill passed.

HB 2726, An act concerning crime, criminal procedure and punishment; relating to victims; polygraph examinations, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed.

HB 2740, An act concerning corrections; relating to training for corrections officer; amending K.S.A. 75-5212 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed.

HB 2750, An act concerning taxation; relating to exemptions; certain property leased to companies for research and development purposes; housing for elderly or persons with disabilities or low income housing; tangible personal property not specifically classified; sales tax exemption for downing concert series; amending K.S.A. 2007 Supp. 79-201a, 79-201z, 79-213 and 79-3606 and repealing the existing sections, was considered on final action. On roll call, the vote was: Yeas 33, Nays 5, Present and Passing 2, Absent or Not Voting 0.

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

Nays: Huelskamp, Lynn, Pyle, Steineger, Wilson.

Present and Passing: Francisco, Kelly.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I pass on **HB 2750** because it was amended to include a sales tax exemption. We cannot continue to grant random sales tax exemptions. We must establish and adhere to a policy that is consistent and fair and takes into consideration the long term stability of state revenues.—LAURA KELLY

Senator Francisco requests the record to show she concurs with the Explanation of Vote offered by Senator Kelly on **HB 2750**.

HB 2892, An act concerning oil and gas; relating to underground crude oil storage; rules and regulations; relating to the advisory committee on regulation of oil and gas activities; amending K.S.A. 55-153 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

HB 2905, An act relating to capitol complex buildings; requiring each state agency within the capitol complex to designate a security liaison; unique office numbers for all offices in the capitol building, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed.

HCR 5028, A concurrent resolution memorializing the United States Army Corps of Engineers, Bureau of Reclamation and United States Congress to partner with the State of Kansas in order to extend the productive lives of reservoirs in Kansas, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The resolution was adopted.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Haley, Pyle and Taddiken introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1837

A RESOLUTION in memory of Leslie "Les" Droge.

WHEREAS, Leslie A. Droge was born in rural Nashua, Montana on August 3, 1917. His parents were Henry A. and Gertrude Berdau Droge. When he was six weeks old, his family moved back to the Droge homestead near Seneca, Kansas.

WHEREAS, Les Droge attended Allison School, DuBois High School and graduated from Seneca Public High School in 1936. He worked on his uncle Albert Droge's farm during the summers. In his senior year, he joined the New Deal agency Civilian Conservation Corps, Company 1797; and

WHEREAS, Les Droge played basketball at Kansas State University and graduated from the university in 1941; and

WHEREAS, Les Droge joined the U.S. Army and served with the 82nd Airborne Division. In 1945 he was stationed in the Philippines with the 511th Parachute Regiment. He was present, in an adjacent ship, for the signing of the Armistice on the battleship Missouri and was discharged in 1947. He remained in the Army Reserves until his retirement with the rank of Lt. Colonel; and

WHEREAS, When he returned to Kansas, Les Droge continued to work on the family farm; and

WHEREAS, From 1964 until 1976, he served in the Kansas Senate where he served as Chairman of the Agriculture and Military Affairs committees; and

WHEREAS, In 1976, Les Droge was a co-sponsor of Senate Concurrent Resolution No. 1650 requiring perpetual preservation in operating condition the historic passenger elevator in the east wing of the Kansas Statehouse; and

WHEREAS, While at Kansas State University, Les Droge met his wife of 66 years, Lola F. Hubbard. The couple have five children, Dennis, Douglas, Duane, Joann and Beverly; 12 grandchildren and 20 great-grandchildren; and

WHEREAS, Joann Freeborn, Droge's daughter, served in the Kansas House of Representatives from 1993 until 2006; and

WHEREAS, Les Droge was one of eleven children. Four of his brothers, Arden, Charles, Harry and John, survive him. He was preceded in death by his other siblings, Clarence, Emil, Leonard, Helen, Margaret and Eleanor; and

WHEREAS, Les Droge was buried with military honors by the U.S. Army, Navy, Air Force and National Guard on January 19, 2008: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we honor Leslie A. "Les" Droge for his lifetime of service to his community, the state of Kansas and the country, and extend our deepest sympathy to his family and friends.

Be it further resolved: That the Secretary of the Senate provide 8 enrolled copies of this resolution to Senator Haley for presentation to the family.

On emergency motion of Senator Haley **SR 1837** was adopted unanimously.

Senator Haley remarked: I am pleased and extremely proud to cosponsor Resolution, **SR 1837**, in fond remembrance of the Honorable Leslie A. Droge. It has been said that the good that men do in life is often interred with their bones. I desire that to not be the case with Senator Droge.

Two score and four years ago, our state elected black men to the Kansas Senate for the first time. In 1964, Curtis McClinton (of Wichita) and my father, George Haley (of Kansas City) won their campaigns and began their terms in January of 1965. (The Kansas Senate was joined also by a Cuban-born Senator, Tony Casado (of Wichita), that year, as well.)

In 1965, the Kansas legislature was acquainted with the membership of the Negro; but only in the House. And the mood of our state, even most of our country, then was strongly segregated. Not every other Kansas Senator welcomed this change in a century-old tradition of white only in this Chamber.

But, Senator Les Droge and my father entered the Senate at the same time and became good friends and often allies on controversial issues of the day. (On your desk is their biographical information from the 1965 Senate Roster.) For example, on the issue of fair housing, (a novel idea, at the time, that any person could live in any neighborhood that he/she could afford to live in), Senator Droge was an outspoken champion. During one Session, Senators Droge and Haley were house mates and would study legislation together.

But, Les Droge and George Haleys friendship extended past Sine Die and our families would become friends, as well. We visited with each other in our homes; in our respective parts of Kansas. I remember distinctly the warm hospitality on the Droge farm; me, a little boy from the city, sitting high and proud on a horse . . . and the stern warnings to duck as the horse made its way back to the barn ahead of a sudden rain storm . . . almost decapitating me with the edge of the barn roof . . . and the delicious dinners, too perfect to describe in words that greeted us after a long day on the farm. Representative Freeborn, one of Les and Lola Drogés daughters; often recalls with a laugh my greeting people, as a nine year old, in the receiving line at her and Warrens wedding . . . I really was a part of the family!

These are wonderful people, good people, the salt of the Kansas Earth. And it is again my honor and my pleasure to welcome their family to this renovated Chamber and to have sponsored this resolution remembering Senator Les Droge.

After presenting Mrs. Lola Droge with a Senate Chamber coin, Senator Haley introduced the following members of the Droge family: Lola L. Droge, wife, Dennis L. Droge, son, Joann L. Freeborn, daughter, Warren S. Freeborn, son-in-law, Beverly Droge, daughter, Duane Droge, son, Susan R. Sillin, granddaughter, Benjamin Droge, grandson, George D. Droge, grandson, Catherine Knapp, granddaughter, Cara Knapp, great granddaughter, Nathan Knapp, great grandson, Anna Knapp, great granddaughter, and Cynthia J. Fisher, friend of the family.

Senator Lee introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1838

A RESOLUTION congratulating Ellis County for being recognized as one of the best places to live in rural America.

WHEREAS, Ellis county was named by the Progressive Farmer as the second best place to live in rural America and the best rural county to live in the Midwest; and

WHEREAS, The Progressive Farmer, published since 1886, annually compiles a list of rural counties and ranks them based on criteria such as home and land prices, crime rates, environment, education, economic factors, access to health care, as well as the editorial opinion of magazine staff who visit selected counties; and

WHEREAS, The flat to rolling landscape of Ellis County is ideal for grazing cattle and growing wheat and grain sorghum, so, not surprisingly, the economy is fueled by agriculture; however, the area also boasts of several manufacturers and businesses, and unemployment is less than 3%; and

WHEREAS, Ellis County's illustrious history has, at times, read like the pages of a Western novel. The surrounding plains once hosted the largest herd of buffalo in North America, estimated to be in the millions. Hays, founded in 1867 and the current county seat, was once a wild frontier and home to such legendary characters as Wyatt Earp, Wild Bill Hickock, Bat Masterson, Calamity Jane and Buffalo Bill Cody, and the frontier spirit remains today; and

WHEREAS, Described as a "micropolitan, not a metropolitan," Hays has many amenities found in a larger city, but without all the problems. Hays is filled with boutiques, galleries, restaurants, coffee houses and salons, and the historic downtown is always attracting new businesses. Home to Fort Hays State University, Hays has a thriving cultural scene, including the oldest arts council in the state, the renowned Sternberg Museum of Natural History, and the Hays Symphony Orchestra, which is in its eighth decade of continuous performance. The Hays Medical Center, home of the Michael E. DeBakey Heart Institute, provides state of the art medical care; and

WHEREAS, Located in northwest Kansas, midway between Kansas City and Denver, Ellis County offers its residents and visitors an array of scenic views and open spaces, including beautiful sunrises and sunsets that saturate the Blue Hills of the Saline River and the valleys of the Smoky Hill River: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate Ellis County for being recognized as one of the best places to live in rural America and commend its residents for maintaining such a high quality of life.

On emergency motion of Senator Lee **SR 1838** was adopted unanimously.

Senator Lee acknowledged a Hays Leadership Group who was visiting in the Senate.

Senator Taddiken introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1839

A RESOLUTION congratulating and commending the Riley County High School Falcons girls' basketball team.

WHEREAS, The Riley County High School Falcons girls' basketball team won the 3A state basketball championship for 2008 with their win over the Cimarron Bluejays 46 - 30; and

WHEREAS, The 2008 state title is the second for the Falcons in four years, the third in the school's history; and

WHEREAS, Despite the pressure of very high expectations after last year's first round state tournament loss, the Falcons had an undefeated season; and

WHEREAS, Despite injuries to two of the team's strongest players, Kylie Rothlisberger and Lainey Uphoff, Falcons' Coach Harold Oliver calls the team one of the best teams the school has ever had in terms of depth and the combination of size and speed. Coach Oliver credits the team's excellence in both offense and defense to "very nice chemistry" among the team members; and

WHEREAS, The Falcon Seniors this year are Elice Frey, Annie Martin, Katie Henry, Abbey Haag and Tiffany Bulk. The rest of the team includes Kylie Rothlisberger, Bryanna Underwood, Hayley Starnes, Beth Husted, Becca Tittel, Stacy Buss, Lindsey Jones, Lainey Uphoff and Cheyanne Sullivan; and

WHEREAS, Coach Oliver was assisted by Coaches Steve Wagner and Emily Nelson: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend the Riley County High School Falcons girls' basketball team for their commitment and hard work in achieving the 3A state basketball championship for 2008; further, we congratulate and commend their coaches, Harold Oliver, Steve Wagner and Emily Nelson, for their expert guidance and encouragement; and

Be it further resolved: That the Secretary of the Senate provide 17 enrolled copies of this resolution to Senator Mark Taddiken for presentation to the team and coaches.

On emergency motion of Senator Taddiken **SR 1839** was adopted unanimously.

REPORT ON ENGROSSED BILLS

SB 49, SB 544, SB 566, SB 675 reported correctly engrossed March 26, 2008.

Also, **SB 474** correctly re-engrossed March 26, 2008.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **HB 2210**, as amended by House Committee, be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL NO. 2210," as follows:

"SENATE Substitute for HOUSE BILL No. 2210

By Committee on Agriculture

"AN ACT concerning the Republican river; disposition of moneys recovered from certain litigation; establishing the Republican river water conservation projects Nebraska moneys fund and the Republican river water conservation projects Colorado moneys fund.;"

and the substitute bill be passed.

Also, **HB 2897**, as amended by House Committee, be amended on page 1, in line 36, by striking "and"; in line 43, by striking all after "grower";

On page 2, in line 1, by striking all before "Any" and inserting "; and (4) each commission, by majority approval of the commissions, may appoint a first purchaser as an additional at-large commissioner.;"

On page 5, in line 1, before "In" by inserting "(a)";

And by redesignating subsections (a) through (k) as (1) through (11);

Also on page 5, after line 40, by inserting:

"(b) Each commission as provided in this act shall not engage in lobbying as defined in K.S.A. 46-255, and amendments thereto.;"

On page 6, in line 17, by striking all after the period; by striking all in lines 18 through 25; in line 26, by striking "effect." and inserting "Any commission shall not change the assessment rate, either to increase or reduce, more than once a year.;" and the bill be passed as amended.

Committee on **Assessment and Taxation** recommends **SR 1836** be adopted.

Committee on **Commerce** recommends **HB 2315**, as amended by House Committee, be amended on page 2, in line 9, by striking "board" and inserting "secretary"; in line 25, by striking "board" and inserting "secretary"; in line 28, by striking "board" and inserting "secretary"; in line 41, by striking all following "(i)" and inserting "Secretary" means the secretary of state.;"

On page 3, in line 38, preceding the semicolon, by inserting ", or an individual retained by an insurance company while acting within the scope of the Kansas insurance code";

On page 4, by striking all in lines 3 through 43;

On page 5, by striking all in lines 1 through 29;

And by renumbering the remaining sections accordingly;

Also on page 5, in line 30, by striking all following "received"; in line 31, by striking "board"; in line 39, by striking "board" where it appears two times and inserting "secretary"; in line 40, by striking "board" and inserting "secretary";

On page 6, in line 12, by striking "board" and inserting "secretary"; in line 22, by striking "board" and inserting "secretary"; in line 24, by striking "prom-"; in line 25, by striking "ulgated" and inserting "adopted"; also in line 25, by striking "board" and inserting "secretary"; in line 27, by striking "board" and inserting "secretary"; in line 32, by striking

“board” and inserting “secretary”; in line 36, by striking “board” and inserting “secretary”; in line 38, by striking “board” where it appears two times and inserting “secretary”; in line 39, by striking “board” where it appears two times and inserting “secretary”; in line 40, by striking “board” and inserting “secretary”; in line 41, by striking “board” and inserting “secretary”;

On page 7, in line 19, by striking “board” and inserting “secretary”; in line 21, preceding the semicolon by inserting “”, unless such individual is engaged in the practice of performing home inspections on the effective date of this act”; in line 22, by striking “in an”; in line 23, by striking all preceding the semicolon; in line 26, by striking “board” and inserting “secretary”; in line 31, by striking “board” and inserting “secretary”; in line 37, by striking “board” and inserting “secretary”; in line 42, by striking “board” and inserting “secretary”;

On page 8, in line 1, by striking “board” and inserting “secretary”; in line 12, by striking “board” and inserting “secretary”; in line 14, by striking “board” and inserting “secretary”; in line 15, by striking “board” and inserting “secretary”; in line 17, by striking “board” and inserting “secretary”; in line 21, by striking “board” and inserting “secretary”; in line 29, by striking “board” and inserting “secretary”;

On page 9, in line 23, by striking “board” and inserting “secretary”;

In the title, in line 10, preceding “relating” by inserting “relating to the secretary of state.”; and the bill be passed as amended.

Also, **HB 2771** be amended on page 1, following the enacting clause, by inserting the following:

“New Section 1. The secretary of labor shall enforce K.S.A. 2007 Supp. 44-1131 and 44-1132, and amendments thereto, and may adopt rules and regulations necessary to implement the provisions of K.S.A. 2007 Supp. 44-1131 and 44-1132, and amendments thereto.”;

And by renumbering the remaining sections accordingly;

Also on page 1, in line 14, by striking “Section” and inserting “Sec.”;

In the title, in line 10, following “concerning” by inserting “discrimination in employment; relating to domestic violence and sexual abuse victims; authorizing enforcement by the secretary of labor; relating to”; and the bill be passed as amended.

Committee on **Education** recommends **HB 2343**, as amended by House Committee of the Whole, be amended on page 1, by striking all in lines 18 through 43;

By striking all on pages 2 through 4;

On page 5, by striking all in lines 1 through 12 and inserting:

“Section 1. K.S.A. 2007 Supp. 76-715a is hereby amended to read as follows: 76-715a.

(a) As used in this section:

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

(2) “Vacation leave” means annual leave.

“Vacation leave” does not mean discretionary day or sick leave.

(3) “Institution” means a state educational institution as defined by K.S.A. 76-711, and amendments thereto, and the university of Kansas medical center.

(4) “University support staff” means those employees whose positions are converted from classified to unclassified status pursuant to this section.

~~(a)~~ (b) (1) The state board of regents, in accordance with the provisions of this section, may authorize any state institution of higher education to convert any or all classified staff employee positions or any portion thereof in at the institution to the unclassified service of state employment. Those classified staff employees whose positions are converted from classified to unclassified status shall retain all health and flexible benefits and leave other than vacation leave if modified pursuant to subsection (c), and retirement benefits provided to them under the state classified employee system. Each

(2) Prior to seeking authorization to convert positions from classified to unclassified status, the institution designated by the board shall develop a plan for a system for administration of all other aspects of employment for these employees the employees in such positions, including personnel policies and procedures, and each such system of administration. Each such plan shall be subject to approval by the state board of regents. Such. The personnel policies and procedures of such plans shall include a disciplinary and grievance process which provides for the right to appeal and due process procedures. Development of such plan shall be subject to input from affected classified employees. Implementation of this

section shall not cause a salary reduction or layoff of any classified employee. ~~This section shall not be implemented by The state board of regents at shall not authorize any state institution of higher education to convert positions from classified status to unclassified status under this section unless an election has been held for classified staff employees affected by such proposal at such institution and the classified staff employees voting at the election by majority vote of all affected classified staff employees approve the conversion of the classified staff employee positions affected by such proposal at that institution to unclassified positions. Any such election held after the effective date of this act shall be preceded by an official announcement providing at least 90-days notice of the date, time and place of the election. After a vote of approval, the state educational institution shall provide all affected employees with opportunities for input into the development of the plan that is to be presented to the state board of regents.~~

(c) The state board may authorize any institution to enhance vacation leave for employees in the classified service or those designated as university support staff. The amount of vacation leave given may not exceed the amount of vacation leave provided to unclassified employees of such institution. Any plan for the enhancement of vacation leave shall be subject to approval by the state board.

~~(b) (d) For the limited purposes of this section, and K.S.A. 74-4925, and amendments thereto, these newly designated unclassified employees shall be referred to as "university support staff" and the university of Kansas medical center shall be considered a state institution of higher education an institution separate from the university of Kansas, Lawrence, and its campuses.~~

~~(e) (e) Nothing in this act subsection (b) shall affect the representation rights of collective bargaining organizations that represent employees of a state institution of higher education an institution, nor shall the provisions of this act subsection (b) affect any term or condition of any collective bargaining agreement in effect on the effective date of this act.~~

(f) The state board may adopt any policies and rules and regulations necessary to implement the provisions of this act.

Sec. 2. K.S.A. 2007 Supp. 76-774 is hereby amended to read as follows: 76-774. (a) The Kansas partnership for faculty of distinction program is hereby established to encourage gifts by private donors to enhance the ability of eligible educational institutions to attract and retain faculty of distinction. The program shall be administered by the state board of regents in accordance with this act. Under the Kansas partnership for faculty of distinction program, the state shall contribute income earnings equivalent awards in accordance with this act to supplement endowed professorships at eligible educational institutions for which qualifying gifts have been received by endowment associations.

(b) Each eligible educational institution shall establish within the general budget of the eligible educational institution a faculty of distinction matching fund. The eligible educational institution shall establish an endowed professorship account in the faculty of distinction matching fund for each endowed professorship established under the Kansas partnership for faculty of distinction program. All expenditures from the faculty of distinction matching fund shall be for one or more endowed professorships to supplement salary and to provide additional operating support for assistants, travel, equipment or other expenses of the endowed professorships.

(c) The chancellor, president, director or other chief executive officer of an eligible educational institution shall notify the state board of regents of the receipt of a qualifying gift under the Kansas partnership for faculty of distinction program. Upon receiving such notice, the state board of regents shall determine if the donation is a qualifying gift. Except as otherwise provided in this subsection, upon determining that a qualifying gift has been received by the endowment association for an eligible educational institution, the state board of regents shall certify to the director of accounts and reports the amount and date of receipt of the qualifying gift under the program and the endowed professorship account established in the faculty of distinction matching fund therefor. ~~The state board of regents shall not make any certification to the director of accounts and reports under this subsection prior to July 1, 2001.~~

~~(d) No moneys committed or pledged to be given to an endowment association prior to the effective date of this act shall be included as part of any qualifying gift under the program;~~

~~notwithstanding the date when such moneys were actually received by the endowment association.~~

Sec. 3. K.S.A. 2007 Supp. 76-775 is hereby amended to read as follows: 76-775. (a) Subject to the other provisions of this act, on the first day of the first state fiscal year commencing after receiving a certification of receipt of a qualifying gift under K.S.A. 2007 Supp. 76-774 and amendments thereto, the director of accounts and reports shall transfer from the state general fund the amount determined by the director of accounts and reports to be the earnings equivalent award for such qualifying gift for the period of time between the date of certification of the qualifying gift and the first day of the ensuing state fiscal year to either (1) the endowed professorship account of the faculty of distinction matching fund of the eligible educational institution, in the case of a certification of a qualifying gift to an eligible educational institution that is a state educational institution, or (2) the faculty of distinction program fund of the state board of regents, in the case of a certification of a qualifying gift to an eligible institution that is not a state educational institution. Subject to the other provisions of this act, on each July 1 thereafter, the director of accounts and reports shall make such transfer from the state general fund of the earnings equivalent award for such qualifying gift for the period of the preceding state fiscal year. All transfers made in accordance with the provisions of this subsection shall be considered demand transfers from the state general fund, except that all such transfers during the fiscal years ending June 30, 2007 and June 30, 2008, shall be considered to be revenue transfers from the state general fund.

(b) There is hereby established in the state treasury the faculty of distinction program fund which shall be administered by the state board of regents. All moneys transferred under this section to the faculty of distinction program fund of the state board of regents shall be paid to eligible educational institutions that are not state educational institutions for earnings equivalent awards for qualifying gifts to such eligible educational institutions. The state board of regents shall pay from the faculty of distinction program fund the amount of each such transfer to the eligible educational institution for the earnings equivalent award for which such transfer was made under this section.

(c) The earnings equivalent award for an endowed professorship shall be determined by the director of accounts and reports and shall be the amount of interest earnings that the amount of the qualifying gift certified by the state board of regents would have earned at the average net earnings rate of the pooled money investment board portfolio for the period for which the determination is being made.

(d) The total amount of new qualifying gifts which may be certified to the director of accounts and reports under this act during any state fiscal year for all eligible educational institutions shall not exceed \$30,000,000. The total amount of new qualifying gifts which may be certified to the director of accounts and reports under this act during any state fiscal year for any individual eligible educational institution shall not exceed \$10,000,000. No additional qualifying gifts shall be certified by the state board of regents under this act when the total of all transfers from the state general fund for earnings equivalent awards for qualifying gifts pursuant to this section and amendments thereto for a fiscal year is equal to or greater than ~~\$5,000,000~~ \$10,000,000.

Sec. 4. K.S.A. 2007 Supp. 76-776 is hereby amended to read as follows: 76-776. (a) The chancellor, president, director or other chief executive officer of an eligible educational institution for which a qualifying gift has been received by the endowment association shall provide from the eligible educational institution's operating budget a salary and full-time position for the endowed professorship. In the manner prescribed by policies adopted by the state board of regents, the chancellor, president, director or other chief executive officer of an eligible educational institution having an endowed professorship under this program shall report annually to the state board of regents a full accounting of the amounts and purposes of all expenditures of the moneys transferred to the faculty of distinction matching fund of the eligible educational institution under this act and the moneys realized from the interest earned on the qualifying gift held in trust by the endowment association for such endowed professorship during the preceding state fiscal year.

(b) The state board of regents shall develop and conduct an ongoing assessment of the Kansas partnership for faculty of distinction program which shall be commenced on or

before the first day of the first state fiscal year during which the total of all transfers from the state general fund for earnings equivalent awards for qualifying gifts pursuant to K.S.A. 2007 Supp. 76-775, and amendments thereto, is equal to or greater ~~the~~ *than* \$4,000,000. The assessment shall include evaluations of (1) the effectiveness of the program to increase private gifts and to attract and retain professors of distinction for eligible educational institutions, (2) the economic impact of the program on eligible educational institutions and the state, and (3) other appropriate factors specified by the state board of regents. After commencing the assessment of the program, the state board of regents shall annually present a report on the assessment to the legislature at the beginning of each regular session.

Sec. 5. K.S.A. 2007 Supp. 72-4479 is hereby amended to read as follows: 72-4479. (a) ~~On or before July 1, 2008; The governing bodies of the northeast Kansas technical college, Kansas City area technical school, Kaw area technical school, Salina area technical school and southwest Kansas body of each~~ technical school shall submit to the state board of regents a plan to merge or affiliate with a postsecondary educational institution or become an accredited technical college with an independent governing board. *Any plan in substantial compliance shall be implemented on or before July 1, 2009.*

(b) *The state board shall certify to the president of the Kansas development finance authority and the secretary of the department of revenue whenever a technical school or college has achieved substantial compliance with subsection (a).*

~~(b)~~ (c) As used in this section:

(1) "Postsecondary educational institution" means a technical college, community college, municipal university or a state educational institution.

(2) "Technical college", "community college", "municipal university" and "state educational institution" have the meanings ascribed thereto by K.S.A. 74-3201b, and amendments thereto.

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

(4) "Technical school" means the northeast Kansas technical college, Kansas City area technical school, Kaw area technical school, Salina area technical school and southwest Kansas technical school.

Sec. 6. K.S.A. 2007 Supp. 76-7,105 is hereby amended to read as follows: 76-7,105. (a) Subject to the provisions of subsection (c), the state board shall advise and consult with the joint committee regarding each project. The state board shall not approve a project to be financed by moneys from the infrastructure maintenance fund unless the state board first has advised and consulted with the joint committee. ~~A state educational institution shall advise and consult with the joint committee before expenditure of any moneys from the infrastructure maintenance fund, or from any account or accounts of the infrastructure maintenance fund of such institution, for each project.~~ No moneys received by a state educational institution as a contribution which qualifies as an income tax credit pursuant to law to finance the cost of a project may be expended unless the institution first has advised and consulted with the joint committee.

(b) Except as specifically provided by this act, the project financed under the program shall not be subject to any further process or procedure that requires the submission, review or approval of any infrastructure improvement. The state board shall ensure that projects financed under the program comply with nationally recognized codes and life-safety inspections under K.S.A. 31-132 et seq., and amendments thereto. Such inspections, plan reviews and other related work shall be conducted by the division of facilities management, or a designee of the division, prior to certification for building occupancy. The state board shall not be subject to the oversight of the state fire marshal.

~~(c) The joint committee shall develop recommendations for a plan for the management and oversight of projects financed under the program. Such recommendations shall be submitted to the president of the senate and the speaker of the house of representatives on or before January 14, 2008.~~

Sec. 7. K.S.A. 2007 Supp. 76-7,117 is hereby amended to read as follows: 76-7,117. As used in the infrastructure finance program:

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

(b) "Postsecondary educational institution" or "institution" means Washburn university and any community college ~~or~~, technical college *or technical school*.

(c) "Community college" means a community college established under the provisions of the community college act.

(d) "Technical college" means a technical college as designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and ~~72-4476~~ 72-4477, and amendments thereto.

(e) (1) "Project" or "infrastructure improvement project" means the maintenance, repair, reconstruction, remodeling or rehabilitation of a building located at a postsecondary educational institution, any additions to a building, any utility system and other infrastructure relating to such building, any life-safety upgrades to such building, any improvements necessary to be made to such building in order to comply with the requirements of the Americans with disabilities act or other federal or state law.

(2) "Infrastructure improvement project" shall not mean:

(A) The new construction of buildings;

(B) the maintenance, repair, reconstruction or rehabilitation of any building used as an athletic facility that does not directly support the delivery of academic pursuits; or

(C) the maintenance, repair, reconstruction or rehabilitation of the residence of the president or chief executive officer of a postsecondary educational institution.

(f) "Cost" means all costs or expenses which are necessary or incidental to an infrastructure improvement project and which are directly attributable thereto.

(g) "Program" means the postsecondary educational institution infrastructure finance program.

(h) "Joint committee" means the joint committee on state building construction.

(i) "Technical school" means a technical school which has submitted a plan approved by the state board in accordance with the provisions of K.S.A. 2007 Supp. 72-4479, and amendments thereto.

Sec. 8. K.S.A. 2007 Supp. 76-7,120 is hereby amended to read as follows: 76-7,120. (a)

(1) Subject to the provisions of this section, the Kansas development finance authority is hereby authorized to issue bonds to finance the cost of projects. Projects which are approved by the state board under the program are hereby approved for the state board for the purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto. *Except as provided by paragraph (3) of this subsection*, the aggregate principal amount of bonds issued pursuant to this section in a single fiscal year under the program shall not exceed \$100,000,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for projects during the time such improvements are being made and any required reserves for the payment of principal and interest on the bonds. ~~The aggregate principal amount of bonds issued pursuant to this section in a single fiscal year shall not exceed \$20,000,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for projects during the time such improvements are being made and any required reserves for the payment of principal and interest on the bonds.~~ All moneys received from the issuance of any such bonds shall be deposited and accounted for as prescribed by applicable bond covenants. The debt service for any such bonds issued for such project shall be paid by appropriations of moneys from the state general fund as may be necessary to pay debt service on the bonds. Subject to the provisions of appropriations acts, and as directed by the Kansas development finance authority, payment of principal and interest on the bonds shall be made by the state board from annual appropriations by the legislature or from any other moneys as may be made available by law or from the postsecondary educational institution in amounts sufficient to pay the principal and interest on the bonds until the bonds are finally paid. The state board is authorized to enter into loan agreements with a postsecondary educational institution to provide for payment of principal on the bonds. All moneys received pursuant to such agreements shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and shall be credited to the state general fund.

(2) No bonds shall be issued pursuant to this section after June 30, 2012.

(3) *The limitation imposed by paragraph (1) of this subsection on the aggregate principal amount of bonds which may be issued under the program shall be increased in an amount equal to \$4,000,000 for each technical school which has submitted a plan approved by the state board in accordance with the provisions of K.S.A. 2007 Supp. 72-4479, and amendments thereto. Applications for loans from technical schools shall be given first priority*

for moneys attributable to the increase in bonding authority under this paragraph. Any moneys remaining after loans are made to technical schools may be reallocated to other postsecondary educational institutions.

(b) The aggregate principal amount of bonds issued pursuant to this section to finance the cost of projects at a single postsecondary educational institution shall not exceed \$15,000,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for projects during the time such improvements are being made and any required reserves for the payment of principal and interest on the bonds.

(c) The date of maturity on bonds issued pursuant to this section shall not be fixed for a period of time which exceeds eight years from the date of issuance.

(d) Subject to the provisions of appropriation acts, the secretary of administration may enter into pledge agreements with the state board and the Kansas development finance authority to pledge moneys for the payment of bonds issued pursuant to the approval in subsection (a).

(e) Any postsecondary educational institutions may apply for a loan under the program. Applications shall be submitted in the manner and form required by the state board. The state board may enter into agreements with the postsecondary educational institutions for the provision of a loan and for the payment of all or a part of eligible project costs. The purposes for which the loan is to be provided, the amount thereof and the repayment terms and conditions shall be included in the agreement entered into pursuant to subsection (d).

(f) The first payment of any principal and interest on bonds issued pursuant to this section during fiscal year 2008, shall not be made prior to July 1, 2008.

Sec. 9. K.S.A. 2007 Supp. 79-32,261 is hereby amended to read as follows: 79-32,261. (a) On and after July 1, 2008, any taxpayer who contributes in the manner prescribed by this section to a community college located in Kansas for capital improvements, to a technical college or *technical school* for deferred maintenance or the purchase of technology or equipment or to a postsecondary educational institution located in Kansas for deferred maintenance, shall be allowed a credit against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated. The tax credit allowed by this section is applicable for the tax year 2008 for any contributions made on and after July 1, 2008, and for the tax years 2009, 2010, 2011 and 2012 for any contributions made during the entire tax year. The amount of the credit allowed by this section shall not exceed 60% of the total amount contributed during the taxable year by the taxpayer to a community college ~~or a~~, technical college or *technical school* located in Kansas for such purposes. The amount of the credit allowed by this section shall not exceed 50% of the total amount contributed during the taxable year by the taxpayer to a postsecondary educational institution for such purposes. If the amount of the credit allowed by this section for a taxpayer who contributes to a community college ~~or a~~, technical college or *technical school* exceeds the taxpayer's income tax liability imposed by the Kansas income tax act, such excess amount shall be refunded to the taxpayer. If the amount of the tax credit for a taxpayer who contributes to a postsecondary educational institution exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the third taxable year succeeding the taxable year in which the contribution is made. Prior to the issuance of any tax credits pursuant to this section, the structure of the process in which contributions received by a community college, a technical college ~~or a~~, *technical school* or postsecondary educational institution qualify as tax credits allowed and issued pursuant to this section shall be developed by a community college, a technical college ~~and a~~, technical school or postsecondary educational institution in consultation with the secretary of revenue and the foundation or endowment association of any such community college, technical college, *technical school* or postsecondary educational institution in a manner that complies with requirements specified in the federal internal revenue code of 1986, as amended, so that

contributions qualify as charitable contributions allowable as deductions from federal adjusted gross income.

(b) (1) Upon receipt of any such contributions to a community college made pursuant to the provisions of this section, the treasurer of the community college shall deposit such contributions to the credit of the capital outlay fund of such community college established as provided by K.S.A. 71-501a, and amendments thereto. Expenditures from such fund shall be made for the purposes described in subsection (a) of K.S.A. 71-501, and amendments thereto, except that expenditures shall not be made from such fund for new construction or the acquisition of real property for use as building sites or for educational programs.

(2) Upon receipt of any such contributions to a technical college made pursuant to the provisions of this section, such contributions shall be deposited to the credit of a deferred maintenance fund or a technology and equipment fund established by the technical college which received the contribution. Expenditures from such fund shall be made only for the purpose as provided in this ~~subsection~~ section.

(3) *Upon receipt of any such contributions to a technical school made pursuant to the provisions of this section, such contributions shall be deposited to the credit of a deferred maintenance fund or a technology and equipment fund established by the technical school which received the contribution. Expenditures from such fund shall be made only for the purpose as provided in this section.*

~~(4)~~ (4) Upon receipt of any such contributions to a postsecondary educational institution made pursuant to the provisions of this section, such contributions shall be deposited to the credit of the appropriate deferred maintenance support fund of the postsecondary educational institution which received the contribution. Expenditures from such fund shall be made only for the purposes designated for such fund pursuant to law.

(c) (1) ~~In no event shall~~ (A) *Except as provided in paragraph (B), for the tax year 2008, the total amount of credits allowed under this section for taxpayers who contribute to any one such community college or technical college or technical school shall not exceed the following amounts: For the tax year 2008, an amount not to exceed \$78,125, for the tax year 2009, an amount not to exceed \$156,250, and for the tax years 2010, 2011 and 2012, an amount not to exceed \$208,233.33; \$78,125; and, except as provided in paragraph (B), for the tax years 2009 through 2012, the total amount of credits allowed under this section for taxpayers who contribute to community colleges, technical colleges or technical schools shall not exceed the following amounts: For the tax year 2009, an amount not to exceed \$3,750,000; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$5,000,000. Except as otherwise provided, for the tax years 2009 through 2012, the allocation of such tax credits for each individual community college, technical college or technical school shall be determined by the state board of regents in consultation with the secretary of revenue and each community college, technical college and technical school, and such determination shall be completed prior to the issuance of any tax credits pursuant to this section. Not more than 40% of the total of credits allowed under this section shall be allocated to any one community college, technical college or technical school unless all such community colleges, technical colleges and technical schools approve an allocation to any one such community college, technical college or technical school which exceeds 40% of the total of such credits allowed under this section.*

(B) *The limitation imposed under paragraph (A) of this subsection on the total amount of tax credits shall be increased: By \$78,125 for each technical school which has submitted a plan certified by the state board to be substantially compliant in accordance with the provisions of K.S.A. 2007 Supp. 72-4479, and amendments thereto, for tax year 2008; and in addition to any amounts allocated to a technical school pursuant to paragraph (A), by \$156,250 for each technical school which has submitted a plan certified by the state board to be substantially compliant in accordance with the provisions of K.S.A. 2007 Supp. 72-4479, and amendments thereto, for tax year 2009; and in addition to any amounts allocated to a technical school pursuant to paragraph (A), by \$208,233.33 for each technical school which has submitted a plan certified by the state board to be substantially compliant in accordance with the provisions of K.S.A. 2007 Supp. 72-4479, and amendments thereto, for tax years 2010, 2011 and 2012.*

(2) ~~In no event shall~~ The total of credits allowed under this section for taxpayers who contribute to postsecondary educational institutions *shall not* exceed the following amounts: For the tax year 2008, an amount not to exceed \$5,625,000; for the tax year 2009, an amount not to exceed \$11,250,000; and for the tax years 2010, 2011 and 2012, an amount not to exceed \$15,000,000. Except as otherwise provided, the allocation of such tax credits for each individual state educational institution shall be determined by the state board of regents in consultation with the secretary of revenue and the university foundation or endowment association of each postsecondary educational institution, and such determination shall be completed prior to the issuance of any tax credits pursuant to this section. Not more than 40% of the total of credits allowed under this section shall be allocated to any one postsecondary educational institution unless all such postsecondary educational institutions approve an allocation to any one such postsecondary educational institution which exceeds 40% of the total of such credits allowed under this section.

(d) As used in this section: (1) "Community college" means a community college established under the provisions of the community college act;

(2) "deferred maintenance" means the maintenance, repair, reconstruction or rehabilitation of a building located at a technical college or a postsecondary educational institution which has been deferred, any utility systems relating to such building, any life-safety upgrades to such building and any improvements necessary to be made to such building in order to comply with the requirements of the Americans with disabilities act or other federal or state law;

(3) "postsecondary educational institution" means the university of Kansas, Kansas state university of agriculture and applied science, Wichita state university, Emporia state university, Pittsburg state university, Fort Hays state university and Washburn university of Topeka; ~~and~~

(4) "technical college" means a technical college as designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475 and 72-4477, and amendments thereto; *and*

(5) "technical school" means a technical school which complies with the provisions of K.S.A. 2007 Supp. 72-4479, and amendments thereto.

(e) Any taxpayer not subject to Kansas income, privilege or premiums tax who contributes to a community college, technical college, *technical school* or postsecondary educational institution, hereinafter designated the transferor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to this section. The sale price of a tax credit shall be at least 50% of the full value of the credit. Such credit shall be deemed to be allowed and earned by any such taxpayer which is only disqualified therefrom by reason of not being subject to such Kansas taxes. The taxpayer acquiring earned credits, hereinafter designated the transferee, may use the amount of the acquired credits to offset up to 100% of the taxpayer's income, privilege or premiums tax liability for the taxable year in which such acquisition was made. Such credits may be sold or transferred only one time and, if sold or transferred, shall be transferred in the tax year such credit is earned or the two successive tax years. A transferred credit shall be claimed in the year purchased. The transferor shall enter into a written agreement with the transferee establishing the terms and conditions of the sale or transfer and shall perfect such transfer by notifying the secretary of revenue in writing within 30 calendar days following the effective date of the transfer, subject to the review and approval or denial of such transfer by the secretary of revenue. The transferor and transferee shall provide any information pertaining to the sale or transfer as may be required by the secretary of revenue to administer and carry out the provisions of this section. The amount received by the transferor of such tax credit shall be taxable as income of the transferor, and the excess of the value of such credit over the amount paid by the transferee for such credit shall be taxable as income of the transferee.

(f) The secretary of revenue shall submit an annual report to the legislature to assist the legislature in the evaluation of the utilization of any credits claimed pursuant to this act, including information specific as to each community college, technical college, *technical school* or postsecondary educational institution. Such report shall be due on or before the first day of the legislative session following the tax year in which the credits were claimed.

(g) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this section.

New Sec. 10. (a) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the deferred maintenance support fund of each state educational institution interest earnings based on:

(1) The average daily balance of moneys in each clearing fund of the state educational institution for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(b) All moneys transferred to the deferred maintenance support fund pursuant to this section shall be expended solely to finance infrastructure improvement projects as defined by K.S.A. 2007 Supp. 76-7,102, and amendments thereto.

(c) As used in this section, "clearing fund of the state educational institution" means those special revenue funds in the state treasury which are designated as clearing funds, other than service clearing funds under K.S.A. 76-755, and amendments thereto, of a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, by the chief executive officer of the state board of regents.

New Sec. 11. (a) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the deferred maintenance support fund of each state educational institution interest earnings based on:

(1) The average daily balance of moneys in each health fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(b) All moneys transferred to the deferred maintenance support fund pursuant to this section shall be expended solely to finance infrastructure improvement projects as defined by K.S.A. 2007 Supp. 76-7,102, and amendments thereto.

(c) As used in this section, "health fee fund" means the university of Kansas health service fund, Kansas state university student health fees fund, Emporia state university student health fees fund, Pittsburg state university hospital and student health fees fund and Fort Hays state university health fees fund.

Sec. 12. K.S.A. 76-755 is hereby amended to read as follows: 76-755. (a) There is hereby established in the state treasury a service clearing fund for each state educational institution.

(b) The service clearing fund at a state educational institution shall be used only as a working capital fund to finance the internal service activities rendered to the state educational institution's own departments, other institutional related organizations and specific organizations and classes of individuals approved by the state board of regents, which activities are specified in appropriations acts for the service clearing fund or which are authorized for the service clearing fund by the state board of regents with the approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto.

(c) The director of accounts and reports shall approve the accounting procedures to be used for service clearing funds to insure a self-supporting operation of each service clearing fund.

(d) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the deferred maintenance support fund of each state educational institution interest earnings based on:

(1) The average daily balance of moneys in the service clearing fund of the state educational institution for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) All moneys transferred to the deferred maintenance support fund pursuant to this section shall be expended solely to finance infrastructure improvement projects as defined by K.S.A. 2007 Supp. 76-7,102, and amendments thereto.

Sec. 13. K.S.A. 76-755 and K.S.A. 2007 Supp. 72-4479, 76-715a, 76-715b, 76-774, 76-775, 76-776, 76-7,105, 76-7,117, 76-7,120 and 79-32,261 are hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, by striking all in lines 12 through 15 and inserting:

“AN ACT concerning education; relating to institutions of higher education; amending K.S.A. 76-755 and K.S.A. 2007 Supp. 72-4479, 76-715a, 76-774, 76-775, 76-776, 76-7,105, 76-7,117, 76-7,120 and 79-32,261 and repealing the existing sections; also repealing K.S.A. 2007 Supp. 76-715b.”; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **HB 2331**, as amended by House Committee of the Whole, be amended on page 1, in line 17, by striking “2006” and inserting “2007”;

On page 2, in line 33, by striking “2006” and inserting “2007”;

On page 3, by striking all in lines 17 through 19;

On page 4, by striking all in lines 13 through 15 and inserting the following:

“Sec. 4. K.S.A. 75-4317a is hereby amended to read as follows: 75-4317a. (a) As used in this act, “meeting” means any gathering, assembly, telephone call or any other means of ~~interactive~~ communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.

(b) *Any meeting by persons who are members of a political or taxing subdivision of the state subject to this act and who constitute less than a majority of a quorum of a body or agency of the political or taxing subdivision of the state shall be open to the public if such meeting is one in a series that:*

(1) *Collectively involve a majority of a quorum;*

(2) *share a common topic of discussion of the affairs of the body or agency;*

(3) *are intended by any participant or participants to determine, influence or develop consensus of a majority of a quorum in preparation for binding action concerning the common topic; and*

(4) *are intended to subvert the policy of open public meetings as pronounced in subsection*

(a) of K.S.A. 75-4317 and amendments thereto.

This subsection shall not be construed to prohibit meetings by less than a majority of a quorum of such members except when such meetings occur in a series with intent as specified herein.”;

And by renumbering the remaining sections accordingly;

Also on page 4, in line 16, before “K.S.A.” by inserting “K.S.A. 75-4317a and”;

In the title, in line 12, after the semicolon by inserting “pertaining to the electronic filing of certain forms and budget information; pertaining to open meetings; pertaining to serial communications with members of the governing body of municipalities and taxing subdivisions;”; in line 13, before “K.S.A.” by inserting “K.S.A. 75-4317a and”; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **SB 696** be passed.

Also, **HB 2772**, as amended by House Committee, be amended on page 1, in line 31, by striking “Brokers” and inserting “Broker’s”;

On page 4, in line 20, by striking “or” and inserting “nor shall”; in line 27, by striking “or” and inserting “nor shall”; following line 29, by inserting:

“(i) The provisions of paragraph (1) of subsection (a) shall not be applicable to employees of the Kansas department of transportation performing appraisals for the department for the purpose of real property acquisition or disposal of real property by the department. In no event shall such employee performing such appraisal represent such individual’s self as a state certified or licensed appraiser unless such employee is a state certified or licensed appraiser.

(j) The provisions of paragraph (1) of subsection (a) shall not preclude an individual licensed as an insurance agent pursuant to K.S.A. 40-4901 et seq., and amendments thereto, or an individual retained by an insurance company, while acting within the scope of the Kansas insurance code, from performing and providing services as an insurance agent or an individual retained by an insurance company as otherwise allowed by law. In no event shall any report by an insurance agent or an individual retained by an insurance company be referred to as an appraisal nor shall such insurance agent or an individual retained by an insurance company represent such individual’s self as a state certified or licensed appraiser unless such employee is a state certified or licensed appraiser.”; and the bill be passed as amended.

HB 2908 be amended on page 2, in line 17, before “The”, by inserting “Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director’s findings and judgment.”; in line 18, by striking all after “indicate”; by striking all in line 19; in line 20, by striking all before “that”;

On page 3, in line 3, by striking all after “(f)”; by striking all in lines 4 through 7; in line 8, by striking all before “A”;

On page 6, in line 35, before the semicolon by inserting “or a person who currently has a beneficial interest in a farm winery”;

On page 9, by striking all in lines 3 and 4; following line 4, by inserting:

“Sec. 4. K.S.A. 41-102 is hereby amended to read as follows: 41-102. As used in this act, unless the context clearly requires otherwise:

(a) “Alcohol” means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) “Alcoholic liquor” means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) “Beer” means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

(d) “Caterer” has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(e) “Cereal malt beverage” has the meaning provided by K.S.A. 41-2701, and amendments thereto.

(f) “Club” has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(g) “Director” means the director of alcoholic beverage control of the department of revenue.

(h) “Distributor” means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this act or cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2702, and amendments thereto.

(i) “Domestic beer” means beer which contains not more than 8% alcohol by weight and which is manufactured ~~from agricultural products grown~~ in this state.

(j) “Domestic fortified wine” means wine which contains more than 14%, but not more than 20% alcohol by volume and which is manufactured ~~from agricultural products grown~~ in this state without rectification.

(k) “Domestic table wine” means wine which contains not more than 14% alcohol by volume and which is manufactured without rectification or fortification ~~from agricultural products grown~~ in this state.

(l) “Drinking establishment” has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(m) “Farm winery” means a winery licensed by the director to manufacture, store and sell domestic table wine and domestic fortified wine.

(n) “Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

(o) (1) “Manufacturer” means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage.

(2) “Manufacturer” does not include a microbrewery or a farm winery.

(p) “Microbrewery” means a brewery licensed by the director to manufacture, store and sell domestic beer.

(q) “Minor” means any person under 21 years of age.

(r) "Nonbeverage user" means any manufacturer of any of the products set forth and described in K.S.A. 41-501, and amendments thereto, when the products contain alcohol or wine, and all laboratories using alcohol for nonbeverage purposes.

(s) "Original package" means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor. Original container does not include a sleeve.

(t) "Person" means any natural person, corporation, partnership, trust or association.

(u) "Primary American source of supply" means the manufacturer, the owner of alcoholic liquor at the time it becomes a marketable product or the manufacturer's or owner's exclusive agent who, if the alcoholic liquor cannot be secured directly from such manufacturer or owner by American wholesalers, is the source closest to such manufacturer or owner in the channel of commerce from which the product can be secured by American wholesalers.

(v) (1) "Retailer" means a person who sells at retail, or offers for sale at retail, alcoholic liquors.

(2) "Retailer" does not include a microbrewery or a farm winery.

(w) "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

(x) "Salesperson" means any natural person who:

(1) Procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor or cereal malt beverage; or

(2) is engaged in promoting the sale of alcoholic liquor or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of alcoholic liquor or cereal malt beverage, whether the seller resides within the state of Kansas and sells to licensed buyers within the state of Kansas, or whether the seller resides without the state of Kansas and sells to licensed buyers within the state of Kansas.

(y) "Secretary" means the secretary of revenue.

(z) (1) "Sell at retail" and "sale at retail" refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits.

(2) "Sell at retail" and "sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

(aa) "To sell" includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

(bb) "Sleeve" means a package of two or more 50-milliliter (3.2-fluid-ounce) containers of spirits.

(cc) "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(dd) "Supplier" means a manufacturer of alcoholic liquor or cereal malt beverage or an agent of such manufacturer, other than a salesperson.

(ee) "Temporary permit" has the meaning provided by K.S.A. 41-2601, and amendments thereto.

(ff) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

Sec. 5. K.S.A. 2007 Supp. 41-303 is hereby amended to read as follows: 41-303. (a) The director may issue to qualified applicants licenses to sell at retail alcoholic liquor in the original package on premises not located in an incorporated city for use or consumption off the premises, if such premises are located in a township having a population of more than ~~5,000~~. No such license shall be issued to any applicant unless the applicant possesses all the qualifications required of other applicants for retailers' licenses except the qualification of

residency within a city. ~~If any license has been issued under the provisions of this section in a township having a population of more than 5,000 and thereafter such township population decreases or has decreased to 5,000 or less, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at the appropriate time if they are otherwise qualified.~~

No such license shall be issued to any applicant under this section unless the board of county commissioners of the county in which the premises for which licensure is sought are located adopts a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this section.

(b) ~~If a license has been issued under the provisions of this section in a township having a population of more than 5,000~~ *the unincorporated area of a county* and thereafter the premises so licensed are annexed to a city wherein retail liquor licenses may be issued, such license shall continue to be valid and may be renewed at the appropriate time even though the licensee does not reside in the city to which the area is annexed if the licensee otherwise is qualified and resides in the township in which the premises were located prior to annexation or in the city to which the premises have been annexed.

(c) Any retail license issued prior to the effective date of this act for premises not located in an incorporated city ~~or in a township having a population of more than 5,000~~ shall continue to be valid and such premises shall continue to be eligible for licensure if the board of county commissioners of the county in which the premises are located has adopted a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this subsection.

Sec. 6. K.S.A. 2007 Supp. 41-308b is hereby amended to read as follows: 41-308b. (a) A microbrewery license shall allow:

(1) The manufacture of not less than 100 nor more than 15,000 barrels of domestic beer during the license year and the storage thereof;

(2) the sale to beer distributors of beer, manufactured by the licensee;

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of beer manufactured by the licensee;

(4) the serving on the premises of samples of beer manufactured by the licensee, if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(5) if the licensee is also licensed as a club or drinking establishment, the sale of domestic beer and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act; and

(6) if the licensee is also licensed as a caterer, the sale of domestic beer and other alcoholic liquor for consumption on unlicensed premises as authorized by the club and drinking establishment act.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a microbrewery licensee, the director may issue not to exceed one microbrewery packaging and warehousing facility license to the microbrewery licensee. A microbrewery packaging and warehousing facility license shall allow:

(1) The transfer, from the licensed premises of the microbrewery to the licensed premises of the microbrewery packaging and warehousing facility, of beer manufactured by the licensee, for the purpose of packaging or storage, or both; and

(2) the transfer, from the licensed premises of the microbrewery packaging and warehousing facility to the licensed premises of the microbrewery, of beer manufactured by the licensee; or

(3) the removal from the licensed premises of the microbrewery packaging and warehousing facility of beer manufactured by the licensee for the purpose of delivery to a licensed beer wholesaler.

~~(c) Not less than 50% of the products utilized in the manufacture of domestic beer by a microbrewery shall be grown in Kansas except when a greater proportion of products grown outside this state is authorized by the director based upon findings that such products are not available in this state. The label of each container of domestic beer shall clearly set forth the proportion of the products utilized in the manufacture of the beer which was from agricultural products grown in Kansas.~~

~~(c)~~ (c) A microbrewery may sell domestic beer in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 11 a.m. and 7 p.m. on Sunday. If authorized by subsection (a), a microbrewery may serve samples of domestic beer and serve and sell domestic beer and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor.

~~(d)~~ (d) The director may issue to the Kansas state fair or any bona fide group of brewers a permit to import into this state small quantities of beer. Such beer shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such beer shall not be subject to the tax imposed by K.S.A. 41-501, and amendments thereto. The permit shall identify specifically the brand and type of beer to be imported, the quantity to be imported, the tasting programs for which the beer is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of beer pursuant to this subsection and the conduct of tasting programs for which such beer is imported.

~~(e)~~ (e) A microbrewery license or microbrewery packaging and warehousing facility license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

~~(f)~~ (f) No microbrewery shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premises supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

~~(g)~~ (g) Whenever a microbrewery licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and all fees paid for the license in accordance with the Kansas administrative procedure act.

Sec. 7. K.S.A. 2007 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) No person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;

(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place; or

(5) on the premises of a microbrewery or farm winery, if authorized by K.S.A. 41-308a or 41-308b, and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.

(2) In any state-owned or operated building or structure, and on the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated, and amendments thereto, or established by a city.

(4) On the state fair grounds on the day of any race held thereon pursuant to the Kansas parimutuel racing act.

(5) On the state fairgrounds, if: (A) The alcoholic liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A. 41-308a, and amendments thereto, and is consumed only for purposes of judging competitions; (B) the alcoholic liquor is wine or beer and is sold and consumed during the days of the Kansas state fair on premises leased by the state fair board to a person who holds a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto, authorizing the sale and serving of such wine or beer, or both; or (C) the alcoholic liquor is consumed on nonfair days in conjunction with bona fide scheduled events involving not less than 75 invited guests and the state fair board, in its discretion, authorizes the consumption of the alcoholic liquor, subject to any conditions or restrictions the board may require.

(6) In the state historical museum provided for by K.S.A. 76-2036, and amendments thereto, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(7) On the premises of any state-owned historic site under the jurisdiction and supervision of the state historical society, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(8) In a lake resort within the meaning of K.S.A. 32-867, and amendments thereto, on state-owned or leased property.

(9) In the Hiram Price Dillon house or on its surrounding premises, subject to limitations established in policies adopted by the legislative coordinating council, as provided by K.S.A. 75-3682, and amendments thereto.

(10) On the premises of any Kansas national guard regional training center *or armory*, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(11) On property exempted from this subsection (c) pursuant to subsection (d), (e), (f), (g) or (h).

(d) Any city may exempt, by ordinance, from the provisions of subsection (c) specified property the title of which is vested in such city.

(e) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (c) specified property the title of which is vested in such county.

(f) The state board of regents may exempt from the provisions of subsection (c) the Sternberg museum on the campus of Fort Hays state university, or other specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(g) The board of regents of Washburn university may exempt from the provisions of subsection (c) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(h) The board of trustees of a community college may exempt from the provisions of subsection (c) specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(i) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.

Sec. 8. K.S.A. 41-346 is hereby amended to read as follows: 41-346. In any administrative proceeding pursuant to the Kansas liquor control act to suspend or revoke a license, or to impose a civil fine, for a violation of K.S.A. 21-3610, 21-3610a or 41-2615, and amendments thereto, it shall be a defense if evidence is presented which indicates that: (a) The defendant permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with

reasonable cause to believe that the minor was 21 or more years of age; and (b) to possess or consume the alcoholic liquor or cereal malt beverage, the minor 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.

Sec. 9. K.S.A. 41-2615 is hereby amended to read as follows: 41-2615. (a) No licensee or permit holder, or any owner, officer or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverage by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is 21 years of age or older.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than \$100 and not more than \$250 or imprisonment not exceeding 30 days, or both.

(c) It shall be a defense to a prosecution under this section if: (1) The defendant permitted the minor to possess or consume the alcoholic liquor or cereal malt beverage with reasonable cause to believe that the minor was 21 or more years of age; and (2) to possess or consume the alcoholic liquor or cereal malt beverage, the minor 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.

Sec. 10. 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. 11. 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. 12. 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. 13. K.S.A. 21-3610, 41-102, 41-346 and 41-2615 and K.S.A. 2007 Supp. 41-303, 41-308a, 41-308b, 41-311, 41-719, 41-2645, 41-2905 and 41-2906 are hereby repealed.”;

By renumbering the remaining section accordingly;

In the title, by striking all in lines 9 through 11; following line 11, by inserting: “AN ACT concerning alcoholic beverages; relating to the regulation thereof; amending K.S.A. 21-3610, 41-102, 41-346 and 41-2615 and K.S.A. 2007 Supp. 41-303, 41-308a, 41-308b, 41-311, 41-719, 41-2645, 41-2905 and 41-2906 and repealing the existing sections.”; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **HB 2689** be passed.

Committee on **Health Care Strategies** recommends **HB 2620**, as amended by House Committee of the Whole, be amended on page 2, in line 30, by striking all after “adult”; in line 31, by striking “juvenile”; also in line 31, by striking “, adjudications, expungements”; in line 32, after “tions” by inserting “and adult convictions or adjudications of another state or country”; in line 41, by striking all after “adopt”; in line 42, by striking “tions.”; in line 43, by striking all after “which”;

On page 3, in line 1, by striking “violations” and inserting “may be used by the board as a reference guide”; after line 3, by inserting the following: snum=4

“New Sec. 4. (a) On and after July 1, 2010, the board shall make available on a searchable website which shall be accessible by the public, the following information regarding licensees:

(1) The licensee's full name, business address, telephone number, license number, type, status and expiration date;

(2) the licensee's practice specialty, if any, and board certifications, if any;

(3) any public disciplinary action taken against the licensee by the board or by the licensing agency of any state or other country in which the licensee is currently licensed or has been licensed in the past;

(4) any involuntary limitation, denial, revocation or suspension of the licensee's staff membership or clinical privileges at any hospital or other health care facility, and the name of the hospital or facility, the date the action was taken, a description of the action, including any terms and conditions of the action and whether the licensee has fulfilled the conditions of the action;

(5) any involuntary surrender of the licensee's drug enforcement administration registration; and

(6) any final criminal conviction or plea arrangement resulting from the commission or alleged commission of a felony in any state or country.

(b) Any person applying for an active license, including a renewal or reinstatement license, shall provide the information required in subsection (a) on forms or in a manner determined by the board by rule and regulation.

(c) At the time of licensure or renewal, a licensee may add a statement to such licensee's profile as it appears on the website created herein. Such statement may provide further explanation of any disciplinary information contained in such licensee's profile.

(d) This section shall be part of and supplemental to the healing arts act.

Sec. 5. K.S.A. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, *except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute professional incompetency or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.*

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a $\frac{2}{3}$ majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall have 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 either in the course of an investigation or a disciplinary proceeding. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c and amendments thereto or to a committee consisting of the officers of the board elected pursuant to K.S.A. 65-2818 and amendments thereto and the executive director appointed pursuant to K.S.A. 65-2878 and amendments thereto or to a presiding officer authorized pursuant to K.S.A. 77-514 and amendments thereto. The determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board 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 the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of a renewal to practice the healing arts 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.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a 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.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122 and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.

(n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(q) The licensee has violated a federal law or regulation relating to controlled substances.

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

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a and amendments thereto.

(z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404 and amendments thereto.

(aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

(bb) The licensee as the responsible physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.

(cc) 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.

Sec. 6. K.S.A. 2007 Supp. 65-2837 is hereby amended to read as follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto, and in this section:

(a) "Professional incompetency" means:

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

(3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice ~~medicine~~ *the healing arts*.

(b) "Unprofessional conduct" means:

(1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.

- (2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.
- (3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.
- (4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed.
- (5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.
- (6) Willful betrayal of confidential information.
- (7) Advertising professional superiority or the performance of professional services in a superior manner.
- (8) Advertising to guarantee any professional service or to perform any operation painlessly.
- (9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.
- (10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107, and amendments thereto.
- (11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.
- (12) Conduct likely to deceive, defraud or harm the public.
- (13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.
- (14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.
- (15) Allowing another person or organization to use the licensee's license to practice the healing arts.
- (16) Commission of any act of sexual abuse, misconduct or ~~exploitation related to the licensee's professional practice~~ *other improper sexual contact with a patient, patient surrogate or key third party which exploits the licensee-patient relationship.*
- (17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.
- (18) Obtaining any fee by fraud, deceit or misrepresentation.
- (19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.
- (20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.
- (21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.
- (22) Charging an excessive fee for services rendered.
- (23) Prescribing, dispensing, administering or distributing a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of the licensee's professional practice.
- (24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
- (25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

(28) Prescribing, dispensing, administering or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(29) Referring a patient to a health care entity for services if the licensee has a significant investment interest in the health care entity, unless the licensee informs the patient in writing of such significant investment interest and that the patient may obtain such services elsewhere.

(30) Failing to properly supervise, direct or delegate acts which constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.

(31) Violating K.S.A. 65-6703 and amendments thereto.

(32) Charging, billing or otherwise soliciting payment from any patient, patient's representative or insurer for anatomic pathology services, if such services are not personally rendered by the licensee or under such licensee's direct supervision. As used in this subsection, "anatomic pathology services" means the gross or microscopic examination of histologic processing of human organ tissue or the examination of human cells from fluids, aspirates, washings, brushings or smears, including bloodbanking services, and subcellular or molecular pathology services, performed by or under the supervision of a person licensed to practice medicine and surgery or a clinical laboratory. Nothing in this subsection shall be construed to prohibit billing for anatomic pathology services by a hospital, or by a clinical laboratory when samples are transferred between clinical laboratories for the provision of anatomic pathology services.

(33) *Engaging in conduct which violates patient trust and exploits the licensee-patient relationship for personal gain.*

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

(e) "Licensee" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean all persons issued a license, permit or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes Annotated.

(f) "License" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean any license, permit or special permit granted under article 28 of chapter 65 of the Kansas Statutes Annotated.

(g) "Health care entity" means any corporation, firm, partnership or other business entity which provides services for diagnosis or treatment of human health conditions and which is owned separately from a referring licensee's principle practice.

(h) "Significant investment interest" means ownership of at least 10% of the value of the firm, partnership or other business entity which owns or leases the health care entity, or ownership of at least 10% of the shares of stock of the corporation which owns or leases the health care entity.

Sec. 7. K.S.A. 65-2878 is hereby amended to read as follows: 65-2878. (a) The board shall appoint an executive director, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. The executive director shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and

approved by the governor. The executive director shall not be a member of the board. Under the supervision of the board, the executive director shall be the chief administrative officer of the board and shall perform such duties as may be specified by the board and as may be required by law. The executive director shall be the custodian of the common seal of the board, the books and records of the board and shall keep minutes of all board proceedings.

(b) The board may employ an administrative assistant. The administrative assistant shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor. Under the supervision of the executive director, the administrative assistant shall assist the executive director in the performance of the duties of the executive director.

(c) The board may employ such clerical and other employees, who shall be in the classified service under the Kansas civil service act, as it considers necessary in order to administer and execute, under the supervision of the executive director, the provisions of this act or other statutes delegating duties and responsibilities to the board, except that any attorney employed by the board shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor.

(d) As necessary, the board shall be represented by an attorney appointed by the attorney general as provided by law, whose compensation shall be determined and paid by the board with the approval of the governor.

(e) *The board may contract with one or more persons who are licensed to practice the healing arts in this state and who are not members of the board to provide such advice and assistance as necessary on: Licensure matters including review, investigation and disposition of complaints; clinical and patient care matters; and the ethical conduct and professional practice of licensees; or to perform other duties as assigned by the executive director or the board.*

Sec. 8. K.S.A. 65-2836 and 65-2878 and K.S.A. 2007 Supp. 65-2837 are hereby repealed.”;

And by renumbering the remaining section accordingly;

On page 1, in the title, in line 14, before the period, by inserting “; licensure; website; amending K.S.A. 65-2836 and 65-2878 and K.S.A. 2007 Supp. 65-2837 and repealing the existing sections”; and the bill be passed as amended.

Committee on **Judiciary** recommends **HB 2825** be passed.

Also, **SB 591** be amended on page 1, by striking all in lines 14 through 43;

By striking all on pages 2, 3 and 4;

And by renumbering the remaining sections accordingly;

On page 5, by striking all in lines 1 and 2; in line 3, by striking “Sec.” and inserting “Section”; in line 11, following “(b)” by inserting “(1)”; in line 29, by striking all following the period; by striking all in lines 30 and 31; preceding line 32, by inserting the following:

“(2) In lieu of suspension under paragraph (1), the driver may submit a written request, with a \$25 application fee, for restricted driving privileges. Upon review and approval of the driver’s eligibility, the driving privileges will be restricted pursuant to K.S.A. 8-292, and amendments thereto, for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. The provisions of this paragraph shall expire on January 1, 2011.”;

On page 6, by striking all in lines 27 through 43;

By striking all on pages 7 through 14;

On page 15, by striking all in lines 1 through 29 and inserting the following:

“Sec. 2. K.S.A. 2007 Supp. 8-2110 is hereby repealed.”;

Also on page 15, in line 30, following “after” by inserting “January 1, 2009, and”;

In the title, in line 9, preceding “persons” by inserting “certain”; by striking all in lines 10 and 11 and inserting “; amending K.S.A. 2007 Supp. 8-2110 and repealing the existing section.”; and the bill be passed as amended.

HB 2617, as amended by House Committee, be amended on page 1, in line 41, by striking "other"; in line 42, by striking all preceding the semicolon;

On page 2, in line 1, by striking "serious injury or" and inserting "the immediate"; in line 2, by striking ", except when" and inserting "of any person or if such accident or collision could result in the death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if"; in line 29, by striking "has operated"; by striking all in line 30; in line 31, by striking all preceding the semicolon and inserting "meets the requirements of paragraph (2) of subsection (b)"; by striking all in lines 33 through 35; in line 36, by striking all preceding the period and inserting "person meets the requirements of paragraph (2) of subsection (b)";

On page 6, by striking all in lines 31 through 41;

On page 7, in line 6, by striking all following "procedure"; by striking all in lines 7 through 9; in line 10, by striking all preceding the period and inserting "are required by law to be provided to the requesting law enforcement officer or the law enforcement officer's designee after the requesting law enforcement officer has complied with K.S.A. 8-1001, and amendments thereto"; by striking all in line 39, and inserting the following:

"Sec. 4. K.S.A. 2007 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

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

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

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

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

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

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

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

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

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

the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) ~~(4)~~ On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. *The court shall retain jurisdiction and may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits.*

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

The court shall also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto.

(g) ~~(4)~~ On the fourth ~~or subsequent~~ conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. *The court shall retain jurisdiction and may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits.*

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the

sheriff for execution of the sentence imposed in the event the secretary of corrections determines. (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

(h) (1) *On the fifth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than 12 months imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.*

(2) *The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in the custody of the secretary of corrections in a state substance abuse treatment facility established by the department of corrections, if the term of imprisonment is for 12 months, or, if space is not available at such facility, in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility while participating in the substance abuse treatment program designated by the secretary or if the person refuses or fails to complete the substance abuse treatment program, the expiration of the term of imprisonment. Upon successful completion of the substance abuse treatment program the person shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment, except that the court shall retain jurisdiction and may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. The term of imprisonment in the custody of the secretary of corrections shall not be reduced by good time credit. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.*

At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court under subsection (h), the person shall be placed in the custody of the secretary of corrections supervised by community correctional services for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto court. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., K.S.A. 22-3716, and amendments thereto, and as otherwise provided by law.

~~(h)~~ (i) *Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which*

prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

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

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

~~(l)~~ (l) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

~~(m)~~ (m) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

(2) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(3) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

~~(n)~~ (n) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all

prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

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

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

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

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

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

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

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

~~(p)~~ (q) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. *On and after the effective date of this act and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony.*

Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

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

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

(~~¶~~) (t) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

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

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

(3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-4165, and amendments thereto.

(~~¶~~) (v) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

(~~¶~~) (w) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-sentence evaluation shall be made available, and shall be considered by the sentencing court.

Sec. 5. K.S.A. 21-4704 is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in such grid represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve

the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered a departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto. Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, *except that the term of imprisonment for felony violations under subsection (h) of K.S.A. 8-1567, and amendments thereto, may be served in a state substance abuse treatment facility established by the department of corrections,*

or if space is not available at such facility, in a state correctional facility designated by the secretary of corrections.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who: (A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and (ii) at the time of the conviction under paragraph (A) (i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government; or (B) (i) has been convicted of rape, K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the conviction under paragraph (B) (i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in paragraph (2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) (1) The sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

(2) The sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has two or more prior convictions for violations of K.S.A. 21-3715, and amendments thereto, or a prior conviction of K.S.A. 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section. Such sentence shall not be considered a departure and shall not be subject to appeal.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (d) of K.S.A. 21-3812, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism, such program is available and the offender can be admitted to such program within a reasonable period of time; or

(2) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence pursuant to this section shall not be considered a departure and shall not be subject to appeal.

Sec. 6. K.S.A. 2007 Supp. 75-5210 is hereby amended to read as follows: 75-5210. (a) Persons committed to the institutional care of the secretary of corrections shall be dealt with humanely, with efforts directed to their rehabilitation and return to the community as safely and promptly as practicable. For these purposes, the secretary shall establish programs of classification and diagnosis, education, casework, mental health, counseling and psychotherapy, chemical dependency counseling and treatment, sexual offender counseling, pre-release programs which emphasize re-entry skills, adjustment counseling and job placement, vocational training and guidance, work, library, physical education and other rehabilitation and recreation services; the secretary may establish facilities for religious worship; and the secretary shall institute procedures for the study and classification of inmates. The secretary shall maintain a comprehensive record of the behavior of each inmate reflecting accomplishments and progress toward rehabilitation as well as charges of infractions of rules and regulations, punishments imposed and medical inspections made.

(b) Programs of work, education or training shall include a system of promotional rewards entitling inmates to progressive transfer from high security status to a lesser security status. The secretary shall have authority at any time to transfer an inmate from one level of status to another level of status. Inmates may apply to the secretary for such status privileges. The secretary shall adopt a custody classification manual establishing standards relating to the transfer of an inmate from one status to another, and in developing such standards the secretary shall take into consideration progress made by the inmate toward attaining the educational, vocational and behavioral goals set by the secretary for the individual inmate. In order to facilitate the reintegration into the community of some inmates who are scheduled for release within the next 90 days, there shall be a presumption of minimum security status for those offenders who have been returned to prison for violating conditions of their postrelease supervision not involving a new criminal conviction and whose last facility security custody status was not either special management or maximum. ~~This presumption shall be applied to the initial security custody status assigned to the offender upon readmission into a correctional facility.~~ *Inmates sentenced to a state substance abuse treatment facility established by the department of corrections, to a facility designated by the secretary for the provision of substance abuse treatment, or for whom the court has recommended intensive substance abuse treatment, shall have a presumption of minimum security status. These presumptions of minimum security status shall be applied to the initial security custody upon readmission into a correctional facility or admission into a state substance abuse treatment facility, unless the security custody status is increased pursuant to policies adopted by the secretary. The security custody status designated by the department shall not be subject to judicial review.*

(c) The secretary, with the cooperation of the department of health and environment, shall adopt rules and regulations establishing and prescribing standards for health, medical and dental services for each institution, including preventive, diagnostic and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. An inmate may be taken, when necessary, to a medical facility outside the institution.

(d) Under rules and regulations adopted by the secretary, directors of institutions may authorize visits, correspondence and communication, under reasonable conditions, between inmates and appropriate friends, relatives and others.

(e) The secretary shall adopt rules and regulations under which inmates, as part of a program anticipating their release from minimum security status, may be granted temporary furloughs from a correctional institution or contract facility to visit their families or to be interviewed by prospective employers.

(f) The secretary shall adopt rules and regulations for the maintenance of good order and discipline in the correctional institutions, including procedures for dealing with violations. Disciplinary rules and regulations may provide a system of punishment including segregation, forfeitures of good time earned, fines, extra work, loss of privileges, restrictions and payment of restitution.

The secretary and any persons designated by rules and regulations of the secretary may administer oaths for the purpose of conducting investigations and disciplinary proceedings pursuant to rules and regulations adopted by the secretary under this subsection and under K.S.A. 75-5251 and amendments thereto. For this purpose, the secretary shall adopt rules

and regulations designating those persons who may administer oaths in such investigations and proceedings and the form and manner of administration of the oaths.

(g) A copy of the rules and regulations adopted pursuant to subsection (f) shall be provided to each inmate. Other rules and regulations of the secretary which are required to be published pursuant to K.S.A. 77-415 through 77-437, and amendments thereto, shall be made available to inmates by placing a copy in the inmate library at the institution or by some other means providing reasonable accessibility to inmates.

(h) Any inmate participating in work and educational release programs under the provisions of K.S.A. 75-5267 and amendments thereto shall continue to be in the legal custody of the secretary of corrections, notwithstanding the inmate's absence from a correctional institution by reason of employment, education or for any other purpose related to such work and educational release programs, and any employer or educator of that person shall be considered the representative or agent for the secretary.

(i) The secretary shall establish administrative and fiscal procedures to permit the use of regional or community institutions, local governmental or private facilities or halfway houses for the placement of inmates released for the purposes of this act and for the work and educational release programs under K.S.A. 75-5267 and amendments thereto.

(j) The secretary may establish correctional work facilities and select inmates to be assigned to such facilities.

(k) The secretary may acquire, in the name of the state, by lease, purchase or contract additional facilities as may be needed for the housing of persons in the secretary's custody.

(l) The secretary is hereby authorized to use any of the inmates assigned to the secretary's custody in the construction and repair of buildings or property on state owned or leased grounds.

(m) For the purposes of establishing and carrying out the programs provided for by subsection (a) and by K.S.A. 75-5267 and amendments thereto, the secretary may contract with qualified individuals, partnerships, corporations or organizations; with agencies of the state; or with the United States or any political subdivision of the state, or any agency thereof.

Sec. 7. K.S.A. 2007 Supp. 75-5220 is hereby amended to read as follows: 75-5220. (a) Except as provided in subsection (d), within three business days of receipt of the notice provided for in K.S.A. 75-5218 and amendments thereto, the secretary of corrections shall notify the sheriff having such offender in custody to convey such offender immediately to the department of corrections reception and diagnostic unit or if space is not available at such facility, then to some other state correctional institution until space at the facility is available, except that, in the case of first offenders who are conveyed to a state correctional institution other than the reception and diagnostic unit, such offenders shall be segregated from the inmates of such correctional institution who are not being held in custody at such institution pending transfer to the reception and diagnostic unit when space is available therein. The expenses of any such conveyance shall be charged against and paid out of the general fund of the county whose sheriff conveys the offender to the institution as provided in this subsection.

(b) Any female offender sentenced according to the provisions of K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff having such offender in custody directly to a correctional institution designated by the secretary of corrections, subject to the provisions of K.S.A. 75-52,134 and amendments thereto. The expenses of such conveyance to the designated institution shall be charged against and paid out of the general fund of the county whose sheriff conveys such female offender to such institution.

(c) Each offender conveyed to a state correctional institution pursuant to this section shall be accompanied by the record of the offender's trial and conviction as prepared by the clerk of the district court in accordance with K.S.A. 75-5218 and amendments thereto.

(d) If the offender in the custody of the secretary is a juvenile, as described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such juvenile shall not be transferred to the state reception and diagnostic center until such time as such juvenile is to be transferred from a juvenile correctional facility to a department of corrections institution or facility.

(e) *Any offender sentenced to a state substance abuse treatment facility established by the department of corrections shall not be transferred to the state reception and diagnostic center but directly to such state substance abuse treatment facility, unless otherwise directed by*

the secretary. The secretary may transfer the housing and confinement of any offender sentenced to a state substance abuse treatment facility to any institution or facility pursuant to K.S.A. 75-5206, and amendments thereto.

Sec. 8. K.S.A. 21-4704, 21-4704b and 22-3437 and K.S.A. 2007 Supp. 8-1001, 8-1567, 8-1567b, 75-5210 and 75-5220 are hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, in line 11, by striking all following the semicolon; in line 12, by striking all preceding the period and inserting “providing substance abuse treatment for certain offenders; amending K.S.A. 21-4704 and 22-3437 and K.S.A. 2007 Supp. 8-1001, 8-1567, 75-5210 and 75-5220 and repealing the existing sections; also repealing K.S.A. 21-4704b and K.S.A. 2007 Supp. 8-1567b”; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **HB 2097**, as amended by House Committee, be amended by substituting a new bill to be designated as “SENATE Substitute for HOUSE BILL NO. 2097,” as follows:

“SENATE Substitute for HOUSE BILL No. 2097

By Committee on Public Health and Welfare

“AN ACT concerning vaccinations; relating to educational awareness of infectious disease vaccines and school-based influenza vaccination pilot program study.”;

and the substitute bill be passed.

Also, **Substitute for HB 2207** be amended on page 4, after line 28, by inserting the following:

“Sec. 2. K.S.A. 65-1657 is hereby amended to read as follows: 65-1657. (a) No nonresident pharmacy shall ship, mail or deliver, in any manner, prescription drugs to a patient in this state unless registered under this section as a nonresident pharmacy. Applications for a nonresident pharmacy registration under this section shall be made on a form furnished by the board. A nonresident pharmacy registration shall be granted for a period of one year upon compliance by the nonresident pharmacy with the provisions of this section and rules and regulations adopted pursuant to this section and upon payment of the registration fee established under K.S.A. 65-1645, and amendments thereto, for a pharmacy registration. A nonresident pharmacy registration shall be renewed annually on forms provided by the board, upon compliance by the nonresident pharmacy with the provisions of this section and rules and regulations adopted pursuant to this section and upon payment of the renewal fee established under K.S.A. 65-1645, and amendments thereto, for the renewal of a pharmacy registration.

(b) As conditions for the granting of a registration and for the renewal of a registration for a nonresident pharmacy, the nonresident pharmacy shall comply with the following:

(1) Provide information to the board to indicate the person or persons applying for the registration, the location of the pharmacy from which the prescription drugs will be dispensed, the names and titles of all principal owners and corporate officers, if any, and the names of all pharmacists dispensing prescription drugs to residents of Kansas;

(2) be registered and in good standing in the state in which such pharmacy is located;

(3) maintain, in readily retrievable form, records of prescription drugs dispensed to Kansas patients;

(4) supply upon request, all information needed by the board to carry out the board’s responsibilities under this section and rules and regulations adopted pursuant to this section;

(5) maintain pharmacy hours that permit the timely dispensing of drugs to Kansas patients and provide reasonable access for the patients to consult with a licensed pharmacist about such patients’ medications;

(6) provide toll-free telephone communication consultation between a Kansas patient and a pharmacist at the pharmacy who has access to the patient’s records, and ensure that the telephone number(s) will be placed upon the label affixed to each prescription drug container dispensed in Kansas; and

(7) provide to the board such other information as the board may reasonably request to administer the provisions of this section.

(c) Each nonresident pharmacy shall comply with the following unless compliance would be in conflict with specific laws or rules and regulations of the state in which the pharmacy is located:

(1) All statutory and regulatory requirements of Kansas for controlled substances, including those that are different from federal law;

(2) labeling of all prescriptions dispensed, to include but not be limited to identification of the product and quantity dispensed;

(3) all the statutory and regulatory requirements of Kansas for dispensing prescriptions in accordance with the quantities indicated by the prescriber; and

(4) the Kansas law regarding the maintenance and use of the patient medication profile record system.

(d) In addition to subsection (c) requirements, each nonresident pharmacy shall comply with all the statutory and regulatory requirements of Kansas regarding drug product selection laws whether or not such compliance would be in conflict with specific laws or rules and regulations of the state in which the pharmacy is located, except that compliance which constitutes only a minor conflict with specific laws or rules and regulations of the state in which the pharmacy is located would not be required under this subsection.

(e) Each nonresident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(1) Normal delivery protocols and times;

(2) the procedure to be followed if the patient's medication is not available at the nonresident pharmacy, or if delivery will be delayed beyond the normal delivery time;

(3) the procedure to be followed upon receipt of a prescription for an acute illness, which policy shall include a procedure for delivery of the medication to the patient from the nonresident pharmacy at the earliest possible time, or an alternative that assures the patient the opportunity to obtain the medication at the earliest possible time; and

(4) the procedure to be followed when the nonresident pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mailed prescription drugs become available.

(f) Except in emergencies that constitute an immediate threat to the public health and require prompt action by the board, the board may file a complaint against any nonresident pharmacy that violates any provision of this section. This complaint shall be filed with the regulatory or licensing agency of the state in which the nonresident pharmacy is located. If the regulatory or licensing agency of the state in which the nonresident pharmacy is located fails to resolve the violation complained of within a reasonable time, not less than 180 days from the date that the complaint is filed, disciplinary proceedings may be initiated by the board. The board also may initiate disciplinary actions against a nonresident pharmacy if the regulatory or licensing agency of the state in which the nonresident pharmacy is located lacks or fails to exercise jurisdiction.

(g) The board shall adopt rules and regulations that make exceptions to the requirement of registration by a nonresident pharmacy when the out-of-state pharmacy supplies lawful refills to a patient from a prescription that was originally filled and delivered to a patient within the state in which the nonresident pharmacy is located, or when the prescriptions being mailed into the state of Kansas by a nonresident pharmacy occurs only in isolated transactions. In determining whether the prescriptions being mailed into the state of Kansas by a nonresident pharmacy are isolated transactions, the board shall consider whether the pharmacy has promoted its services in this state and whether the pharmacy has a contract with any employer or organization to provide pharmacy services to employees or other beneficiaries in this state.

(h) It is unlawful for any nonresident pharmacy which is not registered under this act to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions. ~~A violation of this section is a class C misdemeanor.~~

(i) Upon request of the board, the attorney general may bring an action in a court of competent jurisdiction for injunctive relief to restrain a violation of the provisions of this section or any rules and regulations adopted by the board under authority of this section. The remedy provided under this subsection shall be in addition to any other remedy provided under this section or under the pharmacy act of the state of Kansas.

(j) The board may adopt rules and regulations as necessary and as are consistent with this section to carry out the provisions of this section.

(k) The executive secretary of the board shall remit all moneys received from fees under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the manner specified under K.S.A. 74-1609, and amendments thereto.

(l) *A violation of this section is a severity level 10, nonperson felony.*

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

Also on page 4, in line 29, after “Sec. 2.” by inserting “K.S.A. 65-1657 and”; also in line 29, by striking “is” and inserting “are”;

On page 1, in the title, in line 9, after “pharmacy;” by inserting “relating to nonresident pharmacies;”; in line 10, after “amending” by inserting “K.S.A. 65-1657 and”; in line 11, by striking “section” and inserting “sections”; and the substitute bill be passed as amended.

Also, **HB 2672**, as amended by House Committee of the Whole, be amended on page 3, in line 38, by striking “health care data governing board” and inserting “Kansas health policy authority” and the bill be passed as amended.

HB 2721, as amended by House Committee of the Whole, be amended on page 2, in lines 3 and 29, by striking “or laser devices”;

On page 3, in line 33, by striking the “or” where it appears the second time; in line 37, by striking the period and inserting the following:

; or

(12) Provide a service constituting the practice of cosmetology, nail technology, esthetics or electrology by use of a medical device registered with the federal food and drug administration, or as defined in federal or state law which may be distributed only upon the order of a licensed physician. This act does not prohibit a board of cosmetology licensee from providing services using a medical device upon the order and under the supervision of a licensed physician and in a location maintained by the physician.”;

On page 5, in line 9, by striking “Each” and inserting “Before July 1, 2009, each”; in line 11, after “students” by inserting “. On and after July 1, 2009, each licensed school at all times shall employ and maintain a sufficient number of instructors, duly licensed in the practices they teach, to provide at least one instructor for every 25 students”;

On page 6, in line 7, by striking “The” and inserting “Before July 1, 2009, the course of instruction and practice shall require not less than 650 clock hours, or a licensed school may elect to base the course of instruction and practice on credit hours. On and after July 1, 2009, the”; by striking all in lines 33 and 34;

On page 7, in line 35, by striking “Each” and inserting “Before July 1, 2009, each”; in line 37, after “students” by inserting “. On and after July 1, 2009, each licensed school at all times shall employ and maintain a sufficient number of instructors, duly licensed in the practices they teach, to provide at least one instructor for every 25 students”;

On page 9, in line 28, by striking “Each” and inserting “Before July 1, 2009, each”; in line 30, after “students” by inserting “. On and after July 1, 2009, each licensed school at all times shall employ and maintain a sufficient number of instructors, duly licensed in the practices they teach, to provide at least one instructor for every 25 students”; in line 37, by striking “The” and inserting “Before July 1, 2009, the course of instruction and practice shall require not less than 650 clock hours, or a licensed school may elect to base the course of instruction and practice on credit hours. On and after July 1, 2009, the”;

On page 10, by striking all in lines 7 and 8;

On page 16, in line 43, by striking “An” and inserting “(A) Before July 1, 2009, an”;

On page 17, in lines 2 and 6, by striking “1,000” and inserting “650”; after line 7, by inserting the following:

“(B) On and after July 1, 2009, an applicant for examination and licensure as an esthetician shall be required to have practiced as an apprentice in a licensed school for not less than 1,000 clock hours, or, if the applicant has attended a licensed school electing to base the course of instruction and practice on credit hours as provided in K.S.A. 65-1903, and amendments thereto, the applicant shall have practiced as an apprentice for not less than those credit hours which are the equivalent of 1,000 clock hours under the formula for conversion used by the licensed school.”;

On page 22, by striking all in lines 38 through 41;

On page 28, in line 13, by striking “cos-”; in line 14, by striking “metology fee” and inserting “state general”; and the bill be passed as amended.

Committee on **Transportation** recommends **SB 689** be amended on page 1, in line 28, after “highway” by inserting “located outside the corporate limits of any city”; in line 35, after “highway” by inserting “located outside the corporate limits of any city”; after line 41, by inserting the following:

“(e) The provisions of subsections (c) and (d) shall not apply to authorized emergency vehicles, law enforcement vehicles, Kansas turnpike authority vehicles or department of transportation vehicles performing construction or maintenance work.”;

And by renumbering the remaining subsections accordingly;

And the bill be passed as amended.

Committee on **Ways and Means** recommends **HB 2423** be amended by substituting a new bill to be designated as “SENATE Substitute for HOUSE BILL No. 2423,” as follows:

“SENATE Substitute for HOUSE BILL No. 2423

By Committee on Ways and Means

“AN ACT relating to the board of pharmacy; concerning continuous quality improvement programs and nonresident pharmacy; amending K.S.A. 65-1657 and repealing the existing section.”;

and the substitute bill be passed.

Also, **HB 2923**, 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. 2923, as follows:

SENATE Substitute for HOUSE BILL No. 2923

By Committee on Ways and Means

AN ACT concerning veterans; relating to assistance therefor; making and concerning appropriations for the fiscal year ending June 30, 2009, for state agencies; amending K.S.A. 2007 Supp. 8-243 and 74-8724 and repealing the existing sections. ;

and the substitute bill be passed.

SB 656 be amended on page 1, in line 15, by striking all after the period; by striking all in lines 16 and 17; in line 28, by striking “placed in” and inserting “offered”; also in line 28, after “be” by inserting “in aggregate”; in line 37, by striking “, in consultation with” and inserting “and”; in line 38, by striking “and”, where it appears for the second time, and inserting “, in consultation with”; and the bill be passed as amended.

HB 2858 be amended on page 1, after line 13, by inserting the following:

“New Section 1. (a) The state board of regents is hereby authorized and empowered, for and on behalf of the university of Kansas, to sell and convey all of the rights, title and interest in the following parcel in Douglas County, Kansas:

Lots 7, 8, 9, 10, 11 and 12 in Block 13 in Lanes’ Second Addition to the City of Lawrence. Together with and subject to covenants, easements and restrictions of record.

(b) Conveyance of such rights, title and interest in such real estate shall be executed in the name of the state board or regents by its chairperson and chief executive officer. When the sale is made, the proceeds thereof shall be deposited in the state treasury to the credit of an appropriate account of the restricted fees account of the university of Kansas to support the general operations of the university. The provisions of K.S.A. 2007 Supp. 75-6609, and amendments thereto, shall not be applicable to the real estate sale authorized by this section.”;

And by renumbering the remaining sections accordingly;

Also on page 1, in the title, in line 9, by striking “Fort Hays state university;” and inserting “state educational institutions; authorizing the state board of regents to convey certain real estate;” and the bill be passed as amended.

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 Emler in the Chair.

On motion of Senator Emler the following report was adopted:

Recommended **SB 692; HB 2570, HB 2644, HB 2688, HB 2805; Sub HB 2505, Sub HB 2545** be passed.

SB 676, SB 677; HB 2725, HB 2734, HB 2780 be amended by adoption of the committee amendments, and the bills be passed as amended.

HB 2758 be amended by motion of Senator Steineger, on page 2, following line 10, by inserting:

“Sec. 2. K.S.A. 72-3603 is hereby amended to read as follows: 72-3603. As used in this act:

(a) “Board” means the board of education of any school district.

(b) “School district” means any public school district organized and operating under the laws of this state.

(c) “Parent education program” means a program developed and operated by a board for the purpose of providing expectant parents and parents of infants or toddlers or both with information, advice, assistance, resource materials, guidance and learning experiences regarding such measures as parenting skills and the various styles of parenting, the processes and principles of growth and development of children, home learning activities designed for infants and toddlers, techniques emphasizing a positive approach to discipline, effective methods of communicating and interacting with children so as to foster the development of self-esteem, strategies for structuring behavioral limits and increasing mutual positive regard, and other elements of effective parenting that are conducive to the structuring of a home environment in which children are encouraged to be successful and productive learners.

(d) “Infant” and “toddler” ~~mean a child who has not attained the age of three years~~ means any child under the age of eligibility for school attendance.

(e) “State board” means the state board of education.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 11, before “K.S.A.” by inserting “K.S.A. 72-3603 and”;

In the title, in line 10, by striking all after the semicolon; in line 11, by striking “policies” and inserting “relating to the powers and duties thereto”; also in line 11, before “K.S.A.” by inserting “K.S.A. 72-3603 and”; in line 12, by striking “section” and inserting “sections”, and **HB 2758** be passed as amended.

Sub SB 458 be amended by adoption of the committee amendments, and be amended by motion of Senator Vratil, on page 1, after line 31, by inserting:

“(e) “Person” means an individual.

(f) “Pattern or practice” means regular, repeated and intentional acts or activities.

“Pattern or practice” shall not mean isolated, sporadic or accidental acts or activities.”

Sub SB 458 be further amended by motion of Senator Vratil, on page 1, in line 41, before the period, by inserting “are provided or offered”;

Sub SB 458 be further amended by Senator Vratil, on page 2, in line 15, by striking “prior”; in line 16, by striking “to the hiring” and inserting “to verify the employment status”;

Sub SB 458 be further amended by Senator Vratil, on page 2, following line 31, by inserting:

“(f) Any action brought pursuant to this section shall be commenced within five years of the occurrence of the violation of this section.”;

Sub SB 458 be further amended by Senator Vratil, on page 2, in line 5, by striking “3” and inserting “6”; in line 12, after “general” by inserting “or a county or district attorney”; in line 39, after “authority” by inserting “concurrent with a county or district attorney”;

Sub SB 458 be further amended by Senator Journey, on page 21, following line 38, by inserting the following:

“New Sec. 20. (a) Any person who has not been lawfully admitted into the United States in violation of federal immigration laws and is arrested for:

- (1) An off-grid felony, no bail;
 - (2) a severity level 1, 2 or 3 person felony or a severity level 1 or 2 drug felony, bail shall be at least \$250,000 cash or surety;
 - (3) a person felony, except for felonies provided in paragraphs (1) and (2), bail shall be at least \$50,000 cash or surety;
 - (4) a nonperson felony, bail shall be at least \$25,000 cash or surety; and
 - (5) or class A misdemeanor, bail shall be at least \$10,000 cash or surety;
- (b) The bail under subsection (a), shall be required unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pre-trial supervision program is available and the defendant agrees to comply with the mandate of such pre-trial supervision and can show by clear and convincing evidence that the defendant will remain in the jurisdiction.

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

And by renumbering the remaining sections accordingly;

Sub SB 458 be further amended by Senator Ostmeyer, on page 1, in line 15, after “Kansas” by inserting “illegal”;

On page 2, in line 6, after “Kansas” by inserting “illegal”;

Also on page 1, in the title, in line 9, after “Kansas” by inserting “illegal”;

Sub SB 458 be further amended by Senator Bruce, on page 3, in line 7, by striking “serious”;

Sub SB 458 be further amended by Senator Bruce, on page 2, in line 11, by striking all after the “(b)”;

in line 12, by striking “has occurred, the” and inserting “The”;

Sub SB 458 be further amended by Senator Bruce, on page 3, in line 17, before the period by inserting “, if the victim is 18 years of age or older. Coercing employment is a severity level 5, person felony, if the victim is less than 18 years of age”;

Sub SB 458 be further amended by Senator D. Schmidt, on page 2, in line 37, by striking “and 8” and inserting “, 8 and 9”;

On page 3, following line 19, by inserting the following:

“New Sec. 9. Peonage is knowingly holding another person in a condition of involuntary servitude in satisfaction of a debt owed the person who is holding such other person.

(b) “Involuntary servitude” means a condition of servitude in which the victim is forced to work for another person by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.

(c) The provisions of this section shall not apply to the use of the labor of any person incarcerated in a state or county correctional facility or city jail.

(d) Peonage is a severity level 8, person felony.

(e) This section shall be part of and supplemental to the Kansas criminal code.”;

And by renumbering the remaining sections accordingly;

On page 18, in line 32, by striking “and”; in line 34, by striking the period and inserting “; and

(p) peonage as described in section 9, and amendments thereto.”;

Sub SB 458 be further amended by Senator Schmidt, on page 3, following line 42, by inserting the following:

“(4) knowing or in reckless disregard of the fact that an alien has come to, entered or remains in the United States in violation of law, conceals, harbors or shields from detection, or attempts to conceal, harbor or shield from detection, such alien in any place, including any building or any means of transportation and who does so for the purpose of commercial advantage or private financial gain. It is not a violation of this paragraph:

(A) For a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United

States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year; or

(B) if the state is prohibited by federal law from pursuing a prosecution under this provision.”;

Sub SB 458 be further amended by Senator D. Schmidt, on page 4, preceding line 1, by inserting the following:

“(c) In addition to the penalty under subsection (b), if a person is found guilty of violating subsection (a)(3) or (a)(4), the sentence otherwise provided for may be increased by up to 10 years if the offense was part of an ongoing commercial or criminal organization or enterprise and:

- (1) aliens were transported in a manner that endangered their lives; or
- (2) the aliens presented a life-threatening health risk to people in Kansas.”;

Also on page 4, in line 1, by striking “(c)” and inserting “(d)”;

Sub SB 458 be further amended by Senator Brownlee, on page 2, in line 5, following “3”, by inserting “and 20”;

On page 21, following line 38, by inserting:

“New Sec. 20. (a) It shall be unlawful in the state of Kansas for any labor union or employee organization to knowingly impose or collect union dues from any alien who is not lawfully present in the United States.

(b) The attorney general may initiate a civil action in district court to enforce the provisions of this section. Any labor union or employee organization violating subsection (a) shall be subject to a civil fine in an amount not to exceed \$2,000 for the first violation, \$5,000 for the second violation and \$10,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.”;

And by renumbering sections accordingly;

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

On roll call, the vote was: Yeas 19, Nays 18, Present and Passing 2, Absent or Not Voting 1.

Yeas: Allen, Brownlee, Bruce, Brungardt, Donovan, Lynn, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Apple, Barone, Betts, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Journey, Kelly, Lee, Ostmeyer, Palmer, Petersen, Pyle, Steineger, Taddiken.

Present and Passing: Barnett, Emler.

Absent or Not Voting: Jordan.

The motion carried and the amendment was adopted.

Sub SB 458 be further amended by Senator Barnett, on page 2, in line 37, by striking “and 21-4409” and inserting “, 21-4409 and subsection (d) of K.S.A. 2007 Supp. 76-731a”;

On page 21, after line 38, by inserting:

“Sec. 20. K.S.A. 2007 Supp. 76-731a is hereby amended to read as follows: 76-731a. (a) Any individual who is enrolled or has been accepted for admission at a postsecondary educational institution as a postsecondary student shall be deemed to be a resident of Kansas for the purpose of tuition and fees for attendance at such postsecondary educational institution.

(b) As used in this section:

(1) “Postsecondary educational institution” has the meaning ascribed thereto in K.S.A. 74-3201b, and amendments thereto; and

(2) “individual” means a person who (A) has attended an accredited Kansas high school for three or more years, (B) has either graduated from an accredited Kansas high school or has earned a general educational development (GED) certificate issued within Kansas, regardless of whether the person is or is not a citizen of the United States of America; and (C) in the case of a person without lawful immigration status, has filed with the postsecondary educational institution *and with the illegal immigration enforcement division of the office of attorney general* an affidavit stating that the person or the person’s parents have

filed an application to legalize such person's immigration status, or such person will file such an application as soon as such person is eligible to do so or, in the case of a person with a legal, nonpermanent immigration status, has filed with the postsecondary educational institution an affidavit stating that such person has filed an application to begin the process for citizenship of the United States or will file such application as soon as such person is eligible to do so.

(c) The provisions of this section shall not apply to any individual who:

(1) Has a valid student visa; or
 (2) at the time of enrollment, is eligible to enroll in a public postsecondary educational institution located in another state upon payment of fees and tuition required of residents of such state.

(d) Any individual who: (1) Files an affidavit which contains false information; (2) fails to file an application to legalize such person's immigration status within one year of becoming eligible; (3) fails to begin the process for citizenship within one year of becoming eligible; or (4) fails to maintain an active application for citizenship after filing therefor shall not be deemed a resident of the state of Kansas for the purpose of tuition and fees. In addition, such individual shall be required to repay the difference between the amount of fees and tuition actually paid and the amount such person would have paid as a nonresident of the state of Kansas, plus interest at a rate not to exceed the maximum under K.S.A. 16-201, and amendments thereto, for the time such individual was enrolled as a resident pursuant to this section.”;

And by renumbering sections accordingly;

On page 22, in line 2, by striking “and 75-453” and inserting “, 75-453 and 76-731a”;

In the title, in line 11, by striking “and 75-453” and inserting “, 75-453 and 76-731a”; and

Sub SB 458 be passed as amended.

A motion by Senator Barnett to amend **Sub SB 458** failed and the following amendment was rejected: on page 1, by striking all in lines 15 through 43;

By striking all on pages 2 through 21;

On page 22, by striking all in lines 1 through 3 and inserting:

“New Section 1. As used in the Kansas illegal immigration relief act:

(a) “Alien” means any person who is not a citizen or national of the United States, as described in Title 8, Section 1101 of the United States Code, et seq., and amendments thereto.

(b) “Law enforcement officer” means any city, county and state police officers, highway patrol, county sheriff and any other law enforcement officers in the state.

(c) “Employee” has the meaning ascribed thereto in K.S.A. 44-313, and amendments thereto.

(d) “Business entity” means any person or group of persons performing or engaging in any activity, enterprise, profession or occupation for gain, benefit, advantage or livelihood, whether for profit or not-for-profit. “Business entity” shall not include an individual employing casual domestic labor. “Business entity” shall include, but not be limited to:

(1) Self-employed individuals, business entities filing articles of incorporation pursuant to article 60 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto; a partnership pursuant to chapter 56a of the Kansas Statutes Annotated, and amendments thereto; a limited partnership pursuant to article 1a of chapter 56 of the Kansas Statutes Annotated, and amendments thereto; a limited liability company pursuant to article 76 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto; a foreign corporation, a foreign limited partnership or a foreign limited liability company authorized to transact business in this state; a business trust pursuant to article 20 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto; and any business entity that registers with the secretary of state.

(2) Any business entity that possesses a business license, permit, certificate, approval, registration, charter or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without such a business license.

(e) “Identification document” has the meaning ascribed thereto in K.S.A 21-3830, and amendments thereto.

(f) "Unauthorized alien" means an alien who is not authorized to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

(g) "E-verify" means the electronic verification of employment authorization program of the illegal immigration reform and immigrant responsibility act of 1996, P.L. 104-208, division C, section 403(a); 8 U.S.C. 1324(a), and operated by the United States department of homeland security, or its successor program.

(h) "Public employer" means any state agency, department, board or commission or any municipality, as defined in K.S.A. 75-1117, and amendments thereto, that employs one or more employees.

New Sec. 2. (a) It is unlawful for a business entity to knowingly hire, recruit or refer for a fee for employment in the state of Kansas an unauthorized alien.

(b) Every business entity within the state of Kansas that employs one or more employees shall register with and utilize e-verify to verify the employment authorization of all new employees.

(c) All business entities shall be in compliance with this section on and after January 1, 2009. The business entity shall retain all documentation received in connection with its participation in e-verify that verifies the employment authorization of every employee verified through e-verify for at least three years after the termination of the employment of the employee. This documentation shall be provided to the department of revenue upon request.

(d) On and after January 1, 2009, public employers:

(1) Shall register with and utilize e-verify to verify the employment authorization of all new employees; and

(2) shall not enter into a contract for the performance of services within this state unless the contractor is registered with and utilizing e-verify to verify the employment authorization of all new employees under the contractors employment. The provision in this paragraph shall not apply to any contracts entered into prior to January 1, 2009, even though such contracts may involve the performance of labor within this state after January 1, 2009.

(e) The provisions of this section may be enforced in the courts of the state of Kansas by any district attorney, county attorney or by the attorney general.

(f) On a finding of the first violation of this section by a business entity, the court shall order the suspension of all licenses that are held by such business entity for not less than 10 days and not more than 30 days.

(g) On a finding of the second violation of this section by a business entity, the court shall order the suspension of all licenses that are held by such business entity for not less than 90 days and not more than one year.

(h) On a finding of the third violation of this section by a business entity, the court shall order the permanent suspension of all licenses that are held by such business entity as well as the revocation of the business entity's registration as a corporation in the state of Kansas, if applicable.

(i) In enforcing the provisions of this section, no state, county or local official shall attempt to independently determine whether an individual is an unauthorized alien or an alien not lawfully present in the United States. Such determination shall only be made by verifying the alien's immigration status with the federal government, pursuant to 8 U.S.C. 1373(c).

(j) For the purposes of this section, when making a determination of whether an employee is an unauthorized alien, a court shall only consider the federal government's determination pursuant to 8 U.S.C. 1373(c). The court shall take judicial notice of any verification of the immigration status previously provided by the federal government. The court may, and at the request of a party shall, request the federal government to provide, in automated, documentary or testimonial form, a new verification of the immigration status of the employee pursuant to 8 U.S.C. 1373(c). The most recent determination of the immigration status of an employee by the federal government shall create a rebuttable presumption as to the employee's immigration status.

(k) For the purposes of this section, a business entity that has complied in good faith with this section through registration and participation in e-verify to confirm the employment authorization of any employee in question shall create a rebuttable presumption that the employer did not knowingly employ an unauthorized alien.

(l) For the purposes of this section, where a business entity has contracted for the services of an independent contractor, no employment relationship exists between the business entity and the independent contractor or its employees.

New Sec. 3. (a) No payment or compensation or other remuneration, including, but not limited to, wages, salaries, bonuses, benefits, in-kind exchanges, expenses or any other economic benefit, paid to an unauthorized alien employee, as defined in section 1, and amendments thereto, may be claimed and allowed as a deductible business expense for state income tax purposes. This section shall apply whether or not an internal revenue service form 1099 or form W-2 is issued in conjunction with such payments, compensation or other remuneration.

(b) No payment or compensation or other remuneration, including, but not limited to, wages, salaries, bonuses, benefits, in-kind exchanges, expenses or any other economic benefit, paid to an independent contractor may be claimed and allowed as a deductible business expense for state income tax purposes if such independent contractor is not registered with and utilizing e-verify to verify the employment authorization of all new employees under such contractor's employment.

(c) This section shall not apply to any business which is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(d) This section shall not apply to any individual hired by the taxpayer prior to January 1, 2009.

(e) All employers shall submit an affidavit to the department of revenue accompanying the annual tax return required under state law. This affidavit shall be signed by the employer under penalty of perjury and shall specifically state the following:

(1) Whether the employer utilized a business expense or business loss deduction in determining federal adjusted gross income;

(2) whether the employer employed any employees or independent contractors for the tax year in question and the number of such employees or independent contractors;

(3) whether the employer is enrolled in and is actively participating in e-verify;

(4) whether the employer has used e-verify to confirm the employment eligibility of every employee hired on or after January 1, 2009;

(5) whether the employer has confirmed that any independent contractor employed by the employer is an independent contractor who is registered with and utilizing e-verify to verify the employment authorization of all new employees; and

(6) the employer's identification number signifying the employer's enrollment in e-verify.

(f) The department of revenue may audit any employer who:

(1) Fails to timely submit the affidavit required under this section; and

(2) the department has probable cause to believe is not complying with this section.

(g) If the department of revenue determines that the employer has knowingly made material misrepresentations of fact regarding information contained in the affidavit required under this section, the employer shall be required to add back business deductions taken in determining such employer's adjusted gross income used to calculate the employer's state tax liability, to the extent such deductions constitute wages or remuneration paid to employees whose employment authorization was not verified using e-verify.

New Sec. 4. (a) Employment identity fraud is willfully presenting to an employer false or misleading identification documents for the purpose of obtaining employment in the state of Kansas.

(b) Employment identity fraud is a severity level 8, nonperson felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

New Sec. 5. (a) An alien who is not lawfully present in the United States shall not be eligible to receive any state or local public benefit from any state, county or local government entity in the state of Kansas, except for state or local public benefits that are required to be offered by 8 U.S.C. 1621(b).

(b) For the purposes of this section, "public benefit" includes: Any grant, contract, loan or license provided by an agency of state or local government; or any retirement, welfare, health, disability, housing, post-secondary education, food assistance or unemployment ben-

efit under which payments, assistance, credits, reduced rates, reduced fees or resident tuition rates are provided or offered.

(c) In addition to providing proof of other eligibility requirements, at the time of application for any public benefit, an applicant who is 18 years of age or older shall first establish that the applicant is a citizen of the United States, an alien entitled to lawful permanent residence in the United States or is an alien lawfully present in the United States.

(d) An applicant who is an alien shall not receive any public benefit unless the alien's lawful presence in the United States is first verified by the federal government, pursuant to 8 U.S.C. 1373(c). State, county and local agencies administering public benefits shall cooperate with the United States department of homeland security in achieving verification of aliens' lawful presence in the United States, and shall seek a memorandum of understanding with the United States department of homeland security to participate in the systematic alien verification for entitlements program operated by the United States department of homeland security in order to meet the requirements of this section.

New Sec. 6. (a) All state officials, agencies and personnel shall fully comply with, and, to the full extent permitted by law, support the enforcement of federal law prohibiting the entry into, presence or residence in the United States of aliens in violation of federal immigration law.

(b) All law enforcement officers shall inquire into the citizenship and immigration status of any person arrested for a violation of any state law or municipal ordinance, regardless of the person's national origin, ethnicity or race. In all such cases where a person indicates that such person is not a citizen or national of the United States, the law enforcement officer shall verify with the federal government whether the alien is lawfully or unlawfully present in the United States, pursuant to 8 U.S.C. 1373(c). This verification shall occur through communication with the law enforcement support center, operated by the bureau of immigration and customs enforcement of the United States department of homeland security. If the alien is verified to be unlawfully present in the United States, the law enforcement officer shall cooperate with any request by federal immigration authorities to detain the alien or transfer the alien to the custody of the federal government.

(c) Pursuant to 8 U.S.C. 1373 and 8 U.S.C. 1644, no official or agent of a state, county or city law enforcement agency may be prohibited or in any way restricted from sending, receiving or maintaining, information regarding the immigration status, lawful or unlawful, of any individual, or exchanging such information with any other federal, state or local government entity. No state, county or city law enforcement agency may by ordinance, resolution, official policy or informal policy, prevent, restrict or discourage its officers from asking individuals their citizenship or immigration status.

(d) Any state, county or city law enforcement agency shall be deemed to be in violation of this section if the attorney general determines that such a violation has occurred. Any member of the Kansas legislature may request such a determination by the attorney general. Any agency found to be in violation of this section shall be ineligible to receive any state funding until such agency can prove to the attorney general that the agency is in compliance with this section.

New Sec. 7. Sections 1 through 6, and amendments thereto, shall be known and maybe cited as the Kansas illegal immigration relief act.

Sec. 8. K.S.A. 2007 Supp. 8-240 is hereby amended to read as follows: 8-240. (a) Every application for an instruction permit shall be made upon a form furnished by the division of vehicles and accompanied by a fee of \$2 for class A, B, C or M and \$5 for all commercial classes. Every other application shall be made upon a form furnished by the division and accompanied by an examination fee of \$3, unless a different fee is required by K.S.A. 8-241, and amendments thereto, and by the proper fee for the license for which the application is made. If the applicant is not required to take an examination the examination fee shall not be required. The examination shall consist of three tests, as follows: (1) Vision; (2) written; and (3) driving. If the applicant fails the vision test, the applicant may have correction of vision made and take the vision test again without any additional fee. If an applicant fails the written test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails the driving test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant

fails to pass all three of the tests within a period of six months from the date of original application and desires to take additional tests, the applicant shall file an application for reexamination upon a form furnished by the division, which shall be accompanied by a reexamination fee of \$3, except that any applicant who fails to pass the written or driving portion of an examination four times within a six-month period, shall be required to wait a period of six months from the date of the last failed examination before additional examinations may be given. Upon the filing of such application and the payment of such reexamination fee, the applicant shall be entitled to reexamination in like manner and subject to the additional fees and time limitation as provided for examination on an original application. If the applicant passes the reexamination, the applicant shall be issued the classified driver's license for which the applicant originally applied, which license shall be issued to expire as if the applicant had passed the original examination.

(b) (1) For the purposes of obtaining any driver's license or instruction permit, an applicant shall submit, with the application, proof of age and proof of identity as the division may require. The applicant also shall provide a photo identity document, except that a non-photo identity document is acceptable if it includes both the applicant's full legal name and date of birth, and documentation showing the applicant's name, the applicant's address of principal residence and the applicant's social security number. The applicant's social security number shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number the applicant shall provide proof of lawful presence and Kansas residency. The division shall assign a distinguishing number to the license or permit.

(2) The division shall not issue any driver's license or instruction permit to any person who fails to provide proof that the person is lawfully present in the United States. Before issuing a driver's license or instruction permit to a person, the division shall require valid documentary evidence that the applicant: (A) Is a citizen or national of the United States; (B) is an alien lawfully admitted for permanent or temporary residence in the United States; (C) has conditional permanent resident status in the United States; (D) has an approved application for asylum in the United States or has entered into the United States in refugee status; (E) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States; (F) has a pending application for asylum in the United States; (G) has a pending or approved application for temporary protected status in the United States; (H) has approved deferred action status; or (I) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(3) If an applicant provides evidence of lawful presence set out in subsections (b)(2)(E) through (2)(I), or is an alien lawfully admitted for temporary residence under subsection (b)(2)(B), the division may only issue a driver's license to the person under the following conditions: (A) A driver's license issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year; (B) a driver's license issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires; (C) no driver's license issued pursuant to this subparagraph shall be for a longer period of time than the time period permitted by subsection (a) of K.S.A. 8-247, and amendments thereto; and (D) a driver's license issued pursuant to this subparagraph may be renewed, subject at the time of renewal, to the same requirements and conditions as set out in this subsection (b) for the issuance of the original driver's license.

(4) The division shall not issue any driver's license or instruction permit to any person who is not a resident of the state of Kansas, except as provided in K.S.A. 8-2,148, and amendments thereto.

(5) The division shall not issue a driver's license to a person holding a driver's license issued by another state without making reasonable efforts to confirm that the person is terminating or has terminated the driver's license in the other state.

(6) The parent or guardian of an applicant under 16 years of age shall sign the application for any driver's license submitted by such applicant.

(c) Every application shall state the full legal name, date of birth, gender and address of principal residence of the applicant, and briefly describe the applicant, and shall state

whether the applicant has been licensed as a driver prior to such application, and, if so, when and by what state or country. Such application shall state whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal. In addition, applications for commercial drivers' licenses and instruction permits for commercial licenses must include the following: The applicant's social security number; the person's signature; the person's colored digital photograph; certifications, including those required by 49 C.F.R. 383.71(a), effective January 1, 1991; a consent to release driving record information; and, any other information required by the division.

(d) When an application is received from a person previously licensed in another jurisdiction, the division shall request a copy of the driver's record from the other jurisdiction. When received, the driver's record shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(e) When the division receives a request for a driver's record from another licensing jurisdiction the record shall be forwarded without charge.

(f) A fee shall be charged as follows:

(1) For a class C driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$18;

(2) for a class C driver's license issued to a person 65 years of age or older, \$12;

(3) for a class M driver's license issued to a person at least 21 years of age, but less than 65 years of age, \$12.50;

(4) for a class M driver's license issued to a person 65 years of age or older, \$9;

(5) for a class A or B driver's license issued to a person who is at least 21 years of age, but less than 65 years of age, \$24;

(6) for a class A or B driver's license issued to a person 65 years of age or older, \$16;

(7) for any class of commercial driver's license issued to a person 21 years of age or older, \$18; or

(8) for class A, B, C or M, or a farm permit, or any commercial driver's license issued to a person less than 21 years of age, \$20.

A fee of \$10 shall be charged for each commercial driver's license endorsement, except air brake endorsements which shall have no charge.

A fee of \$3 per year shall be charged for any renewal of a license issued prior to the effective date of this act to a person less than 21 years of age.

If one fails to make an original application or renewal application for a driver's license within the time required by law, or fails to make application within 60 days after becoming a resident of Kansas, a penalty of \$1 shall be added to the fee charged for the driver's license.

(g) Any person who possesses an identification card as provided in K.S.A. 8-1324, and amendments thereto, shall surrender such identification card to the division upon being issued a valid Kansas driver's license or upon reinstatement and return of a valid Kansas driver's license.

(h) The division shall require that any person applying for a driver's license submit to a mandatory facial image capture.

(i) The director of vehicles may issue a temporary driver's license to an applicant who cannot provide valid documentary evidence as defined by subsection (b)(2), if the applicant provides compelling evidence proving current lawful presence. Any temporary license issued pursuant to this subsection shall be valid for one year.

(j) *The division shall require that any person applying for a driver's license who provides proof by valid documentary evidence that the person is a citizen of the United States sign an affidavit stating the following: "I hereby declare that I am a citizen of the United States. I understand that falsely declaring United States citizenship is a federal crime under 18 U.S.C. 1015(e); and I understand that swearing falsely on an affidavit is a crime pursuant to K.S.A. 8-261a, and amendments thereto."*

(k) *No driver's license shall be issued to any alien until the alien has been verified by the United States department of homeland security to be lawfully present in the United States, pursuant to 8 U.S.C. 1373(c). Such verification shall occur through the systematic alien*

verification for entitlements program operated by the United States department of homeland security.

Sec. 9. K.S.A. 2007 Supp. 8-1324 is hereby amended to read as follows: 8-1324. (a) Any resident who does not hold a current valid Kansas driver's license may make application to the division of vehicles and be issued one identification card.

(b) For the purpose of obtaining an identification card, an applicant shall submit, with the application, proof of age, proof of identity and proof of lawful presence. An applicant shall submit with the application a photo identity document, except that a non-photo identity document is acceptable if it includes both the applicant's full legal name and date of birth, and documentation showing the applicant's name, the applicant's address of principal residence and the applicant's social security account number. The applicant's social security number shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number, the applicant shall provide proof of lawful presence and Kansas residency. The division shall assign a distinguishing number to the identification card. Before issuing an identification card to a person, the division shall make reasonable efforts to verify with the issuing agency the issuance, validity and completeness of each document required to be presented by the applicant to prove age, identity and lawful presence.

(c) The division shall not issue an identification card to any person who fails to provide proof that the person is lawfully present in the United States. If an applicant provides evidence of lawful presence as set out in subsections (b)(2)(E) through (2)(I) of K.S.A. 8-240, and amendments thereto, or is an alien lawfully admitted for temporary residence under subsection (b)(2)(B) of K.S.A. 8-240, and amendments thereto, the division may only issue a temporary identification card to the person under the following conditions: (A) A temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year; (B) a temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date upon which it expires; (C) no temporary identification card issued pursuant to this subparagraph shall be for a longer period of time than the time period permitted by K.S.A. 8-1325, and amendments thereto; and (D) a temporary identification card issued pursuant to this subparagraph may be renewed, subject at the time of renewal, to the same requirements and conditions set forth in this subsection (c) for the issuance of the original temporary identification card.

(d) The division shall not issue an identification card to any person who holds a current valid Kansas driver's license unless such driver's license has been physically surrendered pursuant to the provisions of subsection (e) of K.S.A. 8-1002, and amendments thereto.

(e) The division shall refuse to issue an identification card to a person holding a driver's license or identification card issued by another state without confirmation that the person is terminating or has terminated the license or identification card.

(f) The parent or guardian of an applicant under 16 years of age shall sign the application for an identification card submitted by such applicant.

(g) The division shall require payment of a fee of \$14 at the time application for an identification card is made, except that persons who are 65 or more years of age or who are handicapped, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only \$10.

(h) All Kansas identification cards shall have physical security features designed to prevent tampering, counterfeiting or duplication for fraudulent purposes.

(i) For the purposes of K.S.A. 8-1324 through 8-1328, and amendments thereto, a person shall be deemed to be a resident of the state if:

- (1) The person owns, leases or rents a place of domicile in this state;
- (2) the person engages in a trade, business or profession in this state;
- (3) the person is registered to vote in this state;
- (4) the person enrolls the person's child in a school in this state; or
- (5) the person registers the person's motor vehicle in this state.

(j) The division shall require that any person applying for an identification card submit to a mandatory facial image capture.

(k) The director of vehicles may issue a temporary identification card to an applicant who cannot provide valid documentary evidence as defined by subsection (c), if the applicant provides compelling evidence proving current lawful presence. Any temporary identification card issued pursuant to this subparagraph shall be valid for one year.

(l) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act an identification card. Such identification card shall bear a distinguishing number assigned to the cardholder, the full legal name, date of birth, address of principal residence, a brief description of the cardholder, a colored digital photograph of the cardholder, and a facsimile of the signature of the cardholder. An identification card which does not contain the address of principal residence of the cardholder as required may be issued to persons who are program participants pursuant to K.S.A. 2007 Supp. 75-455, and amendments thereto.

(m) *The division shall require that any person applying for an identification card who provides proof by valid documentary evidence that the person is a citizen of the United States sign an affidavit stating the following: "I hereby declare that I am a citizen of the United States. I understand that falsely declaring United States citizenship is a federal crime under 18 U.S.C. 1015(e); and I understand that swearing falsely on an affidavit is a crime pursuant to K.S.A. 8-261a, and amendments thereto."*

(n) *No identification card shall be issued to any alien until the alien has been verified by the United States department of homeland security to be lawfully present in the United States, pursuant to 8 U.S.C. 1373(c). Such verification shall occur through the systematic alien verification for entitlements program operated by the United States department of homeland security.*

Sec. 10. K.S.A. 2007 Supp. 79-32,120 is hereby amended to read as follows: 79-32,120.

(a) If federal taxable income of an individual is determined by itemizing deductions from such individual's federal adjusted gross income, such individual may elect to deduct the Kansas itemized deduction in lieu of the Kansas standard deduction. The Kansas itemized deduction of an individual means the total amount of deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the federal internal revenue code with the modifications specified in this section. *No deduction shall be allowed for any payment, compensation or other economic benefit disallowed by section 3, and amendments thereto.*

(b) The total amount of deductions from federal adjusted gross income shall be reduced by the total amount of income taxes imposed by or paid to this state or any other taxing jurisdiction to the extent that the same are deducted in determining the federal itemized deductions and by the amount of all depreciation deductions claimed for any real or tangible personal property upon which the deduction allowed by K.S.A. 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto, is or has been claimed.

Sec. 11. K.S.A. 2007 Supp. 79-32,138 is hereby amended to read as follows: 79-32,138.

(a) Kansas taxable income of a corporation taxable under this act shall be the corporation's federal taxable income for the taxable year with the modifications specified in this section.

(b) There shall be added to federal taxable income: (i) The same modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals.

(ii) The amount of all depreciation deductions claimed for any property upon which the deduction allowed by K.S.A. 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto, is claimed.

(iii) The amount of any charitable contribution deduction claimed for any contribution or gift to or for the use of any racially segregated educational institution.

(iv) *The amount of the payments, compensation or other economic benefit disallowed by section 3, and amendments thereto.*

(c) There shall be subtracted from federal taxable income: (i) The same modifications as are set forth in subsection (c) of K.S.A. 79-32,117, and amendments thereto, with respect to resident individuals.

(ii) The federal income tax liability for any taxable year commencing prior to December 31, 1971, for which a Kansas return was filed after reduction for all credits thereon, except

credits for payments on estimates of federal income tax, credits for gasoline and lubricating oil tax, and for foreign tax credits if, on the Kansas income tax return for such prior year, the federal income tax deduction was computed on the basis of the federal income tax paid in such prior year, rather than as accrued. Notwithstanding the foregoing, the deduction for federal income tax liability for any year shall not exceed that portion of the total federal income tax liability for such year which bears the same ratio to the total federal income tax liability for such year as the Kansas taxable income, as computed before any deductions for federal income taxes and after application of subsections (d) and (e) of this section as existing for such year, bears to the federal taxable income for the same year.

(iii) An amount for the amortization deduction allowed pursuant to K.S.A. 2007 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

(iv) For all taxable years commencing after December 31, 1987, the amount included in federal taxable income pursuant to the provisions of section 78 of the internal revenue code.

(v) For all taxable years commencing after December 31, 1987, 80% of dividends from corporations incorporated outside of the United States or the District of Columbia which are included in federal taxable income.

(d) If any corporation derives all of its income from sources within Kansas in any taxable year commencing after December 31, 1979, its Kansas taxable income shall be the sum resulting after application of subsections (a) through (c) hereof. Otherwise, such corporation's Kansas taxable income in any such taxable year, after excluding any refunds of federal income tax and before the deduction of federal income taxes provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund of federal income tax as determined under paragraph (iv) of subsection (b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduction for federal income taxes as provided by subsection (c)(ii) shall be such corporation's Kansas taxable income.

(e) A corporation may make an election with respect to its first taxable year commencing after December 31, 1982, whereby no addition modifications as provided for in subsection (b)(ii) of K.S.A. 79-32,138 and subtraction modifications as provided for in subsection (c)(iii) of K.S.A. 79-32,138, as those subsections existed prior to their amendment by this act, shall be required to be made for such taxable year.

New Sec. 12. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Sec. 13. K.S.A. 2007 Supp. 8-240, 8-1324, 76-731a, 79-32,120 and 79-32,138 are hereby repealed.”;

By renumbering remaining section;

In the title, by striking all in lines 9 through 12 and inserting:

“AN ACT enacting the Kansas illegal immigration relief act; amending K.S.A. 2007 Supp. 8-240, 8-1324, 79-32,120 and 79-32,138 and repealing the existing sections; also repealing K.S.A. 2007 Supp. 76-731a.”

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

On roll call, the vote was: Yeas 12, Nays 27, Present and Passing 1, Absent or Not Voting 0.

Yeas: Barnett, Barone, Donovan, Gilstrap, Huelskamp, Jordan, Journey, Ostmeyer, Palmer, Petersen, Pyle, Taddiken.

Nays: Allen, Apple, Betts, Brownlee, Bruce, Brungardt, Emler, Francisco, Goodwin, Haley, Hensley, Kelly, Lee, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Present and Passing: Lynn.

A motion by Senator Journey to amend **Sub SB 458** failed and the following amendment was rejected: page 2, in line 5, by striking “3” and inserting “7”; in line 37, by striking “7 and 8” and inserting “8 and 9”; following line 40, by inserting the following:

“New Sec. 7. (a) Pursuant to 8 U.S.C. 1373 and 8 U.S.C. 1644, no official or agent of a state, county or city law enforcement agency may be prohibited or in any way restricted from sending, receiving or maintaining, information regarding the immigration status, lawful or unlawful, of any individual, or exchanging such information with any other federal, state or local government entity. No state, county or city law enforcement agency may by ordinance, resolution, official policy or informal policy, prevent, restrict or discourage its officers from asking individuals their citizenship or immigration status.

(b) Any state, county or city law enforcement agency shall be deemed to be in violation of this section if the attorney general determines that such a violation has occurred. Any member of the Kansas legislature may request such a determination by the attorney general. Any agency found to be in violation of this section shall be ineligible to receive any state funding until such agency can prove to the attorney general that the agency is in compliance with this section.”;

And by renumbering the remaining sections accordingly.

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

On roll call, the vote was: Yeas 14, Nays 24, Present and Passing 1, Absent or Not Voting 1.

Yeas: Apple, Barnett, Barone, Bruce, Gilstrap, Huelskamp, Journey, Lynn, Ostmeyer, Palmer, Petersen, Pyle, Taddiken, Wilson.

Nays: Allen, Betts, Brownlee, Brungardt, Donovan, Emler, Francisco, Goodwin, Haley, Kelly, Lee, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wysong.

Present and Passing: Jordan.

Absent or Not Voting: Hensley.

A motion by Senator Huelskamp to amend **Sub SB 458** failed and the following amendment was rejected: on page 1, following line 31, by inserting the following:

“(e) “Employee” has the meaning ascribed thereto in K.S.A. 44-313, and amendments thereto. “Employee” shall not include an independent contractor.

(f) “Employer” means any person employing or seeking to employ any person for hire. Where there are two or more putative employers, the person or entity taking a deductible business expense for state income tax purposes for the employee in question shall be considered the employer of that person for purposes of this act.

(g) “Employment” means the act of employing or state of being employed, engaged or hired.

(h) “Municipality” has the meaning ascribed thereto in K.S.A. 75-1117, and amendments thereto.

(i) “Knowingly” shall include actions that are taken willfully and with actual knowledge. “Knowingly” shall not include unintentional or accidental conduct.”;

Also on page 1, following line 43, by inserting the following:

“New Sec. 3. (a) On and after July 1, 2008, any state agency, department, board or commission who is an employer shall enroll and actively participate in e-verify and shall verify all new employees.

(b) On and after July 1, 2009:

(1) Any municipality who is an employer shall enroll and actively participate in e-verify and shall verify all new employees;

(2) as a condition for the award of any state contract or grant to a business entity for which the value of employment, labor or personal services exceeds \$10,000, the business entity shall provide documentation affirming its enrollment and participation in e-verify and shall verify all new employees; and

(3) any employer that employs more than 250 individuals in the state of Kansas shall enroll and actively participate in e-verify and shall verify all new employees.

(c) On and after July 1, 2010, any employer that employs more than 30, but less than 250 employees in the state of Kansas shall enroll and actively participate in e-verify and shall verify all new employees.

(d) On and after July 1, 2011, any employer that employs one or more employees in the state of Kansas shall enroll and actively participate in e-verify and shall verify all new employees.

(e) If an employer knowingly fails to comply with the provisions of this section no payment or compensation or other remuneration, including, but not limited to, wages, salaries, bonuses, benefits, in-kind exchanges, expenses or any other economic benefit, paid to an unauthorized alien may be claimed and allowed as a deductible business expense for state income tax purposes. This subsection shall apply whether or not an internal revenue service form 1099 or form W-2 is issued in conjunction with such payments, compensation or other remuneration.

(f) The attorney general shall have the authority concurrent with a county attorney or district attorney to investigate violations of this section and shall have the authority to subpoena and examine e-verify records of any employer subject to the provisions of this section, if there is a reasonable suspicion that an employer is in violation of this section.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 5, by striking “3” and inserting “4”; in line 37, by striking “7 and 8” and inserting “8 and 9”.

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

On roll call, the vote was: Yeas 11, Nays 27, Present and Passing 0, Absent or Not Voting 2.

Yeas: Apple, Barnett, Barone, Gilstrap, Huelskamp, Journey, Ostmeyer, Palmer, Petersen, Pyle, Taddiken.

Nays: Allen, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Goodwin, Haley, Kelly, Lee, Lynn, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Absent or Not Voting: Hensley, Jordan.

A motion by Senator Huelskamp to amend **Sub SB 458** failed and the following amendment was rejected: on page 21, following line 38, by inserting:

“New Sec. 20. (a) An alien who is not lawfully present in the United States shall not be eligible to receive any state or local public benefit from any state, county or local government entity in the state of Kansas, except for state or local public benefits that are required to be offered by 8 U.S.C. 1621(b).

(b) For the purposes of this section, “public benefit” includes: Any grant, contract, loan or license provided by an agency of state or local government; or any retirement, welfare, health, disability, housing, food assistance or unemployment benefit under which payments, assistance, credits, reduced rates or reduced fees are provided or offered.

(c) In addition to providing proof of other eligibility requirements, at the time of application for any public benefit, an applicant shall first establish that the applicant is a citizen of the United States, an alien entitled to lawful permanent residence in the United States or is an alien lawfully present in the United States.

(d) An applicant who is an alien shall not receive any public benefit unless the alien’s lawful presence in the United States is first verified by the federal government, pursuant to 8 U.S.C. 1373(c).”;

And by renumbering the remaining sections accordingly.

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

On roll call, the vote was: Yeas 12, Nays 26, Present and Passing 1, Absent or Not Voting 1.

Yeas: Apple, Barnett, Bruce, Huelskamp, Journey, Lynn, Ostmeyer, Palmer, Petersen, Pyle, Taddiken, Wilson.

Nays: Allen, Betts, Brownlee, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wysong.

Present and Passing: Barone.

Absent or Not Voting: Jordan.

A motion by Senator Journey to amend **Sub SB 458** failed and the following amendment was rejected: on page 22, in line 2, by striking “and 75-453” and inserting “, 75-453 and 76-731a”;

In the title, in line 12, before the period by inserting “; also repealing K.S.A. 2007 Supp. 76-731a”.

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

On roll call, the vote was: Yeas 14, Nays 25, Present and Passing 0, Absent or Not Voting 1.

Yeas: Apple, Barnett, Bruce, Donovan, Emler, Huelskamp, Journey, Lynn, Ostmeyer, Palmer, Petersen, Pyle, Taddiken, Wilson.

Nays: Allen, Barone, Betts, Brownlee, Brungardt, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, McGinn, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steiner, Teichman, Umbarger, Vratil, Wagle, Wysong.

Absent or Not Voting: Jordan.

A motion by Senator Journey to amend **Sub SB 458** was withdrawn: on page 21, following line 38 by inserting:

“Sec. 20. K.S.A. 2007 Supp. 76-729 is hereby amended to read as follows: 76-729. (a) (1) Persons enrolling at the state educational institutions under the control and supervision of the state board of regents who, if such persons are adults, have been domiciliary residents of the state of Kansas or, if such persons are minors, whose parents have been domiciliary residents of the state of Kansas for at least 12 months prior to enrollment for any term or session at a state educational institution are residents for fee purposes. A person who has been a resident of the state of Kansas for fee purposes and who leaves the state of Kansas to become a resident of another state or country shall retain status as a resident of the state of Kansas for fee purposes if the person returns to domiciliary residency in the state of Kansas within 60 months of departure. All other persons are nonresidents of the state of Kansas for fee purposes.

(2) The provisions of this subsection shall be applicable to any person enrolling at a state educational institution from and after July 1, 2006. Any person who (A) qualifies as a resident of the state of Kansas for fee purposes under the provisions of this subsection, (B) attended a state educational institution during academic year 2006-2007 and (C) paid fees as if such person was not a resident of the state of Kansas, may apply to such state educational institution to be reimbursed in an amount equal to the difference between the amount the person paid in fees and the amount the person would have paid if such person had been treated as a resident of the state of Kansas. Such reimbursement shall be paid by the state educational institution at which such person was enrolled during academic year 2006-2007.

(3) The provisions of this subsection shall not apply to a person who is deemed a resident for fee purposes pursuant to K.S.A. 2007 Supp. 76-731a, and amendments thereto.

(b) The state board of regents may authorize the following persons, or any class or classes thereof, and their spouses and dependents to pay an amount equal to resident fees:

(1) Persons who are employees of a state educational institution;

(2) persons who are in military service;

(3) persons who are domiciliary residents of the state, who were in active military service prior to becoming domiciliary residents of the state, who were present in the state for a period of not less than two years during their tenure in active military service, whose domiciliary residence was established in the state within 30 days of discharge or retirement from active military service under honorable conditions, but whose domiciliary residence was not timely enough established to meet the residence duration requirement of subsection (a);

(4) persons having special domestic relations circumstances;

(5) persons who have lost their resident status within six months of enrollment;

(6) persons who are not domiciliary residents of the state, who have graduated from a high school accredited by the state board of education within six months of enrollment, who were domiciliary residents of the state at the time of graduation from high school or within 12 months prior to graduation from high school, and who are entitled to admission at a state educational institution pursuant to K.S.A. 72-116, and amendments thereto;

(7) persons who are domiciliary residents of the state, whose domiciliary residence was established in the state for the purpose of accepting, upon recruitment by an employer, or retaining, upon transfer required by an employer, a position of full-time employment at a place of employment in Kansas, but the domiciliary residence of whom was not timely enough established to meet the residence duration requirement of subsection (a), and who are not otherwise eligible for authorization to pay an amount equal to resident fees under this subsection;

(8) persons who have graduated from a high school accredited by the state board of education within six months of enrollment and who, at the time of graduation from such a high school or while enrolled and in attendance at such a high school prior to graduation therefrom, were dependents of a person in military service within the state; if the person, whose dependent is eligible for authorization to pay an amount equal to resident fees under this provision, does not establish domiciliary residence in the state upon retirement from military service, eligibility of the dependent for authorization to pay an amount equal to resident fees shall lapse; and

(9) persons who have retired or have been honorably discharged from military service, had a permanent change of station order for active duty in Kansas during such military service and live in Kansas at the time of enrollment.

(c) (1) The state board of regents shall authorize the following class of persons to pay an amount equal to resident fees: Any dependent or spouse of a person in military service who is reassigned from Kansas to another duty station so long as such dependent or spouse continues to reside in Kansas.

(2) So long as a person remains continuously enrolled, exclusive of summer sessions, a person who qualifies to pay resident fees by virtue of being a spouse or dependent of a person in military service shall not lose such status because of a divorce or the death of a spouse.

(d) As used in this section:

(1) "Parents" means and includes natural parents, adoptive parents, stepparents, guardians and custodians.

(2) "Guardian" has the meaning ascribed thereto by K.S.A. 59-3051, and amendments thereto.

(3) "Custodian" means a person, agency or association granted legal custody of a minor under the revised Kansas code for care of children.

(4) "Domiciliary resident" means a person who has present and fixed residence in Kansas where the person intends to remain for an indefinite period and to which the person intends to return following absence.

(5) "Full-time employment" means employment requiring at least 1,500 hours of work per year.

(6) "Dependent" means: (A) A birth child, adopted child or stepchild; or

(B) any child other than the foregoing who is actually dependent in whole or in part on the person in military service and who is related to such individual by marriage or consanguinity.

(7) "Military service" means: (A) Any active service in any armed service of the United States; or (B) membership in the Kansas army or air national guard; or (C) *participation in the reserve officers' training program at an ROTC institution.*

(8) "Academic year" means the twelve-month period ending June 30.

(9) "ROTC institution" has the meaning ascribed thereto by K.S.A. 74-3255, and amendments thereto.";

And by renumbering the remaining sections accordingly;

On page 22, in line 2, by striking "and 75-453" and inserting ", 75-453, 76-729 and 76-731a";

In the title, in line 11, by striking "and 75-453" and inserting ", 75-453 and 76-729"; in line 12, before the period by inserting "; also repealing K.S.A. 2007 Supp. 76-731a".

Senator Hensley offered an amendment to **Sub SB 458**; a ruling of the chair was requested as to the germaneness of the amendment. The chair ruled the amendment not germane to the bill.

Senator Journey offered an amendment to **Sub SB 458**; a ruling of the chair was requested as to the germaneness of the amendment. The chair ruled the amendment not germane to the bill.

On a showing of five hands, a roll call vote was requested.

On roll call, the vote was: Yeas 30, Nays 8, Present and Passing 1, Absent or Not Voting 1.

Yeas: Allen, Apple, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Francisco, Gilstrap, Goodwin, Haley, Hensley, Kelly, Lee, McGinn, Morris, Pine, Reitz, Schmidt D,

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

Nays: Barnett, Huelskamp, Journey, Lynn, Ostmeyer, Palmer, Petersen, Pyle.

Present and Passing: Emler.

Absent or Not Voting: Jordan.

The ruling of the Chair was sustained.

EXPLANATION OF VOTE

MR. CHAIRMAN: A vote to sustain the ruling of the Chair denies many worthy members of the ROTC who are citizens of other states an opportunity to qualify for lower in-state tuition rates. On the other hand, the Senate has chosen to retain this privilege for illegal aliens who have no opportunity to even become citizens. These young college men and women are completing their education and have already four-year commitments to serve in our armed forces. I refuse to support such a travesty of justice and must vote no.—TIM HUELSKAMP

Senator Haley offered an amendment to **Sub SB 458**; a ruling of the chair was requested as to the germaneness of the amendment. The chair ruled the amendment not germane to the bill.

S Sub for HB 2119 be amended by adoption of the committee amendments, and be further amended by motion of Senator Lee, on page 1, following line 33, by inserting the following:

“New Sec. 3. “Golf cart” means a motor vehicle that has not less than three wheels in contact with the ground, an unladen weight of not more than 1,800 pounds, is designed to be and is operated at not more than 25 miles per hour and is designed to carry not more than four persons including the driver.

New Sec. 4. (a) It shall be unlawful for any person to operate a golf cart: (1) On any interstate highway, federal highway or state highway; (2) within the corporate limits of any city unless authorized by such city; or (3) on any street or highway with a posted speed limit greater than 30 miles per hour.

(b) The provisions of subsection (a) shall not prohibit a golf cart from crossing a federal or state highway or a street or highway with a posted speed limit in excess of 30 miles per hour.

(c) A golf cart shall be equipped with efficient brakes, brake lights, reliable steering apparatus, rearview mirror, red reflectorized warning devices in both the front and rear and turn signal equipment.

(d) A golf cart shall be operated only during the hours between sunrise and sunset.

(e) This section shall be part of and supplemental to the uniform act regulating traffic on highways.”;

And by renumbering the remaining sections accordingly;

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

“(jj) “Golf cart” means a motor vehicle that has not less than three wheels in contact with the ground, an unladen weight of not more than 1,800 pounds, is designed to be and is operated at not more than 25 miles per hour and is designed to carry not more than four persons including the driver.”;

Also on page 5, following line 25, by inserting the following:

“(4) golf cart.”;

And by renumbering the remaining paragraphs accordingly;

On page 8, in line 6, by striking “and section 1” and inserting “sections 1 and 3”;

On page 11, following line 42, by inserting the following:

“Unlawful operation of golf cart section 4 §60”∞ the title, in line 10, following “trucks” by inserting “and golf carts”, and **S Sub for HB 2119** be passed as amended.

S Sub for HB 2559 be amended by adoption of the committee amendments and be amended by motion of Senator Journey, on page 3, in line 12, by striking all after “(3)”; in line 13, by striking “(4)”; in line 16, by striking “(5)” and inserting “(4)”; and **S Sub for HB 2559** be passed as amended.

HB 2637 be amended by adoption of the committee amendments and be further amended by motion of Senator Apple, on page 14, after line 35, by inserting the following:

“Sec. 4. On July 1, 2009, K.S.A. 66-1802 is hereby amended to read as follows: 66-1802. As used in this act:

(a) “Damage” means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

(b) “Emergency” means any condition constituting a clear and present danger to life, health or property, or a customer service outage.

(c) “Excavation” means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, except tilling the soil for normal agricultural purposes, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and production of crude oil or natural gas, or both.

(d) “Excavator” means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who: (1) Uses such dwelling as a primary residence; and (2) excavates on the premises of such dwelling.

(e) “Facility” means any *sanitary sewer* or underground line, system or structure used for *transporting*, gathering, storing, conveying, transmitting or distributing *potable water*, gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any *stormwater sewers* or production petroleum lead lines, salt water disposal lines or injection lines, which are not located on platted land or inside the corporate limits of any city.

(f) “Locatable facility” means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for locating.

(g) “Marking” means the use of stakes, paint, flags or other clearly identifiable materials to show the field location of underground facilities, in accordance with the rules and regulations promulgated by the state corporation commission in the administration and enforcement of this act.

(h) “Municipality” means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.

(i) “Notification center” means the statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

(j) “Operator” means any person who owns or operates an underground *tier 1* or *tier 2* facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

(k) “Preengineered project” means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

(l) “Permitted project” means a project where a permit for the work to be performed must be issued by a city, county, state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

(m) “Person” means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

(n) “Production petroleum lead line” means an underground facility used for production, gathering or processing on the lease or unit, or for delivery of hydrocarbon gas and/or liquids

to an associated tank battery, separator or sales facility. Production petroleum lead lines shall include underground lines associated with lease fuel and saltwater disposal and injection.

(o) "Platted land" means a tract or parcel of land which has been subdivided into lots of less than five acres for the purpose of building developments, including housing developments, and for which a surveyor's plat has been filed of record in the office of the register of deeds in the county where the land is located.

(p) "Tier 1 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids.

(q) "Tier 2 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

(r) "Tolerance zone" means the area ~~within~~ not less than 24 inches of the outside dimensions in all horizontal directions of an underground facility, *except that a larger tolerance zone for a tier 2 facility may be established by rules and regulations adopted under K.S.A. 2007 Supp. 66-1815, and amendments thereto.*

(s) "Update" means an additional request from the excavator to extend the time period of the request for intent to excavate beyond the 15 calendar day duration of the request.

(t) "Whitelineing" means the act of marking by the excavator the route or boundary of the proposed excavation site with white paint, white stakes or white flags.

(u) "Working day" means every day Monday through Friday beginning at 12:01 a.m., except for the following officially recognized holidays: New Year's day, Memorial day, Independence day, Labor day, Thanksgiving day, the day after Thanksgiving and Christmas.

Sec. 5. On July 1, 2009, K.S.A. 66-1804 is hereby amended to read as follows: 66-1804.

(a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.

(b) *An excavator may serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator of tier 2 facilities located in the proposed area of excavation.*

(c) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

(d) No person shall make repeated requests for remarking unless the request is due to circumstances not reasonably within the control of such person.

(e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.

(f) The person filing the notice of intent to excavate shall, at the request of the operator, whiteline the proposed excavation site when the excavation location cannot be described with sufficient detail to enable the operator to ascertain the location of the proposed excavation.

(g) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

Sec. 6. On July 1, 2009, K.S.A. 66-1805 is hereby amended to read as follows: 66-1805

(a) This act recognizes the establishment of a single notification center for the state of Kansas. ~~The notification center shall provide prompt notice to each affected member of any proposed excavation.~~ Each operator who has an underground facility shall become a member of the notification center.

(b) *For operators of tier 1 facilities or operators of tier 2 facilities that desire notification in the same manner as operators of tier 1 facilities, the notification center shall provide prompt notice of any proposed excavation to each affected operator that has facilities recorded with the notification center in the area of a proposed excavation site.*

(c) For operators of tier 2 facilities that desire direct contact with the excavator, the notification center shall provide the excavator with the name and contact information of the affected operator that has facilities recorded with the notification center in the area of the proposed excavation.

~~(b)~~ (d) Notification, as required by K.S.A. 66-1804, and amendments thereto, to operators as defined in subsection (b) shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

(e) Notification to operators as defined in subsection (c) may be given by notifying the operator of tier 2 facilities using the contact information provided by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

~~(c)~~ (f) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

~~(d)~~ (g) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

(h) A suitable record shall be maintained by operators of tier 2 facilities that desire direct contact with the excavator pursuant to subsection (c) to document the receipt of notices from excavators.

Sec. 7. On July 1, 2009, K.S.A. 66-1806 is hereby amended to read as follows: 66-1806. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

(b) If the operator of tier 2 facilities cannot accurately mark the tolerance zone, such operator shall mark the approximate location to the best of its ability, notify the excavator that the markings may not be accurate, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

(c) The operator of tier 2 facilities shall not be required to provide notification of the tolerance zone for facilities which are at a depth at least two feet deeper than the excavator plans to excavate but does have to notify the excavator of their existence.

~~(b)~~ (d) If the operator of a tier 1 facility has no underground facilities in the area of the proposed excavation, such operator, before the excavation start date, shall notify the excavator that it has no facilities in the area of proposed excavation by telephone, facsimile, marking the area all clear or by other technology that may be developed for such purposes.

~~(c)~~ (e) If the excavator notifies the notification center, within two working days after the initial identification of the tolerance zone by the operator, that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the tolerance zone within one working day after the operator receives actual notice from the notification center.

~~(d)~~ (f) If the excavator has provided notice to an operator pursuant to K.S.A. 66-1804, and amendments thereto, and the operator fails to comply with subsections (a), (b) or (c) or notifies the excavator that it has no underground facilities in the area of the planned excavation, ~~fails to respond or improperly marks the tolerance zone for the facilities,~~ the excavator may proceed and shall not be liable to the operator for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability to the operator in those cases of gross negligence or willful and wanton conduct.

~~(e)~~ (g) For economic damages in any civil court of this state, failure of an operator to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator in the manner required by subsection (a) of K.S.A. 66-1806, and amendments thereto, shall not give rise to a cause of action on the part of the excavator against an operator, except that nothing in this act shall be construed to hold any operator

harmless from liability in those cases of inaccurate marking of the tolerance zone, gross negligence or willful and wanton conduct. Such failure may subject an operator to civil penalties as determined by the state corporation commission.

~~(h)~~ (h) Any person claiming that an operator has failed to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator shall file a complaint with the state corporation commission requesting enforcement of subsection (a) within one year of becoming aware of the violation.

~~(i)~~ (i) All tier 1 facilities installed by an operator after January 1, 2003, shall be locatable.

(j) All tier 2 facilities installed by an operator after July 1, 2008, shall be locatable.

New Sec.8. (a) All tier 2 facilities installed by an operator after July 1, 2008, shall be locatable.

(b) As used in this section, "tier 2 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

Sec. 9. On July 1, 2009, K.S.A. 66-1802, 66-1804, 66-1805 and 66-1806 are hereby repealed.";

And by renumbering the remaining sections accordingly;

On page 1, in the title, in line 13, after "services;" by inserting "relating to the underground utility damage prevention act;"; also in line 13, before "66-2006" by inserting "66-1802, 66-1804, 66-1805, 66-1806 and"; and **HB 2637** be passed as further amended.

A motion by Senator Lee to amend **HB 2637** failed and the following amendment was rejected: on page 2, in line 29, after the comma, by inserting "on or before January 1, 2010, the commission shall issue an order requiring"; in line 30, by striking "shall" and inserting "to".

On motion of Senator D. Schmidt the Senate adjourned until 10:00 a.m., Thursday, March 27, 2008.

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

PAT SAVILLE, *Secretary of the Senate.*

