

# Journal of the House

FIFTY-FIRST DAY

---

HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Wednesday, March 21, 2001, 9:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Aurand in the chair.  
The roll was called with 121 members present.  
Rep. Howell was excused on legislative business.  
Reps. Cook, P. Long, and Minor were excused on excused absence by the Speaker.  
Present later: Reps. Cook and Minor.

Prayer by the Rev. George F. Heller, Vicar, St. Philips Episcopal Church, Topeka:

O God, who is the source of all true knowledge and wisdom: Grant to your gathered representatives of the Kansas Legislature your guidance and direction so that they may be able to discern amongst the myriad choices and decisions facing them those bills and revisions that will increase the well-being of the people of the State of Kansas and give glory to your Name. All this we ask in your Holy Name. Amen.

The Pledge of Allegiance was led by Rep. Humerickhouse.

## REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to committees as indicated:

Agriculture: **HB 2572; HCR 5027.**  
Appropriations: **HB 2570, HB 2571.**

## MESSAGE FROM THE SENATE

**Announcing passage of SB 314, SB 350.**

Announcing passage of **HB 2011, HB 2082, HB 2137, HB 2147, HB 2148, HB 2185, HB 2193, HB 2206, HB 2270.**

Announcing passage of **Sub. HB 2005**, as amended; **HB 2033**, as amended by **S. Sub. for HB 2033** as amended; **HB 2063**, as amended; **HB 2101**, as amended; **HB 2105**, as amended; **HB 2114**, as amended; **HB 2169**, as amended; **HB 2300**, as amended.

Announcing adoption of **HCR 5011.**

The Senate accedes to the request of the House for a conference on **HB 2015** and has appointed Senators Umbarger, Schodorf and Downey as conferees on the part of the Senate.

## INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate bills were thereupon introduced and read by title:

**SB 314, SB 350.**

## INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolution was introduced and read by title:

HOUSE RESOLUTION No. 6015—

By Representative Edmonds

A RESOLUTION in memory of Oscar Micheaux.

WHEREAS, On March 24-25, 2001, the Great Bend community is sponsoring the golden anniversary memorial celebration of Oscar Micheaux, noted pioneer African-American film

maker and author who died March 25, 1951, and is buried in the Great Bend cemetery; and

WHEREAS, Oscar Micheaux is highly deserving of this belated recognition:

- He was the first African-American to produce a feature film (1919);
- He was the first African-American to produce a talking feature film (1931);
- He was the first African-American to produce a film that opened in white theaters (1948);
- He has a star on Hollywood's "Walk of Fame";
- He produced 43 feature films in his lifetime;
- He wrote seven novels, one of which was a best seller; and

WHEREAS, Oscar Micheaux was born in 1884 near Metropolis, Illinois, the middle child of 11 children born to freed slaves. He worked as a shoe shine boy and Pullman porter before homesteading a farm in South Dakota. While on the farm he started writing novels. To sell his novels he formed his own publishing company and sold his books door-to-door. He became interested in the developing silent film industry and formed his own company to produce his own autobiographical novel "The Homesteader" into a movie in 1919. He wrote, produced and directed 43 movies in his life—27 silent films and 16 sound features. His last film "The Betrayal" was released in 1948. Oscar Micheaux died of a heart attack at the age of 67 while on a trip to the South to promote his work.

WHEREAS, Several of Oscar Micheaux's exoduster relatives homesteaded in Stafford County and his parents moved to Great Bend in 1901. Oscar Micheaux considered Great Bend his adopted hometown, and his younger siblings all attended Great Bend schools, including his youngest brother Swan Micheaux (1896-1975) who served as Secretary-Treasurer of the Micheaux Book and Film Company; Now, therefore,

*Be it resolved by the House of Representatives of the State of Kansas:* That we honor the memory of this pioneer film maker and author and urge participation in his golden anniversary memorial celebration; and

*Be it further resolved:* That the Chief Clerk of the House of Representatives be directed to send an enrolled copy of this resolution to the Black Filmmaker's Hall of Fame, 1322 Webster St., Suite 400, Oakland, California 94612; The Kansas African American Museum, 601 N. Water, Wichita, Kansas 67203; Kevin Willmott, 705 Fox Chase Court, Lawrence, Kansas 66049; Harley Robinson, Jr., 6069 So. Vermont Avenue, Los Angeles, California 90044-3747; Pearl Bowser, African Diaspora Images, 71 Joralemon, Brooklyn, New York 11201, Martin J. Keenan, Keenan Law Firm, P.A., 2200 Larkin, P.O. Drawer 459, Great Bend, Kansas 67530 and six copies to Representative Edmonds.

#### CONSENT CALENDAR

Objection was made to **SB 334** appearing on the Consent Calendar; the bill was placed on the calendar under the heading of General Orders.

No objection was made to **SB 253** appearing on the Consent Calendar for the first day.

No objection was made to **HB 2552**; **SB 29** appearing on the Consent Calendar for the second day.

#### FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

**Sub. HB 2489**, An act concerning state officers and employees; concerning governmental ethics; amending K.S.A. 46-229, 46-237, 46-269 and 46-271 and repealing the existing sections; also repealing K.S.A. 46-237a, was considered on final action.

On roll call, the vote was: Yeas 63; Nays 58; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aday, Alldritt, Aurand, Ballou, Beggs, Bethell, Boston, Campbell, Compton, Cox, Dahl, DeCastro, DiVita, Dreher, Faber, Freeborn, Gordon, Hayzlett, Hermes, Horst, Huebert, Huff, Humerickhouse, Huy, Johnson, Kauffman, Kline, Krehbiel, Landwehr, Light, Lightner, Lloyd, Loyd, Mason, Mayans, Mays, McLeland, Merrick, Miller, Jim Morrison, Myers, Neufeld, Novascone, O'Neal, Osborne, Patterson, L. Powell, T. Powell, Powers, Pyle, Ray, Schwartz, Showalter, Shriver, Sloan, Stone, Swenson, Tafanelli, Tanner, Vickrey, Weber, Wilk, D. Williams.

Nays: Ballard, Barnes, Benlon, Burroughs, Crow, Dillmore, Edmonds, Feuerborn, Findley, Flaharty, Flora, Garner, Gatewood, Gilbert, Glasscock, Grant, Henderson, Henry, Holmes, Hutchins, Kirk, Klein, Kuether, Lane, Larkin, Levinson, Loganbill, M. Long, McClure, McCreary, McKinney, Judy Morrison, Newton, Nichols, O'Brien, Ostmeyer, Palmer, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, Reardon, Rehorn, Ruff, Sharp, Shultz, Spangler, Storm, Thimesch, Toelkes, Tomlinson, Toplikar, Wells, Welshimer, J. Williams, Wilson, Winn.

Present but not voting: None.

Absent or not voting: Cook, Howell, P. Long, Minor.

The substitute bill passed, as amended.

**HB 2493.** An act concerning the state fair; relating to acquisition, construction, equipping, furnishing, renovation, reconstruction and repair of the Kansas state fairgrounds, was considered on final action.

On roll call, the vote was: Yeas 109; Nays 12; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aday, Alldritt, Aurand, Ballard, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gilbert, Glasscock, Gordon, Grant, Hayzlett, Hermes, Holmes, Horst, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Kline, Krehbiel, Kuether, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, Loyd, Mason, Mayans, Mays, McClure, McCreary, McKinney, Merrick, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Brien, O'Neal, Osborne, Ostmeyer, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Ray, Rehorn, Ruff, Schwartz, Showalter, Shriver, Shultz, Sloan, Spangler, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, J. Williams, Wilson, Winn.

Nays: Ballou, Gatewood, Henderson, Henry, Huebert, Landwehr, McLeland, Miller, Pyle, Reardon, Sharp, D. Williams.

Present but not voting: None.

Absent or not voting: Cook, Howell, P. Long, Minor.

The bill passed, as amended.

**SB 11.** An act concerning vocational education; relating to supervision of the administration of programs by local educational agencies; amending K.S.A. 2000 Supp. 72-4408 and 72-4412, as amended by section 2 of 2001 House Bill No. 2001, and repealing the existing sections, was considered on final action.

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

Yeas: Aday, Alldritt, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Gordon, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Kline, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, Loyd, Mason, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Brien, O'Neal, Osborne, Ostmeyer, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Spangler, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: None.

Present but not voting: None.

Absent or not voting: Cook, Howell, P. Long, Minor.

The bill passed, as amended.

**SB 53.** An act concerning apportioned fleet registration; relating to interstate reciprocity permits; amending K.S.A. 2000 Supp. 8-1,100 and repealing the existing section; also repealing K.S.A. 2000 Supp. 8-1,112, was considered on final action.

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

Yeas: Aday, Alldritt, Aurand, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Gordon, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Kline, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, Loyd, Mason, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Brien, O'Neal, Osborne, Ostmeyer, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Spangler, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: None.

Present but not voting: None.

Absent or not voting: Cook, Howell, P. Long, Minor.

The bill passed, as amended.

**SB 115.** An act relating to school buses; concerning school transportation; modification of used school buses; amending K.S.A. 72-8313 and K.S.A. 2000 Supp. 8-1730a and 72-8301 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 119; Nays 2; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aday, Alldritt, Ballard, Ballou, Barnes, Beggs, Benlon, Bethell, Boston, Burroughs, Campbell, Compton, Cox, Crow, Dahl, DeCastro, Dillmore, DiVita, Dreher, Edmonds, Faber, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gatewood, Gilbert, Glasscock, Gordon, Grant, Hayzlett, Henderson, Henry, Hermes, Holmes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kauffman, Kirk, Klein, Kline, Krehbiel, Kuether, Landwehr, Lane, Larkin, Levinson, Light, Lightner, Lloyd, Loganbill, M. Long, Loyd, Mason, Mayans, Mays, McClure, McCreary, McKinney, McLeland, Merrick, Miller, Jim Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Brien, O'Neal, Osborne, Ostmeyer, Palmer, Patterson, Pauls, E. Peterson, J. Peterson, Phelps, Pottorff, L. Powell, T. Powell, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Schwartz, Sharp, Showalter, Shriver, Shultz, Sloan, Spangler, Stone, Storm, Swenson, Tafanelli, Tanner, Thimesch, Toelkes, Tomlinson, Toplikar, Vickrey, Weber, Wells, Welshimer, Wilk, D. Williams, J. Williams, Wilson, Winn.

Nays: Aurand, Judy Morrison.

Present but not voting: None.

Absent or not voting: Cook, Howell, P. Long, Minor.

The bill passed, as amended.

#### MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. Ray, the House nonconcurrent in Senate amendments to **HB 2068** and asked for a conference.

Speaker pro tem Aurand thereupon appointed Reps. Ray, Campbell and Gilbert as conferees on the part of the House.

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

#### COMMITTEE OF THE WHOLE

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

Recommended that **SB 75**, **SB 64** be passed.

**SCR 1605** be adopted.

Roll call was demanded on motion of Rep. Edmonds to rerefer **HR 6007** to Committee on Federal and State Affairs.

On roll call, the vote was: Yeas 62; Nays 57; Present but not voting: 0; Absent or not voting: 6.

Yeas: Aday, Aurand, Ballard, Beggs, Benlon, Bethell, Campbell, Compton, Cox, Crow, DiVita, Dreher, Edmonds, Feuerborn, Findley, Flaharty, Flora, Freeborn, Garner, Gilbert, Glasscock, Gordon, Henderson, Hermes, Horst, Huff, Humerickhouse, Johnson, Kirk, Kline, Krehbiel, Kuether, Landwehr, Lane, Levinson, Light, Lightner, Lloyd, Loganbill, McKinney, Merrick, Judy Morrison, Neufeld, Newton, O'Brien, Palmer, E. Peterson, J. Peterson, L. Powell, T. Powell, Rehorn, Schwartz, Sharp, Sloan, Stone, Storm, Tanner, Toelkes, Tomlinson, Weber, Welshimer, Winn.

Nays: Ballou, Barnes, Boston, Burroughs, Dahl, DeCastro, Dillmore, Faber, Gatewood, Grant, Hayzlett, Henry, Holmes, Huebert, Hutchins, Huy, Kauffman, Klein, Larkin, M. Long, Mason, Mayans, Mays, McClure, McCreary, McLeland, Miller, Jim Morrison, Myers, Nichols, Novascone, O'Neal, Osborne, Ostmeier, Patterson, Pauls, Phelps, Pottorff, Powers, Pyle, Ray, Reardon, Ruff, Showalter, Shriver, Shultz, Spangler, Swenson, Tafanelli, Thimesch, Toplikar, Vickrey, Wells, Wilk, D. Williams, J. Williams, Wilson.

Present but not voting: None.

Absent or not voting: Alldritt, Cook, Howell, P. Long, Loyd, Minor.

The motion prevailed and **HR 6007** be rereferred to Committee on Federal and State Affairs.

On motion of Rep. Pauls **SB 139** be amended on page 1, in line 29, after "bison" by inserting ", camels, giraffes"; and be passed as amended.

On motion of Rep. Larkin **SB 280** be amended on page 1, following line 21, by inserting the following:

"Sec. 2. Whenever any federal act or the regulation by any federal agency shall require that the secretary of transportation shall perform engineering services in connection with a federal aid project pertaining to the construction or reconstruction of any county road or bridge, the secretary shall not charge the county a fee for such engineering services which exceeds an amount equal to 10% of the county's share of the construction cost of such project.";

By renumbering sections accordingly;

In the title, in line 10, by striking all following "ACT"; in line 11, by striking all before the period and inserting "relating to highways; and **SB 280** be passed as amended.

Committee report to **SB 31** be adopted; also, roll call was demanded on motion of Rep. Crow to amend on page 1, after line 17, by inserting the following:

"New Section 1. This act shall be known and cited as the children's advocate act.

New Sec. 2. As used in this act:

(a) "Administrative act" means an action, omission, decision, recommendation, practice or other procedure of the department of social and rehabilitation services related to foster care services and services provided by the Kansas payment center as established by subsection (m) of section 20 of chapter 183 of the 2000 Session Laws of Kansas.

(b) "Advocate" means the children's advocate or any individual designated as an advocate who has received the training required under subsection (f) of section 6, and amendments thereto, and who has been designated by the children's advocate to carry out the powers, duties and functions of the office of the children's advocate.

(c) "Child" means a person who is less than 19 years of age.

(d) "Conflict of interest" means (1) having a pecuniary or other interest in a child placement agency, child care resource and referral agency or child care facility; and (2) being actively employed or otherwise having active involvement in representation of or advocacy for any child placement agency, child care resource and referral agency or child care facility, whether or not such representation or advocacy is individual or through an association or other entity.

(e) "Family foster home" means a private home in which care is given for 24 hours a day for a small number of children away from their parent or guardian and which is licensed

under K.A.R. 28-4-311 *et seq.* and shall not include a family day care home as defined in K.S.A. 65-517, and amendments thereto.

(f) "Foster child" means a child under 16 years of age who is living away from such child's parent or guardian with persons who are neither such child's relative nor legal guardian.

(g) "Kansas payment center" means the central unit for the collection and disbursement of support payments established in subsection (m) of section 20 of chapter 183 of the 2000 Session Laws of Kansas.

(h) "Office" means the office of the children's advocate.

(i) "Person" means any individual, association, partnership, corporation, government, governmental subdivision or other entity.

(j) "Volunteer advocate" means an individual who has satisfactorily completed the training prescribed by the children's advocate under section 6, and amendments thereto, who is a volunteer assisting in providing advocate services and who receives no payment for such service other than reimbursement for expenses incurred in accordance with guidelines adopted therefor by the children's advocate.

New Sec. 3. (a) There is hereby established the office of children's advocate within the legislative branch of government. The advocate shall be elected by a  $\frac{2}{3}$  vote in each house of the legislature. The office of children's advocate shall be under the direct supervision of the legislative coordinating council.

(b) The children's advocate shall serve for a term of two years and until such advocate's successor is appointed and qualified. Such advocate may be reappointed for additional terms. The initial children's advocate shall be appointed to serve until the January 2003 session during which the first two-year term children's advocate shall be appointed with subsequent appointments being made every two years.

(c) The legislature by a  $\frac{2}{3}$  vote in each house may remove the children's advocate from office but only for mental or physical incapacity to perform the duties of the office or other grounds sufficient for removal of a judge from state court. If the position of children's advocate becomes vacant for some reason, the deputy children's advocate shall serve as acting children's advocate until a children's advocate is appointed and qualified.

New Sec. 4. (a) No person shall be eligible to be appointed to or to hold, the office of children's advocate if such person is subject to a conflict of interest. No person shall be eligible for appointment as children's advocate unless such person has:

(1) A baccalaureate or higher degree from an accredited college or university;

(2) demonstrated abilities to analyze problems of law, administration and public policy; and

(3) experience in investigation and conflict resolution procedures.

(b) The children's advocate shall administer the office of the children's advocate in accordance with the provisions of this act.

(c) Upon appointment as children's advocate, such advocate shall select and appoint a person as deputy children's advocate.

(d) The children's advocate may delegate to staff members any authority, power or duty except this power of delegation and such children's advocate's duty to make any report to the legislature or governor under this act. However, the children's advocate may authorize the deputy children's advocate to act in the children's advocate's stead in the event of illness, absence, leave or disability or when, in the children's advocate's sole discretion, an appearance of impropriety or partiality or a conflict of interest prevents such advocate from discharging such advocate's duty in a particular matter.

(e) The office of the children's advocate shall oversee and investigate complaints regarding foster care of children in the custody of the state and complaints regarding the Kansas payment center, as defined in section 2, and amendments thereto, and shall perform such other duties as may be provided.

New Sec. 5. (a) Employees in the office of children's advocate shall be in the unclassified service, shall receive such compensation as is provided under this act and shall be covered by the state group health plan and Kansas public employees retirement system to the same extent as other state employees. Employees of the office of children's advocate

shall receive travel expenses and subsistence expenses and allowances as provided for other state employees.

(b) Employees in the office of children's advocate shall be employed by and be responsible to the children's advocate who shall fix the compensation of each employee subject to the approval of the legislative coordinating council and within budget and appropriations therefor. The annual budget request of the office shall be prepared by the children's advocate and presented to the legislative coordinating council. Such council shall make any changes it desires in the budget request and upon approval of the budget request by the council, the children's advocate shall submit such budget to the director of the budget as other budget requests are submitted.

(c) All officers and employees of the office of children's advocate shall serve at the pleasure of the children's advocate.

New Sec. 6. The children's advocate shall:

(a) Establish procedures for receiving and processing complaints from complainants, conducting investigations, holding hearings and reporting findings resulting from investigation;

(b) investigate and resolve complaints made by or on behalf of a foster child relating to action, inaction or decisions of the foster home or an administrative act of an agency, without regard to the finality of the act;

(c) develop continuing programs to inform children, their family members or other persons of the rights and responsibilities of the child, family members or other persons regarding such foster children and the Kansas payment center;

(d) provide the legislature and the governor with an annual report containing data, findings and outcomes regarding the types of problems experienced and complaints received by or on behalf of foster children, person's sending or receiving support checks through the Kansas payment center and containing policy, regulatory and legislative recommendations to solve such problems, resolve such complaints and improve the quality of care and life of a foster child when placed under the state's care and shall present such report and other appropriate information and recommendations to the senate committee on public health and welfare, the senate committee on ways and means, the house of representatives committee on health and human services and the house of representatives committee on appropriations during each regular session of the legislature;

(e) analyze and monitor the development and implementation of federal, state and local government laws, rules and regulations, resolutions, ordinances and policies with respect to foster children in the care of the state, payments processed through the Kansas payment center and services provided in this state, and recommend any changes in such laws, rules and regulations, resolutions, ordinances and policies deemed by the office to be appropriate;

(f) prescribe and provide for the training of each children's advocate and any individual designated as an avocate under subsection (h) of this section, and any individual who is an advocate volunteer in (1) federal, state and local laws, rules and regulations, resolutions, ordinances and policies with respect to foster children and the Kansas payment center in Kansas, (2) investigative techniques, and (3) such other matters as the state children's advocate deems appropriate;

(g) authorize an individual, who is an employee of the office and who has satisfactorily completed the training prescribed by the children's advocate under subsection (g), to be an advocate or a volunteer advocate and to be a representative of the office and such an authorized individual shall be deemed to be a representative of the office for the purposes of and subject to the provisions of the children's advocate act;

(h) establish and maintain a system to recruit and train individuals to become volunteer advocates;

(i) develop and implement procedures for authorizing and for withdrawing the authorization of individuals to be advocates or volunteer advocates to represent the office in providing advocate services;

(j) provide services to foster children in the care of the state and persons seeking services regarding the Kansas payment center throughout the state directly or through service providers to meet needs for advocate services;

(k) collaborate with the department of health and environment and the department of social and rehabilitation services to establish a statewide system to collect and analyze information on complaints about the state foster care system or the Kansas payment center;

(l) undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies which might improve the functioning of agencies regarding state foster care and the Kansas payment center or lessen the risks that objectionable administrative acts will occur;

(m) have access to and examine and copy, without payment of a fee, any agency records, including records that are confidential by state law;

(n) enter and inspect the premises of any agency, including the Kansas payment center, and foster care home or facility;

(o) subpoena any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably relevant to the matters under investigation;

(p) maintain confidentiality regarding any matter related to complaints and investigations, including the identities of the complaints and witnesses, except as the children's advocate deems necessary to fulfill the duties of such advocate's office;

(q) adopt, promulgate, amend and rescind rules and regulations required for the discharge of the office of children's advocate's duties; and

(r) perform such other duties and functions as may be provided.

New Sec. 7. For the purposes of carrying out the powers and duties of the office of the children's advocate, such advocate may request and accept a grant or donation from any person, firm, association or corporation or from any federal, state or local governmental agency and may enter into contracts or other transactions with any such person or entity in connection with the grant or donation.

New Sec. 8. Upon receipt of a complaint or on its own initiative, the advocate may:

(a) Investigate an administrative act that is alleged to be contrary to law, rules and regulations, policy of a foster care home or Kansas payment center, imposed without an adequate statement of reason or based on irrelevant, immaterial or erroneous grounds;

(b) decide, in its discretion, whether to investigate a complaint;

(c) conduct a preliminary investigation to determine whether the foster care home or the Kansas payment center may have committed an act that is alleged to be contrary to law; and

(d) hold informal hearings and request that persons appear before the advocate and give testimony or produce documentary or other evidence the advocate considers relevant to the matter under investigation.

New Sec. 9. (a) Upon rendering a decision to investigate a complaint the advocate shall notify the complainant of the decision to investigate and shall notify the state foster care home or the Kansas payment center and any other pertinent state entity referred to in the complaint and the decision to investigate the matter. If the advocate declines to investigate a complaint or continue an investigation, the advocate shall notify the complainant and the other person involved in the decision and the reasons for the decision.

(b) The advocate may advise a complainant to pursue all administrative remedies or channels of complaint open to the complainant before pursuing a complaint with the advocate's office. Subsequent to the administrative processing of a complaint, the advocate may conduct further investigations of any complaint upon the request of the complainant or on the advocate's own initiative.

(c) If the advocate finds in the course of an investigation that a person's action is in violation of state or federal criminal law, the advocate shall report that fact to the county prosecutor or the attorney general. If the complaint is against a state foster care home, the advocate shall refer the matter to the department of social and rehabilitation services for further action with respect to licensing.

New Sec. 10. (a) The department of social and rehabilitation services and a foster care home shall:

(1) Upon the advocate's request, grant the advocate or advocate's designee access to all relevant information, records, including the child's medical records, and documents in the possession of such entities that the advocate considers necessary in an investigation;



(2) assist the advocate upon request with progress reports concerning the administrative processing of a complaint; and

(3) provide the advocate upon request with progress reports concerning the administrative processing of a complaint.

(b) The department of social and rehabilitation services, foster care home or Kansas payment center shall provide information to a biological parent, child support payor or payee, prospective adoptive parent or foster parent regarding the provisions of this act.

New Sec. 11. (a) The advocate shall prepare a report of the findings of an investigation and make recommendations to the department of social and rehabilitation services, Kansas payment center or foster care home if the advocate finds one or more of the following:

(1) A matter should be further considered by the department, foster care home or Kansas payment center;

(2) an administrative act should be modified or canceled;

(3) reasons should be given for an administrative act; or

(4) other actions should be taken by the department, foster care home or Kansas payment center.

(b) Before announcing a finding or recommendation that expressly or by implication criticizes a person as defined in section 2 and amendments thereto, the advocate shall consult with that person. When publishing an opinion adverse to the department, foster care home or the Kansas payment center, the advocate shall include in the opinion any statement made to the advocate by the department, foster care home, Kansas payment center or other state entity in defense or mitigation of the action. The advocate may request to be notified by the department, foster care home, Kansas payment center or other state entity, within a specified time, of any action taken on any recommendation presented.

(c) The advocate shall notify the complainant of the actions taken by the advocate and the department, foster care home, Kansas payment center or other state entity.

(d) The advocate shall provide the complainant with a copy of the advocate's recommendations on a complaint.

New Sec. 12. (a) No person shall willfully interfere with any lawful action or activity of an advocate or a volunteer advocate, including the request for immediate entry into a foster care home, Kansas payment center or other state entity.

(b) No person shall take any discriminatory, disciplinary or retaliatory action against any foster parent, person, officer, employee of a foster care home or the Kansas payment center or against any child or any guardian or family member thereof for any communication by any such individual with an advocate or a volunteer advocate or for any information given or disclosed by such individual in good faith to aid the office in carrying out its duties and responsibilities.

(c) Any person that violates the provisions of subsection (a) or (b) shall be guilty of a class C misdemeanor.

New Sec. 13. The following persons may make a complaint to the advocate concerning a child alleging that an administrative act is contrary to law, rules and regulations, policy, imposed without an adequate statement of reason or based on irrelevant, immaterial or erroneous grounds:

(a) The foster child or child for whom child support is processed by the Kansas payment center if such child is able to articulate a complaint;

(b) a biological or adoptive parent of the foster child or child for whom child support is processed by the Kansas payment center;

(c) a foster parent of the foster child;

(d) a person having residential custody of a child for whom child support is processed by the Kansas payment center;

(e) a prospective adoptive parent of the foster child or child for whom child support is processed by the Kansas payment center;

(f) a legally appointed guardian or conservator of the foster child or child for whom child support is processed by the Kansas payment center;

(g) a guardian ad litem of the foster child or child for whom child support is processed by the Kansas payment center;

(h) an adult who is related to the foster child or child to the fifth degree by marriage, blood or adoption;

(i) a payee, payor or such person's attorney in child support matters whose support moneys are processed through the Kansas payment center;

(j) a Kansas legislator;

(k) an attorney for any person described in subsection (a) through (i); or

(l) the advocate upon the advocate's own initiative.

New Sec. 14. No individual shall investigate any complaint filed with the office of the children's advocate unless the individual has received the training required and designated by the children's advocate as an advocate or a voluntary advocate qualified to investigate such complaints.

New Sec. 15. A volunteer advocate shall have access to the plan of care and other records or documents kept for or concerning the resident to the same extent and under the same circumstances as an advocate under this section, except that a volunteer advocate shall not have access to any such other records and documents that are privileged medical records.

New Sec. 16. (a) An advocate or a volunteer advocate is hereby authorized to enter any foster care home and any area within such home at any time with or without prior notice and shall have access to the child of a foster care home at all times.

(b) An advocate or a volunteer advocate shall notify immediately the person in charge of a foster care home upon arrival and shall present appropriate identification.

(c) A foster child shall have the right to request, deny or terminate visits with an advocate or a volunteer advocate.

New Sec. 17. All information, records and reports received by or developed by an advocate or a volunteer advocate which relate to a foster child in a foster care home or other state entity, including written material identifying a foster child or other complainant, are confidential and not subject to the provisions of K.S.A. 45-216 to 45-220, inclusive, and amendments thereto, and shall not be disclosed or released by an advocate or a volunteer advocate, either by name of the foster child or other complainant or of facts which allow the identity of the foster child or other complainant to be inferred, except upon the order of a court or unless the foster child's legal representative or other complainant consents in writing to such disclosure or release by an advocate or a volunteer advocate, except the children's advocate shall forward to the secretary of health and environment and the secretary of social and rehabilitation services copies of reports received by the children's advocate relating to the health and safety of a foster child. A summary report and findings shall be forwarded to the appropriate person, exclusive of information or material that identifies a foster child or any other individuals.

New Sec. 18. An advocate shall have access to all records and documents kept by the department of health and environment, the department of social and rehabilitation services and foster care home concerning the following matters: (a) Licensure of foster care homes dealing with foster children in state care; (b) certification of such homes dealing with foster children in state care; (c) public funding reimbursement for the care of foster children of such homes dealing with foster children; (d) utilization and medical review records; and (e) complaints regarding care of foster children of such foster care homes. The provisions of this section shall not apply to a volunteer advocate.

New Sec. 19. An advocate shall have access to all records and documents of the Kansas payment center concerning complaints involving such center.

New Sec. 20. The authority granted the advocate under this act is in addition to the authority granted under the provisions of any rule and regulation or other act or rule and regulation under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the advocate does not limit or affect the remedy or right of appeal or objection and is not an exclusive remedy or procedure.

New Sec. 21. (a) On the effective date of this act, all of the powers, duties, functions, records and property of the office of the secretary of social and rehabilitation services, which are prescribed for the office of the children's advocate by this act, are hereby transferred to and conferred and imposed upon the office of the children's advocate, including the power to expend funds now or hereafter made available in accordance with appropriation

acts, are hereby transferred to and conferred and imposed upon the office of the children's advocate established by this act, except as is otherwise specifically provided by this act.

(b) The office of the children's advocate established by this section shall be the successor in every way to the powers, duties and functions of the office of the secretary of social and rehabilitation services in which such powers, duties and functions were vested prior to the effective date of this act, except as otherwise specifically provided by this act. Every act performed under the authority of the office of the children's advocate established by this act shall be deemed to have the same force and effect as if performed by the office of the secretary of social and rehabilitation services in which such powers, duties and functions were vested prior to the effective date of this act.

(c) Subject to the provisions of this act, whenever the office of the secretary of social and rehabilitation services or words of like effect, is referred to or designated by a statute, contract or other document, and such reference or designation relates to a power, duty or function which is transferred to and conferred and imposed upon the office of the children's advocate that is established by this act, such reference or designation shall be deemed to apply to the office of the children's advocate established by this act.

(d) All policies, orders or directives of the office of the secretary of social and rehabilitation services transferred to and conferred and imposed upon the children's advocate which are in existence on the effective date of this act shall continue to be effective and shall be deemed to be the policies, orders or directives of the children's advocate established by this act, until revised, amended or revoked or nullified pursuant to law. The office of the children's advocate established by this act shall be deemed to be a continuation of the secretary of social and rehabilitation services concerning children which are transferred, conferred and imposed upon the children's advocate.

(e) (1) The children's advocate and the secretary of administration shall provide that all officers and employees of the secretary of social and rehabilitation services, who are engaged in the exercise and performance of the powers, duties and functions of the programs of the office of the children's advocate that are transferred by this act, are transferred to the office of the children's advocate established by this section.

(2) Officers and employees of the department of social and rehabilitation services transferred under this act shall retain all retirement benefits and leave rights which had accrued or vested prior to each date of transfer. The service of each officer or employee so transferred shall be deemed to be continuous. All transfers, layoffs and abolition of classified service positions under the Kansas civil service act which may result from program transfers under this act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this act shall affect the classified status of any person transferred to the office of the children's advocate prior to the date of transfer.

(3) If the children's advocate and the secretary of social and rehabilitation services cannot agree as to how any transfer of an officer or employee is to take place under this section, the children's advocate and the secretary of administration shall be responsible for administering any layoff that is part of the transfer in accordance with this act.

(4) Notwithstanding the effective date of this act, the provisions of this act prescribing the transfer of officers and employees between the office of the children's advocate established by this section and the department of social and rehabilitation services, the date of transfer of each such officer or employee shall commence at the start of a payroll period.

New Sec. 22. (a) The children's advocate shall ensure that:

(1) No individual involved in the authorization of any individual to represent the office as an advocate or a volunteer advocate is subject to a conflict of interest;

(2) no officer, employee or other representative of the office is subject to a conflict of interest;

(3) policies and procedures are in place to identify and remedy all conflicts of interest specified under paragraphs (1) and (2);

(4) legal counsel is available to the office for advice and consultation and that legal representation is provided to any advocate against whom suit or other legal action is brought in connection with the performance of the advocate's official duties; and

(5) the office has the ability to pursue administrative, legal and other appropriate remedies on behalf of a child or such child's parent who receives support payments through the

Kansas payment center or whose child is in the custody of the state and subject to the processes of a foster care facility or home, or other programs, office or process involving children whose welfare has been placed under the state's jurisdiction.

(b) The children's advocate may enter into contracts with service providers to provide investigative, legal, public education, training or other services as may be required to assist the children's advocate in providing advocate services to foster children whose welfare has been assumed by the state or as otherwise required to carry out the powers, duties and functions of the office. Contracts entered into under this subsection shall not be subject to the competitive bidding requirements of K.S.A. 75-3739 and amendments thereto. No contract may be entered into by the children's advocate to privatize the office or to otherwise provide that all or substantially all of the advocate services or functions of the office are to be performed by one or more service providers.

New Sec. 23. (a) Records of the office of children's advocate included under the provisions of this act shall not be disclosed directly or indirectly to any person except as authorized by the children's advocate or such person's designee.

(b) No documents relating to complaints, investigations or studies in the possession of the children's advocate or any employee of the children's advocate shall be read, copied or taken by any officer or employee of the state of Kansas except as authorized by the children's advocate or such person's designee.";

And by renumbering sections accordingly;

In the title, in line 11, by striking "joint committees of"; in line 14, after the semicolon, by inserting: "enacting the children's advocate act;"

On roll call, the vote was: Yeas 61; Nays 58; Present but not voting: 0; Absent or not voting: 6.

Yeas: Alldritt, Ballard, Barnes, Boston, Burroughs, Campbell, Crow, DeCastro, Dillmore, Feuerborn, Findley, Flaharty, Flora, Gatewood, Gilbert, Grant, Henderson, Henry, Huebert, Kauffman, Kirk, Klein, Kuether, Landwehr, Larkin, Levinson, Loganbill, M. Long, Mayans, McClure, McCreary, McKinney, McLeland, Judy Morrison, Myers, Nichols, O'Brien, Palmer, Pauls, E. Peterson, Phelps, Pottorff, T. Powell, Reardon, Rehorn, Ruff, Sharp, Showalter, Shriver, Storm, Swenson, Thimesch, Toelkes, Toplikar, Vickrey, Wells, Welshimer, D. Williams, J. Williams, Wilson, Winn.

Nays: Aday, Aurand, Ballou, Beggs, Benlon, Bethell, Compton, Cox, Dahl, DiVita, Dreher, Edmonds, Faber, Freeborn, Glasscock, Gordon, Hayzlett, Hermes, Holmes, Horst, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kline, Krehbiel, Lane, Light, Lightner, Lloyd, Loyd, Mason, Mays, Merrick, Miller, Jim Morrison, Neufeld, Newton, Novascone, O'Neal, Osborne, Ostmeyer, Patterson, J. Peterson, L. Powell, Powers, Pyle, Ray, Schwartz, Shultz, Sloan, Stone, Tafanelli, Tanner, Tomlinson, Weber, Wilk.

Present but not voting: None.

Absent or not voting: Cook, Garner, Howell, P. Long, Minor, Spangler.

The motion of Rep. Crow prevailed.

Also, on motion to recommend **SB 31** favorably for passage, roll call was demanded.

On roll call, the vote was: Yeas 58; Nays 60; Present but not voting: 0; Absent or not voting: 7.

Yeas: Alldritt, Ballard, Barnes, Boston, Burroughs, Crow, DeCastro, Dillmore, Feuerborn, Findley, Flaharty, Flora, Gatewood, Gilbert, Grant, Henderson, Henry, Kauffman, Kirk, Klein, Kuether, Landwehr, Larkin, Levinson, Loganbill, M. Long, Mayans, McClure, McKinney, McLeland, Judy Morrison, Nichols, Novascone, O'Brien, Palmer, Pauls, E. Peterson, Phelps, Pottorff, T. Powell, Reardon, Rehorn, Ruff, Sharp, Showalter, Shriver, Storm, Swenson, Thimesch, Toelkes, Toplikar, Vickrey, Wells, Welshimer, D. Williams, J. Williams, Wilson, Winn.

Nays: Aday, Aurand, Ballou, Beggs, Benlon, Bethell, Campbell, Compton, Cox, Dahl, DiVita, Dreher, Edmonds, Faber, Freeborn, Glasscock, Hayzlett, Hermes, Holmes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, Johnson, Kline, Krehbiel, Lane, Light, Lightner, Lloyd, Loyd, Mason, Mays, McCreary, Merrick, Miller, Jim Morrison, Myers, Neufeld, Newton, O'Neal, Osborne, Ostmeyer, Patterson, J. Peterson, L. Powell, Powers, Pyle, Ray, Schwartz, Shultz, Sloan, Stone, Tafanelli, Tanner, Tomlinson, Weber, Wilk.

Present but not voting: None.

Absent or not voting: Cook, Garner, Gordon, Howell, P. Long, Minor, Spangler.

The motion to recommend **SB 31** favorably for passage did not prevail.

Committee report to **SB 32** be adopted; also, on motion of Rep. Sloan be amended on page 4, in line 30, after the period, by inserting "The secretary shall be fully qualified by education, training and experience in wildlife, parks or natural resources, or a related field, and shall have a demonstrated executive and administrative ability to discharge the duties of the office of secretary.";

On page 1, in the title, in line 11, by striking all after "law"; in line 12, by striking all before the semicolon;

Also, on motion of Rep. Neufeld **SB 32** be amended on page 10, by striking "statute book" and inserting "Kansas register"; and **SB 32** be passed as amended.

Committee report to **SB 183** be adopted; and the bill be passed as amended.

Committee report to **SB 58** be adopted; also, on motion of Rep. Loyd be amended on page 3, after line 27, by inserting the following:

"Sec. 4. K.S.A. 17-1764 is hereby amended to read as follows: 17-1764. No person shall act as a professional fund raiser for a charitable organization or for any religious organization as described in subsection (k) of K.S.A. 17-1762 and amendments thereto before such person has registered with the secretary of state or after the expiration or cancellation of such registration or any renewal of such registration. Applications for registration and reregistration shall be in writing and under oath in the form prescribed by the secretary of state. ~~The applicant, at the time of making application, shall file with, and have approval of the secretary of state, a bond in the sum of \$5,000, in which the applicant shall be the principal obligor, with one or more corporate sureties licensed to do business in this state whose liability in the aggregate will at least equal such sum. The bond shall run to the state for the use of the state and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of such solicitation. The aggregate limit of liability of the surety to the state and to all such persons, in no event, shall exceed the sum of such bond.~~ Registration or reregistration shall be in effect for a period of one year, or a part thereof, expiring on June 30, and may be renewed upon written application, under oath, in the form prescribed by the secretary of state ~~and the filing of the bond~~ for additional one year periods. Every professional fund raiser required to register pursuant to this act shall file an annual written report with the secretary of state containing such information as the secretary may require by rule and regulation pursuant to K.S.A. 17-1763 and amendments thereto.

New Sec. 5. (a) If any person is found to have violated any provision of the charitable organizations and solicitations act, and such violation is committed against elder or disabled persons, in addition to any civil penalty otherwise provided by law, the court may impose an additional civil penalty not to exceed \$10,000 for each such violation.

(b) In determining whether to impose a civil penalty as provided in this section and the amount of such civil penalty, the court shall consider the extent to which one or more of the following factors are present:

(1) Whether the defendant's conduct was in disregard of the rights of the elder or disabled person;

(2) whether the defendant knew or should have known that the defendant's conduct was directed to an elder or disabled person;

(3) whether the elder or disabled person was more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility or disability than other persons and actually suffered substantial physical, emotional or economic damage resulting from the defendant's conduct;

(4) whether the defendant's conduct caused an elder or disabled person to suffer any of the following:

(A) Mental or emotional anguish;

(B) loss of or encumbrance upon a primary residence of the elder or disabled person;

(C) loss of or encumbrance upon the elder or disabled person's principal employment or principal source of income;

(D) loss of funds received under a pension or retirement plan or a government benefits program;

(E) loss of property set aside for retirement or for personal or family care and maintenance;

(F) loss of assets essential to the health and welfare of the elder or disabled person; or  
 (G) any other factors the court deems appropriate.

(c) As used in this section elder person and disabled person shall mean the same as provided in K.S.A. 2000 Supp. 50-676, and amendments thereto.

(d) The provisions of this section shall be part of and supplemental to the charitable organizations and solicitations act.”;

And by renumbering sections accordingly;

Also on page 3, in line 28, after “K.S.A.” by inserting “17-1764.”;

In the title, in line 15, after “K.S.A.” by inserting “17-1764,” and **SB 58** be passed as amended.

Committee report to **SB 147** be adopted; also, on motion of Rep. Landwehr be amended on page 3, after line 26, by inserting the following:

“Sec. 2. K.S.A. 32-1001 is hereby amended to read as follows: 32-1001. (a) It is unlawful for any person to:

(1) Participate or engage in any activity for which such person is required to have obtained a license, permit, stamp or other issue of the department under the wildlife and parks laws of this state or under rules and regulations of the secretary unless such person has obtained a currently valid such license, permit, stamp or other issue issued to such person;

(2) fail to carry in such person’s possession a currently valid license, permit, stamp or other issue of the department, issued to such person, while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the wildlife and parks laws of this state or under rules and regulations of the secretary;

(3) refuse to allow examination of any license, permit, stamp or other issue of the department while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the wildlife and parks laws of this state or under rules and regulations of the secretary, upon demand by any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary;

(4) while participating or engaging in fishing or hunting: (A) Fail to carry in such person’s possession a card or other evidence which such person is required to carry pursuant to K.S.A. 32-980 and amendments thereto; or (B) refuse to allow inspection of such card or other evidence upon demand of any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary; or

(5) make any false representation to secure any license, permit, stamp or other issue of the department, or duplicate thereof, or to make any alteration in any such license, permit, stamp or other issue.

(b) No person charged with violating subsection (a)(1) for failure to obtain a vehicle or camping permit for use of any state park, or any portion thereof or facility therein, or any other area or facility for which a vehicle or camping permit is required pursuant to rules and regulations of the secretary shall be convicted thereof unless such person refuses to purchase such permit after receiving a permit violation notice, which notice shall require the procurement of: (1) The proper *daily* permit or permits and payment, within 24 hours, of a late payment fee of ~~5~~ \$15; or (2) an *annual vehicle or camping permit*, as the case may be, if such permit has been established by rule and regulation and adopted by the secretary. The provisions of this subsection (b)(2) shall expire on December 31, 2002.

(c) (1) In any prosecution charging a violation of subsection (a)(1) for failure to obtain a permit required by K.S.A. 32-901 and amendments thereto, proof that the particular vehicle described in the complaint was in violation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the time when and place where the violation occurred.

(2) Proof of a written lease of, or rental agreement for, a particular vehicle described in the complaint, on the date and at the time of the violation, which lease or rental agreement

includes the name and address of the person to whom the vehicle was leased or rented at the time of the violation, shall rebut the prima facie evidence that the registered owner was the person who parked or placed the vehicle at the time when and place where the violation occurred.

(d) No person who is a resident of this state and charged with violating subsection (a)(1) or (a)(2) shall be convicted thereof if such person produces in court or the office of the arresting officer the appropriate license, permit, stamp or other issue of the department, lawfully issued to such person and valid at the time of such person's arrest.”;

And by renumbering sections accordingly;

Also on page 3, in line 40, by striking “and” and inserting “, 32-1001 and”; in line 42, by striking “statute book” and inserting “Kansas register”;

In the title, in line 13, by striking “and” where it appears for the first time, and inserting: “, 32-1001 and”; and **SB 147** be passed as amended.

On motion of Rep. O'Neal **SB 321** be amended on page 1, after line 22, by inserting:

“New Sec. 2. (a) The state corporation commission shall adopt rules and regulations establishing standards for the plugging of salt brine wells and water wells drilled into salt-bearing formations.

(b) The state corporation commission shall establish a program to plug abandoned salt brine wells, and abandoned water wells drilled into salt-bearing formations, in Reno county, subject to the availability of appropriations for that purpose.

(c) A salt brine well or water well drilled into a salt-bearing formation shall be deemed abandoned for the purposes of subsection (b) if no person is legally responsible for the proper care and control of such well or if the person legally responsible for the care and control of such well is dead, is no longer in existence, is insolvent or cannot be found.”;

By renumbering the remaining sections accordingly;

In the title in line 9, by striking “oil and gas” where it appears for the first time and inserting “wells”; in line 10, before “amending” by inserting “providing for establishment of standards for plugging salt brine wells and water wells drilled into salt-bearing formations and providing for plugging of certain such wells;”; and **SB 321** be passed as amended.

Committee report to **HB 2145** be adopted; also, on motion of Rep. Ballou be amended on page 1, following line 28, by inserting:

“(c) Any violation of this section shall be considered an unconscionable act and practice under K.S.A. 50-627, and amendments thereto, and shall be subject to any and all of the remedies and enforcement provisions of the Kansas consumer protection act.”; and **HB 2145** be passed as amended.

Roll call was demanded on motion of Rep. Storm to amend **SB 50** on page 2, in line 40, before the semicolon, by inserting: “. The provisions of this part (ii) of subsection (8)(E) shall expire on July 1, 2003”;

On page 3, after line 28, by inserting the following:

“(c) Legislative post audit is hereby directed to perform an audit to determine whether the provisions of this section accomplish the need it was designed to meet. The audit report shall be submitted to the legislature at the commencement of the 2002 legislative session.”;

On roll call, the vote was: Yeas 53; Nays 64; Present but not voting: 0; Absent or not voting: 8.

Yeas: Alldritt, Aurand, Ballard, Barnes, Benlon, Burroughs, Cox, Crow, Dillmore, DiVita, Feuerborn, Findley, Flaharty, Garner, Gatewood, Gilbert, Grant, Horst, Hutchins, Kirk, Klein, Kline, Larkin, Levinson, Loganbill, M. Long, Mays, McClure, McLeland, Merrick, O'Brien, Pauls, E. Peterson, Phelps, Pottorff, Powers, Pyle, Ray, Reardon, Rehorn, Ruff, Sloan, Storm, Swenson, Tanner, Thimesch, Toelkes, Vickrey, Weber, Welshimer, J. Williams, Wilson, Winn.

Nays: Aday, Ballou, Beggs, Bethell, Boston, Campbell, Compton, Dahl, DeCastro, Dreher, Edmonds, Faber, Flora, Freeborn, Glasscock, Hayzlett, Henderson, Henry, Hermes, Holmes, Huebert, Huff, Humerickhouse, Huy, Johnson, Kauffman, Krehbiel, Kuether, Landwehr, Lane, Light, Lightner, Lloyd, Loyd, Mason, Mayans, McCreary, McKinney, Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Neal, Osborne, Ostmeier, Palmer, Patterson, J. Peterson, L. Powell, T. Powell, Schwartz, Showalter, Shriver, Shultz, Stone, Tafanelli, Toplikar, Wells, Wilk, D. Williams.

Present but not voting: None.

Absent or not voting: Cook, Gordon, Howell, P. Long, Minor, Sharp, Spangler, Tomlinson.

The motion of Rep. Storm did not prevail.

Also, rose and reported progress (see Committee of the Whole, afternoon session).

#### REPORTS OF STANDING COMMITTEES

The Committee on **E-Government** recommends **SB 97**, be amended on page 1, in line 21, by striking all before the period, and inserting " or, when authorized by the governor, by the governor's electronic signature"; and the bill be passed as amended.

The Committee on **Federal and State Affairs** recommends **HB 2563** be passed.

The Committee on **Health and Human Services** recommends **SB 118** be passed.

The Committee on **Higher Education** recommends **SB 7** be passed.

The Committee on **Insurance** recommends **SB 19**, be amended on page 1, following line 28 by inserting new sections as follows:

"Sec. 2. The purpose of section 3, and amendments thereto, is to provide insurance coverage to individuals with a condition or medical history for which bone mass measurement is determined to be medically necessary for the individual's diagnosis and treatment of osteoporosis.

Sec. 3. Any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society, health maintenance organization, municipal group-funded pool, and the state employee health care benefits program which provides coverage for and which is delivered, issued for delivery, amended or renewed on or after July 1, 2001, shall include coverage for services related to diagnosis, treatment and management of osteoporosis subject to the same deductibles and coinsurance as apply to other covered services.";

And by renumbering remaining section accordingly;

In line 30 by striking "Kansas register" and inserting "statute book";

In the title before the period, by inserting "and the diagnosis and treatment of osteoporosis"; and the bill be passed as amended.

The Committee on **Judiciary** recommends **HB 2549; SB 20, SB 30; Sub. SB 36** be passed.

The Committee on **Taxation** recommends **HB 2160** be passed.

The Committee on **Taxation** recommends **HB 2030** be amended on page 19, in line 19, by striking "and all sales of" and inserting "palladium,,"; in line 20, after "bullion" by inserting "and currency,,"; also in line 20, by striking "\$1,000" and inserting "\$100"; and the bill be passed as amended.

The Committee on **Taxation** recommends **HB 2219** be amended after line 12, by inserting a new section to read as follows:

"Section 1. K.S.A. 2000 Supp. 74-8017 is hereby amended to read as follows: 74-8017. ~~§~~ (a) On and after January 1, 2003, it shall be the duty of Kansas, Inc. to prepare an annual report evaluating the cost effectiveness of the various income tax credits and sales tax exemptions enacted to encourage economic development within this state and submit the same to the standing committees on taxation and economic development of the house and assessment and taxation and commerce of the senate at the beginning of each regular session of the legislature. The secretary of revenue shall develop a questionnaire on the utilization of state income tax credits and sales tax exemptions that shall be completed by all corporate taxpayers subject to state income tax that shall be submitted to the department of revenue concurrently with the filing of an annual corporate income tax return. The questionnaire shall require respondents to indicate utilization of the following credits and exemptions:

(1) Income tax credits authorized under the provisions of the job expansion and investment credit act of 1976 and acts amendatory thereof and supplemental thereto;

(2) income tax credits for expenditures in research and development activities authorized by K.S.A. 79-32,182 and 79-32,182a, and amendments thereto;

(3) income and financial institutions privilege tax credits for cash investment in stock of Kansas Venture Capital, Inc. authorized by K.S.A. 74-8205 and 74-8206, and amendments thereto;



(4) income tax credits for cash investment in certified Kansas venture capital companies authorized by K.S.A. 74-8304, and amendments thereto;

(5) income tax credits for cash investment in certified local seed capital pools authorized by K.S.A. 74-8401, and amendments thereto;

(6) income tax credits for investment in the training and education of qualified firms' employees authorized by K.S.A. 2000 Supp. 74-50,132, and amendments thereto;

(7) sales tax exemptions for property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business, or retail business meeting the requirements of K.S.A. 74-50,115, and amendments thereto, and machinery and equipment for installation at such business or retail business authorized by subsection (c) of K.S.A. 1993 Supp. 79-3606a 79-3606, and amendments thereto; and

(8) sales tax exemptions for machinery and equipment used directly and primarily for the purposes of manufacturing, assembling, processing, finishing, storing, warehousing or distributing articles of tangible personal property in this state intended for resale by a manufacturing or processing plant or facility or a storage, warehousing or distribution facility. The secretary of revenue shall provide the completed questionnaires and copies of sales tax exemption certificates to Kansas, Inc. for the preparation of such report.

(b) *Prior to the commencement of the 2002 legislative session, Kansas, Inc. and the Kansas department of revenue shall agree upon procedures for the purpose of disclosure of corporate and individual taxpayer information to fulfill the purposes of this section and protect sensitive taxpayer information to the extent possible consistent with this section. Such procedures shall be submitted to an appropriate committee at the commencement of such session in the form of a proposed bill.*

In line 13, by striking "Section 1" and inserting "Sec. 2"; in line 14, by striking "2" and inserting "3";

In the title, in line 9, by striking "repealing K.S.A. 2000 Supp. 74-8017,"; in line 10, before the period, by inserting "; amending K.S.A. 2000 Supp. 74-8017 and repealing the existing section"; and the bill be passed as amended.

The Committee on **Taxation** recommends **HB 2292** be amended on page 6, after line 8, by inserting a new section to read as follows:

"New Sec. 2. Notwithstanding the provisions of any law to the contrary, the tax imposed upon a motor vehicle pursuant to K.S.A. 79-5101 *et seq.*, and amendments thereto, which is delinquent and more than one year past due, and any penalty and interest resulting from such delinquency, shall be canceled and forgiven if such vehicle is donated to a nonprofit charitable organization which is exempt from payment of federal income tax. In the event any such vehicle is purchased from any such organization by the donor, or on behalf of the donor, of such vehicle, liability for all such tax, interest and penalty shall vest in such purchaser, and shall be collected in the manner prescribed by K.S.A. 79-5116, and amendments thereto.";

By renumbering existing sections accordingly;

In the title, in line 9, by striking the first "sales"; in line 10, after the semicolon by inserting "concerning the cancellation of tax imposed upon certain motor vehicles."; and the bill be passed as amended.

The Committee on **Taxation** recommends **HB 2458** be amended on page 2, in line 35, by striking "or state"; also, in line 35, by striking the comma and inserting "and"; in line 36, by striking "or political subdivision thereof, or any" and inserting a comma; and the bill be passed as amended.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was thereupon introduced and read by title:

**HB 2573**, An act concerning the Kansas development finance authority; relating to the financing of certain projects of statewide as well as local importance; amending K.S.A. 2000 Supp. 74-8922 and repealing the existing section, by Committee on Taxation.

**MESSAGES FROM THE GOVERNOR**

**HB 2004, HB 2038, HB 2457** approved on March 20, 2001.

On motion of Rep. Weber, the House recessed until 2:00 p.m.

---

**AFTERNOON SESSION**

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

**MESSAGE FROM THE SENATE**

Announcing passage of **SB 235, SB 236, SB 329**.

Announcing adoption of **SCR 1609**.

**INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS**

The following Senate bills and concurrent resolution were thereupon introduced and read by title:

**SB 235, SB 236, SB 329; SCR 1609**.

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

**COMMITTEE OF THE WHOLE**

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

Recommended that discussion resume on **SB 50** and on motion of Rep. Benlon to amend, the motion did not prevail.

Also, on motion of Rep. Kirk **SB 50** be amended on page 3, after line 28, by inserting:

“Sec. 2. Sections 2 through 8 of this act shall be known and may be cited as the dental hygienists student loan act.

Sec. 3. As used in this act:

(a) “School of dental hygiene” means a school approved by the Kansas dental board for the teaching of dental hygiene under the dental practices act;

(b) “service commitment area” means (1) any community within any county in Kansas other than Douglas, Johnson, Sedgwick or Shawnee county, (2) any state medical care facility or institution, (3) any medical center operated by the veterans administration of the United States, or (4) the full-time faculty of a school of dental hygiene located in Kansas; and

(c) “state medical care facility or institution” includes, but is not limited to, the Kansas state school for the blind, the Kansas state school for the deaf, any institution under the secretary of social and rehabilitation services, as defined by subsection (b) of K.S.A. 76-12a01, and amendments thereto, any institution under the commissioner of juvenile justice as defined by K.S.A. 38-1602, and amendments thereto, the Kansas soldiers’ home, the Kansas veterans’ home and any correctional institution under the secretary of corrections, as defined by subsection (d) of K.S.A. 75-5202, and amendments thereto, but shall not include any state educational institution under the state board of regents, as defined by subsection (a) of K.S.A. 76-711 and amendments thereto, except as specifically provided by statute.

Sec. 4. (a) There is hereby established the dental hygienist student loan program under the state board of regents.

(b) Subject to the provisions of appropriation acts, the state board of regents may make dental hygiene student loans in accordance with the provisions of this act to undergraduate students who are enrolled in or admitted to a school of dental hygiene and who enter into a written student loan agreement with the state board of regents in accordance with section 5 and amendments thereto.

(c) Each student loan agreement under this act shall provide to the person receiving the loan the payment of all tuition of the student enrolled in a school of dental hygiene.

(d) Subject to the provisions of appropriation acts, student loan agreements under this act may be entered into on an annual basis and shall provide the payment of the amounts specified under subsection (c) for one year unless otherwise terminated before such period of time. Subject to the provisions of appropriation acts, an undergraduate student enrolled in or admitted to a school of dental hygiene may receive a separate loan under this act for each separate year the student enters into a written student loan agreement with the state board of regents under section 5, and amendments thereto. For each separate year a student receives a loan under this act, the student shall engage in the full-time practice of dental hygiene in an appropriate service commitment area for a period of 12 months unless such obligation is otherwise satisfied as provided in section 8, and amendments thereto.

(e) Student loans shall be awarded on a priority basis as follows, first to qualified applicants who are Kansas residents at the time of entry into a school of dental hygiene, and second, to qualified applicants who are not Kansas residents at the time of entry into a school of dental hygiene. As used in this subsection, "Kansas residents" means persons who meet the residence requirements established in K.S.A. 76-729, and amendments thereto.

Sec. 5. A student loan agreement entered into by the state board of regents and an undergraduate student enrolled in or admitted to a school of dental hygiene for the purpose of receiving a student loan under this act shall require that the person receiving the loan:

(a) Complete the required course of instruction and apply for and obtain a license to practice dental hygiene in Kansas;

(b) commence the full-time practice of dental hygiene within nine months after graduation from a school of dental hygiene and licensure in a service commitment area and continue such full-time practice in such service commitment area for a consecutive period of months equal to the total number of months required under the agreement;

(c) maintain records and make reports to the state board of regents to document the satisfaction of the obligation under such agreement to engage in the full-time practice of dental hygiene within a service commitment area and to continue such full-time practice in such service commitment area for a consecutive period of months equal to the total number of months required under the agreement; and

(d) upon failure to satisfy an agreement to engage in the full-time practice of dental hygiene within a service commitment area for the required period of time under any such agreement, the person receiving a student loan under this act shall repay amounts to the state board of regents as provided in section 7, and amendments thereto.

Sec. 6. (a) Upon the selection of a service commitment area for the purposes of satisfying a service obligation under a student loan agreement entered into under this act, the person so selecting shall inform the state board of regents of the service commitment area selected.

(b) A person serving in a service commitment area pursuant to any agreement under this act may serve all or part of any commitment in the service commitment area initially selected by such person. If such person moves from one service commitment area to another service commitment area, such person shall notify the state board of regents of such person's change of service commitment area. Service in any such service commitment area shall be deemed to be continuous for the purpose of satisfying any agreement entered into under this act.

(c) A person receiving a student loan under this act may satisfy the obligation to engage in the full-time practice of dental hygiene in a service commitment area if the person serves as a full-time faculty member of a school of dental hygiene located in Kansas and serves two years for each one year of such obligation, or the equivalent thereof on a two-for-one basis.

(d) A person may satisfy the obligation to engage in the full-time practice of dental hygiene in a service commitment area by performing at least 100 hours per month of on-site dental hygiene care at a medical facility operated by a local health department or non-profit organization in this state serving dentally indigent persons. As used in this subsection, "dentally indigent" shall have the meaning ascribed thereto in subsection (b) of K.S.A. 2000 Supp. 65-1466, and amendments thereto.

Sec. 7. (a) (1) Except as otherwise provided in paragraphs (2), (3), (4) and (5) of this subsection (a) or in section 8, and amendments thereto, upon the failure of any person to

satisfy the obligation to engage in the full-time practice of dental hygiene within a service commitment area of this state for the required period of time under any student loan agreement entered into under this act, such person shall repay to the state board of regents in accordance with subsection (b) an amount equal to the total of (A) the amount of money received by such person pursuant to such agreement, or the amount of money determined under rules and regulations of the state board of regents plus (B) annual interest at a rate of 15% from the date such money was received.

(2) Any person who fails to apply for licensure as a dental hygienist shall be required to repay all moneys received pursuant to an agreement entered into for any such student loan, plus accumulated interest at an annual rate of 15% and shall commence such repayment in accordance with subsection (b) within 90 days of graduation from the school of dental hygiene.

(3) If at any time a person is failing to satisfy an obligation to engage in the full-time practice of dental hygiene in Kansas for the required period of time under an agreement entered into under this act because such person is engaged in the full-time practice of dental hygiene in a state other than Kansas, or within Kansas in an area that is not a service commitment area or in the practice of dental hygiene which does not otherwise comply with the agreement entered into under this act, and if such person is subject to or currently making repayments under this section and if such person subsequently commences the practice of dental hygiene in this state which is in a service commitment area or which otherwise complies with the agreement entered into under this act, the balance of the repayment amount, including interest thereon, from the time of such commencement of practice until the obligation of such person is satisfied, or until the time such person again becomes subject to repayments, shall be waived. All repayment amounts due prior to such commencement of practice, including interest thereon, shall continue to be payable as provided in this section. If subsequent to such commencement of practice, the person fails to satisfy such obligation, the person again shall be subject to repayments, including interest thereon, as otherwise provided in this section.

(4) If, during the time a person is satisfying the service requirement of an agreement entered into under this act, such person desires to engage in less than the full-time practice of dental hygiene within a service commitment area of the state and remain in satisfaction of such service requirement, such person may make application to the state board of regents or the designee of the state board of regents for permission to engage in less than such full-time practice of dental hygiene. Upon a finding of exceptional circumstances made by the state board of regents, or the designee of the state board of regents, such person may be authorized to engage in less than the full-time practice of dental hygiene within a service commitment area of the state for the remaining required period of time under such agreement and for an additional period of time which shall be equal to the length of the originally required period of time multiplied by the decimal fraction which is equal to the reduction of the full-time practice of dental hygiene to be authorized hereunder, multiplied by two. In any such determination of the period required to be engaged in the less than full-time practice of dental hygiene, the decimal fraction utilized shall not exceed .5 and any person granted permission to engage in less than the full-time practice of dental hygiene in accordance with the provisions of this paragraph (4) shall be required to engage in at least the half-time practice of dental hygiene.

(5) Any person who fails to satisfy the obligation to engage in the full-time practice of dental hygiene within a service commitment area of this state for the required period of time shall be required to repay all money received pursuant to an agreement entered into under this act, plus accumulated interest at an annual rate of 15% and shall commence such repayment in accordance with subsection (b) within 90 days of failure to commence qualifying practice.

(b) For any repayment requirement under this section, the person shall repay an amount totaling the entire amount to be repaid under all such agreements for which such obligations are not satisfied, including all amounts of interest at the rate prescribed. The repayment shall be made in not more than 10 equal annual installment payments or in monthly payments as specified by the state board of regents.

(c) All installment payments under this section shall commence six months after the date of the action or circumstance that causes the failure of the person to satisfy the obligations of such agreements, as determined by the state board of regents based upon the circumstances of each individual case. In all cases, if an installment payment becomes 91 days overdue, the entire amount outstanding shall become immediately due and payable, including all amounts of interest at the rate prescribed.

(d) The total repayment obligation imposed under all agreements entered into under this act may be satisfied by the person who entered into the agreements at any time prior to graduation from the school of dental hygiene by making a single lump-sum payment equal to the total of (1) the entire amount to be repaid under all such agreements upon failure to satisfy the obligations under such agreements to practice in Kansas, plus (2) all amounts of interest thereon at the rate prescribed to the date of payment.

(e) The state board of regents shall remit all moneys received under this section to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury, and such amount shall be credited to the dental hygiene loan repayment fund.

Sec. 8. (a) An obligation to engage in the practice of dental hygiene in accordance with an agreement under this act shall be postponed: (1) During any required period of active military service; (2) during any period of service as a part of volunteers in service to America (VISTA); (3) during any period of service in the peace corps; (4) during any period of service commitment to the United States public health service; (5) during any period of religious missionary work conducted by an organization exempt from tax under subsection (c) of section 501 of the federal internal revenue code of 1986; or (6) during any period of temporary medical disability during which the person obligated is unable because of such medical disability to practice dental hygiene. Except for clause (6) of this subsection (a), an obligation to engage in the practice of dental hygiene in accordance with an agreement under this act shall not be postponed more than five years from the time the practice of dental hygiene was to have been commenced under any such agreement. An obligation to engage in the practice of dental hygiene in accordance with an agreement under this act shall be postponed under clause (6) of this subsection (a) during the period of time the medical disability exists.

(b) An obligation to engage in the practice of dental hygiene in accordance with an agreement under this act shall be satisfied: (1) If the obligation to engage in the practice of dental hygiene in accordance with an agreement under this act has been completed, (2) if the person obligated dies, or (3) if, because of permanent physical disability, the person obligated is unable to practice dental hygiene.”;

And renumbering the remaining sections accordingly;

On page 1, in the title, in line 9, after the semicolon by inserting “relating to dental hygienists; student loans for certain dental hygiene students; administration of such loans; performance of prophylaxis;”; and **SB 50** be passed as amended.

Committee report to **HB 2283** be adopted; and the bill be passed as amended.

**HB 2014, HB 2515; SB 41** be passed.

**HR 6011** be adopted.

On motion of Rep. Thimesch **SB 55** be amended on page 3, in line 41, by striking “or alteration”; and **SB 55** be passed as amended.

Committee report to **SB 214** be adopted; also, on motion of Rep. Welshimer to amend, the motion did not prevail and the bill be passed as amended.

Committee report to **SB 186** be adopted; and the bill be passed as amended.

Committee report to **SB 83** be adopted; and the bill be passed as amended.

Committee report to **Sub. SB 123** be adopted; and the bill be passed as amended.

**SB 9** be passed over and retain a place on the calendar.

Committee report to **HB 2521** be adopted; also, on motion of Rep. Lightner to amend, the motion did not prevail.

Also, on motion of Rep. Faber **HB 2521** be amended on page 1, line 41, by striking “20” and inserting “36”;

Also, on motion to recommend **HB 2521** favorably for passage, the motion did not prevail.

Committee report to **SB 56** be adopted; also, on motion of Rep. Levinson be amended on page 2, after line 2, by inserting the following:

"New Sec. 2. (a) On and after January 1, 2002, any owner or lessee of one or more passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less, who is a resident of Kansas, upon compliance with the provisions of this section, may be issued one Ancient Arabic Order, Nobles of the Mystic Shrine of North America (Shriners) license plate for each such passenger vehicle or truck. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and the presentation of the annual logo use authorization statement provided for in subsection (b).

(b) The shrine temple to which the person is a member in good standing may authorize the use of their logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be paid to the shrine temple and shall be used to support the shriners hospitals for children. Any motor vehicle owner or lessee annually may apply to the shrine temple for the use of such logo. Upon annual application and payment to the shrine temple in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the shrine temple shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration.

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall provide the annual logo use authorization statement provided for in subsection (b). Application for registration of a passenger vehicle or truck and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides the annual logo use authorization statement provided for in subsection (b). If such logo use authorization statement is not presented at the time of registration, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

(f) The shrine temples of Kansas shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and  
 (2) provide to all county treasurers a toll-free telephone number where applicants can call the shrine temples for information concerning the application process or the status of their license plate application.

(g) The shrine temples of Kansas, with the approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.";

By renumbering the remaining sections;

In the title, in line 10, by striking all following "to"; in line 11, by striking all preceding the semicolon and inserting "motor vehicles; concerning the operation and registration thereof"; and **SB 56** be passed as amended.

On motion of Rep. Edmonds **SB 45** be amended on page 2, after line 40, by inserting a new section to read as follows:

"Sec. 2. K.S.A. 2000 Supp. 79-32,207 is hereby amended to read as follows: 79-32,207.

(a) As used in this section, "abandoned oil or gas well" means an abandoned well, as defined by K.S.A. 2000 Supp. 55-191 and amendments thereto:

(1) The drilling of which was commenced before January 1, 1970; and  
 (2) which is located on land owned by the taxpayer claiming the tax credit allowed by this section.

(b) For any taxable year commencing after December 31, 1997, and before January 1, 2001, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expenditures made for the purpose of plugging any abandoned oil or gas well in accordance with rules and regulations of the state corporation commission applicable thereto, in an amount equal to 50% of such expenditures made in the taxable year.

(c) If the amount of the tax credit allowed by this section exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such 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.

(d) The total amount of credits allowed taxpayers pursuant to this section, including the amount of credits carried over under subsection (c), shall not exceed \$250,000 for any one fiscal year.

(e) The secretary of revenue shall adopt such rules and regulations as necessary to carry out the purposes of this section.”;

By renumbering existing sections accordingly;

Also, on page 2, in line 41, by striking “is” and inserting “and 79-32.207 are”;

In the title, in line 9, after “limitations” by inserting “and certain credits therefrom”; in line 10, before “and” by inserting “and 79-32.207”; in line 11, by striking “section” and inserting “sections”; and **SB 45** be passed as amended.

### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Weber, in accordance with House Rule 2306, **SB 9**, **SB 19**, **SB 24** were withdrawn from the calendar under the heading General Orders and were referred to Committee on Calendar and Printing.

### COMMITTEE ASSIGNMENT CHANGE

Speaker pro tem Aurand announced the appointment of Rep. Weber to replace Rep. Kline as a member of the Committee on Appropriations.

### REPORTS OF STANDING COMMITTEES

The Committee on **E-Government** recommends **SB 161** be amended on page 1, on line 37, after the period, by inserting “The policy shall include provisions that refer to K.S.A. 75-3317 through 75-3322, and amendments thereto, and provide for compliance with and enforcement of the provisions of such statutes. The policy shall prescribe limitations and restrictions on the use of such credit cards and on the amounts and categories of expenses which may be paid through use of such credit cards. The policy shall provide for establishment of a special fund from which expenditures for payment of charges incurred by the school district through use of credit cards shall be made, authorize an officer or employee of the school district to administer the special fund, and designate an amount of moneys to be maintained in the fund. The officer or employee authorized to administer the fund shall keep a record of all receipts and expenditures from the fund, and from time to time, and at the end of each school year, shall prepare a report for the board of education showing all receipts, expenditures, and the balance in the fund. If the board of education is satisfied with the reports, the board may authorize replenishment of the special fund from other funds of the district, as appropriate. The special fund shall be kept separate from all other funds and be used only for authorized expenditures and itemized receipts shall be taken for each expenditure. All officers or employees entrusted with the administration of a special fund established under authority of this section shall be bonded by the school district.”;

Also on page 1, in line 40, after the period, by inserting “The provisions of K.S.A. 75-3317 through 75-3322, and amendments thereto, apply to the provisions of this section and the authorization for the use of credit cards by school districts.”

Also on page 1, following line 43, by inserting the following:

“(c) Any policy developed and adopted by a board of education under authority of this section is subject to modification, amendment or repeal by subsequent action of the board.

(d) If the state board of education finds that a school district using credit cards under this act has repeatedly and willfully violated the provisions of K.S.A. 75-3317 through 75-3322, and amendments thereto, then the state board of education shall suspend the authorization of the school district to use credit cards under this section for a period of 12 months commencing on July 1, following the violations.”; and the bill be passed as amended.

The Committee on **Education** recommends **HB 2546** be amended by substituting a new bill to be designated as “Substitute for HOUSE BILL No. 2546,” as follows:

“Substitute for HOUSE BILL No. 2546

By Committee on Education

AN ACT establishing the Kansas skills for success in school program; imposing certain duties on the state department of education and school districts; concerning the legislative educational planning committee; making and concerning appropriations for the fiscal years ending June 30, 2002, and June 30, 2003, for the department of education; amending K.S.A. 46-1208a and K.S.A. 2000 Supp. 72-6407 and repealing the existing sections.”; and the substitute bill be passed.

**(Sub. HB 2546** was thereupon introduced and read by title.)

The Committee on **Environment** recommends **Substitute for SB 204** be amended on page 1, in line 42, by striking “the department conducts”; also in line 42, by striking “that takes” and inserting “conducted by the department and taking”;

On page 2, in line 1, by striking “and such analysis”; in line 3, following “segment” by inserting “, as consistent with the federal clean water act and federal regulations”; in line 6, by striking all following “permit”; by striking all in line 7; in line 8, by striking all preceding the period and inserting “other than a permit for a confined feeding facility, as defined in K.S.A. 65-171d, and amendments thereto”; in line 9, following “segments” by inserting “other than those described in subsection (a)(1)(E)”; in line 30, following “use” by inserting “waters”; in line 36, following “use” by inserting “waters”;

On page 4, in line 7, by striking the semicolon; in line 15, by striking the semicolon; in line 17, by striking “and” where it appears for the first time and inserting “or”; in line 19, by striking “may apply to classified stream segments that are” and inserting “is use of a classified stream segment for recreation, provided such classified stream segment (1) is”; in line 20, by striking “provided such”; in line 21, by striking “classified stream segment” and inserting “and (2)”; following line 23, by inserting the following:

“(B) If opposite sides of a classified stream segment would have different designated recreational uses due to differences in public access, the designated use of the entire classified stream segment may be the higher attainable use, notwithstanding that such designation does not grant the public access to both sides of such segment.”;

Also on page 4, in line 24, by striking “(B)” and inserting “(C)”; in line 33, following “and” by inserting a comma;

On page 5, in line 5, by striking “or (a)(1)(D)” and inserting “, (a)(1)(D) or (a)(1)(E)”; in line 11, following “2005” by inserting a comma; by striking all in lines 13 through 21 and inserting:

“Sec. 4. (a) Prior to October 15, 2001, the department shall make publicly available a listing of all currently classified stream segments for which: (1) Designated use attainability analyses for recreational use have been completed; (2) recreational use has been determined not attainable; or (3) designated use attainability analyses for recreational use have not been completed. For such classified stream segments for which designated use attainability analyses for recreational use have not been completed, the department, at a minimum, shall complete a designated use attainability analysis for recreational use according to the following schedule.”;

Also on page 5, in line 22, by striking “(1)” and inserting “(A)”; also in line 22, by striking “30%” and inserting “25%”; in line 23, following “analyses” by inserting “for recreational use”; in line 25, by striking “(2)” and inserting “(B)”; also in line 25, by striking “60%” and inserting “50%”; in line 26, following “analyses” by inserting “for recreational use”; in line 28, by striking “(3)” and inserting “(C)”; also in line 28, by striking “90%” and inserting “75%”; in line 29, following “analyses” by inserting “for recreational use”; in line 31, by



striking "(4)" and inserting "(D)"; in line 32, following "analyses" by inserting "for recreational use"; following line 32, by inserting:

"(b) Prior to October 15, 2002, the department shall make publicly available a listing of all currently classified stream segments for which: (1) Designated use attainability analyses for use other than recreational use have been completed; (2) use other than recreational use has been determined not attainable; or (3) designated use attainability analyses for use other than recreational use have not been completed. For such classified stream segments for which designated use attainability analyses for use other than recreational use have not been completed, the department, at a minimum, shall complete a designated use attainability analysis for use other than recreational use according to a schedule adopted before June 1, 2004, by rules and regulations of the secretary.";

Also on page 5, in line 35, by striking "schedule outlined in subsection (b)" and inserting "schedules provided for pursuant to subsections (a) and (b)"; in line 36, by striking all following "analyses" and inserting "for all designated uses on or before December 31, 2007."; in line 39, by striking "2005" and inserting "2007."; in line 41, by striking "October 31" and inserting "December 1";

On page 6, in line 5, following "include" by inserting ", if applicable for the respective designated use, "; in line 7, by striking "Analysis" and inserting "Review"; in line 9, by striking "analysis" and inserting "review"; in line 11, by striking "analysis" and inserting "review"; in line 13, by striking "analysis" and inserting "review"; in line 17, by striking "analysis of hydro logic" and inserting "review of hydrologic"; in line 19, by striking "analysis" and inserting "review"; by striking all in lines 22 through 24; in line 25, by striking "(8) analysis of whether there are" and inserting:

"(7) identification and description of";

Also on page 6, in line 28, by striking "(9)" and inserting "(8)"; by striking all in lines 36 through 43;

On page 7, by striking all in lines 1 through 5 and inserting:

"(d) Within 60 days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete.

(e) Within 60 days after receipt of submission of a complete use attainability analysis, the department shall review and provide a written determination of whether revision of the designated use will be proposed as a rule and regulation. Any person aggrieved by such determination may make written request, within 30 days after receipt of such determination, for a meeting with the secretary or the secretary's designee to discuss the determination and exchange information.

(f) All proposed revisions to the surface water register shall be proposed for adoption in accordance with the rules and regulations filing act (K.S.A. 77-415, and amendments thereto).

(g) Following the promulgation of a revision of the surface water register as a rule and regulation pursuant to subsections (d) and (e), any person aggrieved by such promulgation, within 15 days after publication of the rule and regulation, may request a hearing by filing an application for an order under the Kansas administrative procedure act. Any action of the secretary in a proceeding pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(h) The Kansas surface water register shall be updated and published annually.";

Also on page 7, in line 26, following "to" by inserting "":

(1) Require the secretary to designate the use of any classified stream as secondary contact recreational use pursuant to subsection (c)(7)(A)(ii)(b) of section 1, and amendments thereto; or

(2) "":

Also on page 7, following line 28, by inserting:

"Sec. 9. If any provisions of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.";

Also on page 9, by renumbering section 9 as section 10; and the substitute bill be passed as amended.

The Committee on **Judiciary** recommends **HB 2539** be amended on page 1, in line 17, by striking "as such surveyor"; in line 18, by striking "deems necessary or convenient"; also in line 18, by striking "Such" and inserting "If the licensed surveyor has made a reasonable attempt to gain permission from the landowner, such"; in line 21, after the period by inserting "Nothing herein shall change the status of the licensed surveyor as an occupier of land."; and the bill be passed as amended.

The Committee on **Judiciary** recommends **SB 14** be amended on page 2, in line 10, by striking all after "are"; in line 11, by striking all before "parties" and inserting "justified relative to the"; in line 12, by striking "judicial"; in line 14, by striking all before the period; in line 31, by striking "deliberate and intentional"; in line 32, before "shall" by inserting "without just cause or excuse,."; and the bill be passed as amended.

The Committee on **Judiciary** recommends **SB 67** be amended on page 1, by striking all of lines 16 through 43;

By striking all of pages 2 through 5;

On page 6, by striking all of lines 1 through 15 and inserting the following:

"New Section 1. (a) Whenever a nonresident or a person who is unlicensed is convicted of any offense or is subject to a juvenile adjudication or an order of the division which would require the revocation or suspension of a driver's license, if the person had been issued a driver's license by the division, such nonresident's privilege to operate a motor vehicle in this state or such unlicensed person's privilege of obtaining a driver's license issued by the division shall be revoked or suspended. Such revocation or suspension shall be for a period of time equal to the period of time that the driver's license of a licensed driver would be revoked or suspended. If the driving privileges of a licensed driver would be restricted by a court or the division, the driving privileges of a nonresident shall be restricted in the same manner. If the driving privileges of a licensed driver would be restricted by a court or the division, an unlicensed driver shall be eligible to apply for a driver's license during the period of restriction, but any license issued shall be subject to the same restrictions which would apply to a licensed driver.

(b) The division is hereby authorized to create a record with an identifying number and other identifying information, including address and date of birth, if known, for any nonresident or unlicensed driver subject to subsection (a). Such record shall include information showing any revocation, suspension or restriction entered under subsection (a) and the reason for such action in the same manner that records are maintained for licensed drivers, pursuant to K.S.A. 8-249, and amendments thereto. If any such person becomes a licensed driver, the information contained in such record shall be included in the person's driving record maintained by the division.

(c) The purpose of this section is to make nonresident and unlicensed drivers subject to the same driving sanctions as licensed residents.

(d) This section shall be part of and supplemental to the motor vehicle drivers' license act, article 2 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 2. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked 10 calendar days after service of notice, if such notice was given by personal service;

(2) mailing a written request which is postmarked 13 calendar days after service of notice, if such notice was given by mail;

(3) transmitting a written request by electronic facsimile which is received by the division within 10 calendar days after service of notice, if such notice was given by personal service; or

(4) transmitting a written request by electronic facsimile which is received by the division within 13 calendar days after service, if such notice was given by mail.

(b) If the licensee makes a timely request for an administrative hearing, any temporary license issued pursuant to K.S.A. 8-1002, and amendments thereto, shall remain in effect until the 30th calendar day after the effective date of the decision made by the division.

(c) If the licensee fails to make a timely request for an administrative hearing, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.

(d) Upon receipt of a timely request for a hearing, the division shall forthwith set the matter for hearing before a representative of the director and provide notice of the extension of temporary driving privileges. The hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto. At the discretion of the division, the hearing may be conducted by telephone or video conference call.

(e) Except as provided in subsection (f), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than five calendar days prior to the date of hearing:

(1) The officer's certification and notice of suspension;

(2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;

(3) in the case of a breath test failure, a copy of the affidavit showing certification of the officer and the instrument; and

(4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

(f) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to review any video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the video or audio tape is kept. The licensee may obtain a copy of any such video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

(g) Witnesses at the hearing shall be limited to the licensee and to any law enforcement officer who signed the certification form. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and

(D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was certified by the Kansas department of health and environment;

(E) the person who operated the testing equipment was certified by the Kansas department of health and environment;

(F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and

(H) the person was operating or attempting to operate a vehicle.

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was reliable;

(E) the person who operated the testing equipment was qualified;

(F) the testing procedures used were reliable;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and

(H) the person was operating or attempting to operate a vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.

(l) Evidence at the hearing shall be limited to the following:

(1) The documents set out in subsection (e);

(2) the testimony of the licensee;

(3) the testimony of any certifying officer;

(4) any affidavits submitted from other witnesses;

(5) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and

(6) any video or audio tape record of the events upon which the administrative action is based.

(m) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the administrative action. If the representative of the director

enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30th day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(n) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is made at the close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone or video conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.

(o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.

(p) Such review shall be in accordance with this section and the act for judicial review and civil enforcement of agency actions. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within 10 days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary restrictions of subsection (l) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. If the court finds that the grounds for action by the agency have been met, the court shall affirm the agency action.

(q) Upon review, the licensee shall have the burden to show that the decision of the agency should be set aside. To be raised upon review, an issue shall have been raised at the administrative hearing and also shall be set out in the petition for review. The court is not limited to any evidentiary record created during the administrative hearing and may accept additional evidence on the issues preserved for review. Except as otherwise provided in this section, the court shall not rely upon evidence contained in the record of the administrative proceeding below, absent compliance upon review with the rules of evidence in a civil proceeding.

(r) Notwithstanding the requirement to issue a temporary license in K.S.A. 8-1002, and amendments thereto, and the requirements to extend the temporary license in this section, any such temporary driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

(s) Upon motion by a party, or on the court's own motion, the court may enter an order restricting the driving privileges allowed by the temporary license provided for in K.S.A. 8-1002, and amendments thereto, and in this section. The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.

(t) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.

(u) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant

to this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

(v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall not be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) but shall apply to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto. "Calendar day" shall mean that every day shall be included in computations of time whether a weekday, Saturday, Sunday or holiday.

(w) The provisions of this subsection shall be effective on and after July 1, 2001.

Sec. 3. K.S.A. 2000 Supp. 8-255 is hereby amended to read as follows: 8-255. (a) The division is authorized to suspend or revoke a person's driving privileges upon a showing by its records or other sufficient evidence the person:

(1) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(2) has been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period;

(3) is incompetent to drive a motor vehicle;

(4) has been convicted of a moving traffic violation, committed at a time when the person's driving privileges were suspended or revoked; or

(5) is a member of the armed forces of the United States stationed at a military installation located in the state of Kansas, and the authorities of the military establishment certify that such person's on-base driving privileges have been suspended, by action of the proper military authorities, for violating the rules and regulations of the military installation governing the movement of vehicular traffic or for any other reason relating to the person's inability to exercise ordinary and reasonable control in the operation of a motor vehicle.

(b) The division shall suspend a person's driving privileges when required by K.S.A. 8-262 ~~or~~, 8-1014 *or* 41-727, and amendments thereto, and K.S.A. 2000 Supp. 21-3765, and amendments thereto, and shall disqualify a person's privilege to drive commercial motor vehicles when required by K.S.A. 8-2,142, and amendments thereto.

(c) When the action by the division suspending, revoking or disqualifying a person's driving privileges is based upon a report of a conviction or convictions from a convicting court, the person may not request a hearing but, within 30 days after notice of suspension, revocation or disqualification is mailed, may submit a written request for administrative review and provide evidence to the division to show the person whose driving privileges have been suspended, revoked or disqualified by the division was not convicted of the offense upon which the suspension, revocation or disqualification is based. Within 30 days of its receipt of the request for administrative review, the division shall notify the person whether the suspension, revocation or disqualification has been affirmed or set aside. The request for administrative review shall not stay any action taken by the division.

(d) Upon suspending, revoking or disqualifying the driving privileges of any person as authorized by this act, the division shall immediately notify the person in writing. Except as provided by K.S.A. 8-1002 and 8-2,145, and amendments thereto, and subsection (c) of this section, if the person makes a written request for hearing within 30 days after such notice of suspension or revocation is mailed, the division shall afford the person an opportunity for a hearing as early as practical not sooner than five days nor more than 30 days after such request is mailed. If the division has not revoked or suspended the person's driving privileges or vehicle registration prior to the hearing, the hearing may be held within not to exceed 45 days. Except as provided by K.S.A. 8-1002 and 8-2,145, and amendments thereto, the hearing shall be held in the person's county of residence or a county adjacent thereto, unless the division and the person agree that the hearing may be held in some other county. Upon the hearing, the director or the director's duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require an examination or reexamination of the person. When the action proposed or taken by the division is authorized but not required, the division, upon the hearing, shall either rescind or affirm its order of suspension or revocation or, good cause

appearing therefor, extend the suspension of the person's driving privileges, modify the terms of the suspension or revoke the person's driving privileges. When the action proposed or taken by the division is required, the division, upon the hearing, shall either affirm its order of suspension, revocation or disqualification, or, good cause appearing therefor, dismiss the administrative action. If the person fails to request a hearing within the time prescribed or if, after a hearing, the order of suspension, revocation or disqualification is upheld, the person shall surrender to the division, upon proper demand, any driver's license in the person's possession.

(e) In case of failure on the part of any person to comply with any subpoena issued in behalf of the division or the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, the district court of any county, on application of the division, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. Each witness who appears before the director or the director's duly authorized agent by order or subpoena, other than an officer or employee of the state or of a political subdivision of the state, shall receive for the witness' attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by the witness.

(f) The division, in the interest of traffic and safety, may establish driver improvement clinics throughout the state and, upon reviewing the driving record of a person whose driving privileges are subject to suspension under subsection (a)(2), may permit the person to retain such person's driving privileges by attending a driver improvement clinic. A person who is required to attend a driver improvement clinic shall pay a fee of \$15. Amounts received under this subsection shall be remitted at least monthly to the state treasurer who shall deposit the same in the state treasury and shall be credited to the division of vehicles operating fund.

Sec. 4. K.S.A. 8-258 is hereby amended to read as follows: 8-258. Any resident or nonresident, whose license to operate a motor vehicle in this state has been suspended or revoked as provided in this act, *or whose privilege to obtain a driver's license has been suspended or revoked pursuant to section 1, and amendments thereto*, shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this act.

Sec. 5. K.S.A. 2000 Supp. 8-262 is hereby amended to read as follows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked *or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to section 1, and amendments thereto*, shall be guilty of a: (A) Class B nonperson misdemeanor on the first conviction; and (B) class A nonperson misdemeanor on the second conviction or subsequent conviction.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license ~~or was, at the time of arrest, eligible under K.S.A. 8-256, and amendments thereto, to apply for a new license to operate a motor vehicle.~~

(3) Except as otherwise provided by subsection (a)(4), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second or subsequent conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) If a person (A) is convicted of a violation of this section, committed while the person's privilege to drive *or privilege to obtain a driver's license* was suspended or revoked for a violation of K.S.A. 8-1567, and amendments thereto, or any ordinance of any city or a law of another state, which ordinance or law prohibits the acts prohibited by that statute, and (B) is or has been also convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive *or privilege to obtain a driver's license* was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days'

imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(b) The division, upon receiving a record of the conviction of any person under this section, or any ordinance of any city or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

~~(c) In addition to extension of the period of suspension or revocation under subsection (b), if the conviction is for a violation committed after June 30, 1994, and before July 1, 1996, and committed while the person's driving privileges are suspended pursuant to K.S.A. 8-1014 and amendments thereto, the division, upon completion of the extended period of suspension, shall restrict the person's driving privileges for an additional 120 days to driving only a motor vehicle equipped with an ignition interlock device, as defined by K.S.A. 8-1013 and amendments thereto, approved by the division and obtained, installed and maintained at the person's expense.~~

~~On or before February 1, 1996, the division shall report to the legislature regarding the use of the provisions of this subsection and making recommendations concerning continuation or modification of such provisions.~~

~~(d) For the purposes of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or a law of another state which is in substantial conformity with this section.~~

Sec. 6. K.S.A. 8-285 is hereby amended to read as follows: 8-285. Except as otherwise provided in this section, as used in this act, the words and phrases defined in K.S.A. 8-234a and amendments thereto shall have the meanings ascribed to them therein. The term "habitual violator" means any resident or nonresident person who, within the immediately preceding five years, has been convicted in this or any other state:

(a) Three or more times of:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with that statute;

(2) violating K.S.A. 8-1567 and amendments thereto, or violating an ordinance of any city in this state or any law of another state, which ordinance or law declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto, *or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to section 1, and amendments thereto*, or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with ~~that statute~~ *those statutes*;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications, or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony, if a motor vehicle was used in the perpetration of the crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or required by any ordinance of any city in this state or a law of another state which is in substantial conformity with those statutes; or

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage or an ordinance of any city in this state, which is in substantial conformity with such statute.

(b) Three or more times, either singly or in combination, of any of the offenses enumerated in subsection (a).



For the purpose of subsection (a)(2), in addition to the definition of "conviction" otherwise provided by law, conviction includes, but is not limited to, a diversion agreement entered into in lieu of further criminal proceedings, or a plea of *nolo contendere*, on a complaint, indictment, information, citation or notice to appear alleging a violation of K.S.A. 8-1567 and amendments thereto or an ordinance of a city in this state or law of another state, which ordinance or law prohibits the acts prohibited by that statute.

Sec. 7. K.S.A. 2000 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a) if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; and one of the following conditions exists: (1) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (2) the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. When presented with a written statement by a law enforcement officer directing blood to be withdrawn from a person who has tentatively agreed to allow the withdrawal of blood under this section, the person authorized herein to withdraw blood and the medical care facility where blood is withdrawn may rely on such a statement as evidence that the person has consented to the medical procedure used and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood test nor any medical care facility where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood, shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required. If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence.

(e) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

(f) (1) Before a test or tests are administered under this section, the person shall be given oral and written notice that: (A) Kansas law requires the person to submit to and complete one or more tests of breath, blood or urine to determine if the person is under the influence of alcohol or drugs, or both; (B) the opportunity to consent to or refuse a test is not a constitutional right; (C) there is no constitutional right to consult with an attorney regarding whether to submit to testing; (D) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, *the person shall be guilty of a class B misdemeanor* and the person's driving privileges will be suspended for ~~at least~~ one year; (E) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for ~~at least~~ 30 days; (F) if the person refuses a test or the test results show an alcohol concentration of .08 or greater and if, within the past five years, the person has been convicted or granted diversion on a charge of driving under the influence of alcohol or drugs, or both, or a related offense or has refused or failed a test, the person's driving privileges will be suspended for ~~at least~~ one year; (G) if the person is less than 21 years of age at the time of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended ~~up to~~ <sup>up to</sup> for one year; (H) refusal to submit to testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; (I) the results of the testing may be used against the person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and (J) after the completion of the testing, the person has the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities and physicians. If a law enforcement officer has reasonable grounds to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person must also be provided the oral and written notice pursuant to K.S.A. 8-2,145 and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145 and amendments thereto shall not invalidate any action taken as a result of the requirements of this section. After giving the foregoing information, a law enforcement officer shall request the person to submit to testing. The selection of the test or tests shall be made by the officer. If the person refuses to submit to and complete a test as requested pursuant to this section, additional testing shall not be given unless the certifying officer has probable cause to believe that the person, while under the influence of alcohol or drugs, or both, has operated a vehicle in such a manner as to have caused the death of or serious injury to another person. As used in this section, the officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto. If the test results show a blood or breath alcohol concentration of .08 or greater, the person's driving privileges shall be subject to suspension, or suspension and restriction, as provided in K.S.A. 8-1002 and 8-1014, and amendments thereto. The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the

person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto. *An officer shall have probable cause to believe that the person operated a vehicle while under the influence of alcohol or drugs, or both, if the vehicle was operated by such person in such a manner as to have caused the death of or serious injury to another person. In such event, such test or tests may be made pursuant to a search warrant issued under the authority of K.S.A. 22-2502, and amendments thereto, or without a search warrant under the authority of K.S.A. 22-2501, and amendments thereto.*

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(3) It shall not be a defense that the person did not understand the written or oral notice required by this section.

(4) No test shall be suppressed because of technical irregularities in the consent or notice pursuant to K.S.A. 8-2,145, and amendments thereto.

(g) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant.

(h) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(i) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

Sec. 8. On and after July 1, 2001, K.S.A. 2000 Supp. 8-1002 is hereby amended to read as follows: 8-1002. (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145 and amendments thereto shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:

(1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.

(3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.

(b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification,

copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.

(c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a)(1) have been met or determines that a person has failed a test and the criteria of subsection (a)(2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

(d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30th calendar day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.

(e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 30th calendar day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within five days after the date of service of a copy of the law enforcement officer's certification and notice of suspension the officer's certification and notice of suspension, along with any licenses taken, shall be forwarded to the division.

(f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.

~~(g) If the person mails a written request which is postmarked within 10 days after service of the notice, if by personal service, or 13 days after service, if by mail, the division shall schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto. The licensee may request that subpoenas be issued in accordance with the notice provided pursuant to subsection (d). Any request made by the licensee to subpoena witnesses must be made in writing at the time the hearing is requested and must include the name and current address of such witnesses and, except for the law enforcement officer or officers certifying refusal or failure, a statement of how the testimony of such witness is relevant. Upon receiving a timely request for a hearing, the division shall mail to the person notice of the time, date and place of hearing in accordance with subsection (l) and extend the person's temporary driving privileges until the date set for the hearing by the division.~~

~~(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of~~

alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2-128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed the test, the scope of the hearing shall be limited to whether: (A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2-128, and amendments thereto, while having alcohol or other drugs in such person's system; (B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; (D) the testing equipment used was reliable; (E) the person who operated the testing equipment was qualified; (F) the testing procedures used were reliable; (G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood or breath; and (H) the person was operating a vehicle.

(i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. Such affidavit shall be admitted to prove such reliability without further foundation requirement. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.

(j) At a hearing pursuant to this section, or upon court review of an order entered at such hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.

(k) If no timely request for hearing is made, the suspension period imposed pursuant to this section shall begin upon the expiration of the temporary license granted under subsection (c). If a timely request for hearing is made, the hearing shall be held within 30 days of the date the request for hearing is received by the division, except that failure to hold such hearing within 30 days shall not be cause for dismissal absent a showing of prejudice. At the hearing, the director or the representative of the director, shall either affirm the order of suspension or suspension and restriction or dismiss the administrative action. If the division is unable to hold a hearing within 30 days of the date upon which the request for hearing is received, the division shall extend the person's temporary driving privileges until the date set for the hearing by the division. No extension of temporary driving privileges shall be issued for continuances requested by or on behalf of the licensee. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(l) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to subsection (k) shall be sent by first class mail and a U.S. post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.

~~(m)~~ (g) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

~~(n)~~ This section and the applicable provisions contained in subsections (d) and (e) of K.S.A. 8-255 and amendments thereto constitute the administrative procedures to be used for all administrative hearings held under this act. To the extent that this section and any other provision of law conflicts, this section prevails.

~~(o)~~ (h) The provisions of K.S.A. 60-206 and amendments thereto regarding the computation of time shall not be applicable in determining the effective date of suspension set out in subsection (d) ~~or the time for requesting an administrative hearing set out in subsection (g)~~. "Calendar day" when used in this section ~~act~~ shall mean that every day shall be included in computations of time whether a weekday, Saturday, Sunday or holiday.

Sec. 9. On and after July 1, 2001, K.S.A. 2000 Supp. 8-1008 is hereby amended to read as follows: 8-1008. (a) Community-based alcohol and drug safety action programs certified in accordance with subsection (b) shall provide:

(1) Presentence alcohol and drug evaluations of any person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute;

(2) supervision and monitoring of all persons who are convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, and whose sentences or terms of probation require completion of an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section;

(3) alcohol and drug evaluations of persons whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute;

(4) supervision and monitoring of persons required, under a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, to complete an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section;

or

(5) any combination of (1), (2), (3) and (4).

(b) The presentence alcohol and drug evaluation shall be conducted by a community-based alcohol and drug safety action program certified in accordance with the provisions of this subsection to provide evaluation and supervision services as described in subsections (c) and (d). A community-based alcohol and drug safety action program shall be certified either by the chief judge of the judicial district to be served by the program or by the secretary of social and rehabilitation services for judicial districts in which the chief judge declines to certify a program. In addition to any qualifications established by the secretary, the chief judge may establish qualifications for the certification of programs, which qualifications may include requirements for training, education and certification of personnel; supervision and monitoring of clients; fee reimbursement procedures; handling of conflicts of interest; delivery of services to clients unable to pay; and other matters relating to quality and delivery of services by the program. In establishing the qualifications for programs, the chief judge or the secretary shall give preference to those programs which have had practical experience prior to July 1, 1982, in diagnosis and referral in alcohol and drug abuse. Certification of a program by the chief judge shall be done with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If within 60 days after the effective date of this act the chief judge declines to certify any program for the judicial district, the judge shall notify the secretary of social and rehabilitation services, and the secretary of social and rehabilitation services shall certify a community-based alcohol and drug safety action program for that judicial district. The certification shall be for a four-year period. Recertification of a program or certification of a different program shall be by the chief judge, with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If upon expiration of certification

of a program there will be no certified program for the district and the chief judge declines to recertify or certify any program in the district, the judge shall notify the secretary of social and rehabilitation services, at least six months prior to the expiration of certification, that the judge declines to recertify or certify a program under this subsection. Upon receipt of the notice and prior to the expiration of certification, the secretary shall recertify or certify a community-based alcohol and drug safety action program for the judicial district for the next four-year period. To be eligible for certification under this subsection, the chief judge or the secretary of social and rehabilitation services shall determine that a community-based alcohol and drug safety action program meets the qualifications established by the judge or secretary and is capable of providing, within the judicial district: (1) The evaluations, supervision and monitoring required under subsection (a); (2) the alcohol and drug evaluation report required under subsection (c) or (d); (3) the follow-up duties specified under subsection (c) or (d) for persons who prepare the alcohol and drug evaluation report; and (4) any other functions and duties specified by law. Community-based alcohol and drug safety action programs performing services in any judicial district under this section prior to the effective date of this act may continue to perform those services until a community-based alcohol and drug safety action program is certified for that judicial district.

(c) A presentence alcohol and drug evaluation shall be conducted on any person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute. The presentence alcohol and drug evaluation report shall be made available to and shall be considered by the court prior to sentencing. The presentence alcohol and drug evaluation report shall contain a history of the defendant's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the defendant to education and rehabilitation. The presentence alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the defendant. The presentence alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the presentence alcohol and drug evaluation report may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring defendants in the treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation. The cost of any alcohol and drug education, rehabilitation and treatment programs for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessments required by subsection (e). If financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence.

(d) An alcohol and drug evaluation shall be conducted on any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute. The alcohol and drug evaluation report shall be made available to the prosecuting attorney and shall be considered by the prosecuting attorney. The alcohol and drug evaluation report shall contain a history of the person's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the person to education and rehabilitation. The alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the person. The alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the alcohol and drug evaluation report may also include monitoring persons in the treatment programs, notifying the prosecutor and the court of any person failing to meet the conditions of diversion or referrals to treatment, and providing assistance and data reporting and program evaluation. The cost of any alcohol and drug education, rehabilitation and treatment programs for any person shall be paid by such

person, and such costs shall include, but not be limited to, the assessments required by subsection (e).

(e) In addition to any fines, fees, penalties or costs levied against a person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, or who enters a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of that statute or such an ordinance, ~~§125~~ \$150 shall be assessed against the person by the sentencing court or under the diversion agreement. The ~~§125~~ \$150 assessment may be waived by the court or, in the case of diversion of criminal proceedings, by the prosecuting attorney, if the court or prosecuting attorney finds that the defendant is an indigent person. Except as otherwise provided in this subsection, the clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court. If the secretary of social and rehabilitation services certifies the community-based alcohol and drug safety action program for the judicial district in which the court is located, the clerk of the court shall remit, during the four-year period for which the program is certified, 15% of all assessments received under this section to the secretary of social and rehabilitation services. Moneys credited to the alcohol and drug safety action fund shall be expended by the court, pursuant to vouchers signed by the judge having administrative authority over that court, only for costs of the services specified by subsection (a) or otherwise required or authorized by law and provided by community-based alcohol and drug safety action programs, except that not more than 10% of the money credited to the fund may be expended to cover the expenses of the court involved in administering the provisions of this section. In the provision of these services the court shall contract as may be necessary to carry out the provisions of this section. The district or municipal judge having administrative authority over that court shall compile a report and send such report to the office of the state judicial administrator on or before January 20 of each year, beginning January 20, 1991. Such report shall include, but not be limited to:

- (1) The balance of the alcohol and drug safety action fund of the court on December 31 of each year;
- (2) the assessments deposited into the fund during the 12-month period ending the preceding December 31; and
- (3) the dollar amounts expended from the fund during the 12-month period ending the preceding December 31.

The office of the state judicial administrator shall compile such reports into a statewide report and submit such statewide report to the legislature on or before March 1 of each year.

(f) The secretary of social and rehabilitation services shall remit all moneys received by the secretary under this section to the state treasurer at least monthly. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the certification of community-based alcohol and drug safety action programs fee fund, which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants issued pursuant to vouchers approved by the secretary of social and rehabilitation services or a person designated by the secretary.

Sec. 10. K.S.A. 2000 Supp. 8-1014 is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall suspend the person's driving privileges for one year.

(b) Except as provided by subsections (c) and (e) and K.S.A. 8-2,142, and amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state, the division shall:

- (1) On the person's first occurrence, suspend the person's driving privileges for 30 days, then restrict the person's driving privileges as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days; and
- (2) on the person's second or a subsequent occurrence, suspend the person's driving privileges for one year *and, commencing July 1, 2001, then at the end of the suspension for*



*an alcohol-related conviction, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device.*

(c) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person who is less than 21 years of age fails a test or has an alcohol or drug-related conviction in this state, the division shall:

~~(1) suspend the person's driving privileges for one year; or~~

~~(2) if such person has entered a diversion agreement under K.S.A. 12-4412 et seq., and amendments thereto, or K.S.A. 22-2906 et seq., and amendments thereto, suspend the person's driving privileges for the term of such diversion agreement.~~

(d) Whenever the division is notified by an alcohol and drug safety action program that a person has failed to complete any alcohol and drug safety action education or treatment program ordered by a court for a conviction of a violation of K.S.A. 8-1567, and amendments thereto, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such program.

(e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the longest applicable period authorized by subsection (a), (b) or (c), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a), (b) or (c), such person shall receive credit for any period of time for which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act.

If a person's driving privileges are subject to restriction pursuant to this section for a test failure or alcohol or drug-related conviction arising from the same arrest, the restriction periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of restriction, the person shall receive credit for any period of suspension imposed for a test refusal arising from the same arrest.

(f) If the division has taken action under subsection (a) for a test refusal or under subsection (b) or (c) for a test failure and such action is stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary driving privileges are issued pursuant to subsection (k) of K.S.A. 8-1002, and amendments thereto, the stay or temporary driving privileges shall not prevent the division from taking the action required by subsection (b) or (c) for an alcohol or drug-related conviction.

~~(g) Upon restricting a person's driving privileges pursuant to this section, the division shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's driving privileges and that a copy of the order imposing the restrictions which is required to be carried by the person for whom the license was issued at any time the person is operating a motor vehicle on the highways of this state.~~

*(h) Any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall be effective on and after July 1, 2001.*

Sec. 11. On and after July 1, 2001, K.S.A. 2000 Supp. 8-1015 is hereby amended to read as follows: 8-1015. (a) When subsection (b)(1) of K.S.A. 8-1014, and amendments thereto, requires or authorizes the division to place restrictions on a person's driving privileges, the division shall restrict the person's driving privileges to driving only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and amendments thereto.

(b) In lieu of the restrictions set out in subsection (a), the division, upon request of the person whose driving privileges are to be restricted, may restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense.

~~(c) Upon a person's second or subsequent conviction for an alcohol related offense, if the person had an alcohol concentration of .15 or more in the person's blood or breath, the~~

~~convicting court shall restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense. When a person has completed the one-year suspension pursuant to subsection (b)(2) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and maintained at the person's expense.~~

(d) Upon expiration of the period of time for which restrictions are imposed pursuant to this section, the licensee may apply to the division for the return of any license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been suspended or revoked prior to expiration.

Sec. 12. On and after July 1, 2001, K.S.A. 2000 Supp. 8-1016 is hereby amended to read as follows: 8-1016. (a) The secretary of revenue ~~shall~~ may adopt rules and regulations for:

(1) The approval by the division of models and classes of ignition interlock devices suitable for use by persons whose driving privileges have been restricted to driving a vehicle equipped with such a device; ~~and~~

(2) the calibration and maintenance of such devices, which shall be the responsibility of the manufacturer; ~~and~~

(3) ~~ensuring that each manufacturer approved provides a reasonable statewide service network where such devices may be obtained, repaired, replaced or serviced and such service network can be accessed 24 hours per day through a toll-free phone service.~~

In adopting rules and regulations for approval of ignition interlock devices under this section, the secretary of revenue shall ~~insure that those devices approved do not impede the safe operation of a motor vehicle and have the fewest opportunities to be bypassed so as to render them ineffective.~~ require that the manufacturer or the manufacturer's representatives calibrate and maintain the devices at intervals not to exceed 60 days. Calibration and maintenance shall include but not be limited to physical inspection of the device, the vehicle and wiring of the device to the vehicle for signs of tampering, calibration of the device and downloading of all data contained within the device's memory and reporting of any violation or noncompliance to the division.

(4) ~~The division shall adopt by rules and regulations participant requirements for proper use and maintenance of a certified ignition interlock device during any time period the person's license is restricted by the division to only operating a motor vehicle with an ignition interlock device installed and by rules and regulations the reporting requirements of the approved manufacturer to the division relating to the person's proper use and maintenance of a certified ignition interlock device.~~

(5) ~~The division shall require that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the federal food stamp program.~~

(b) If the division approves an ignition interlock device in accordance with rules and regulations adopted under this section, the division shall give written notice of the approval to the manufacturer of the device. Such notice shall be admissible in any civil or criminal proceeding in this state.

(c) The manufacturer of an ignition interlock device shall reimburse the division for any cost incurred in approving or disapproving such device under this section.

(d) Neither the state nor any agency, officer or employee thereof shall be liable in any civil or criminal proceeding arising out of the use of an ignition interlock device approved under this section."

By renumbering the remaining sections accordingly;

On page 8, by striking all of line 19 and inserting the following:

"Sec. 14. K.S.A. 41-727 is hereby amended to read as follows: 41-727. (a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 and 41-2727, and amendments thereto, and

subject to any rules and regulations adopted pursuant to such statutes, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.

(b) Violation of this section by a person 18 or more years of age but less than 21 years of age is a class C misdemeanor for which the minimum fine is \$200.

(c) Any person less than 18 years of age who violates this section is a juvenile offender under the Kansas juvenile justice code. Upon adjudication thereof and as a condition of disposition, the court shall require the offender to pay a fine of not less than \$200 nor more than \$500.

(d) In addition to any other penalty provided for a violation of this section, the court may order the offender to do either or both of the following:

- (1) Perform 40 hours of public service; or
- (2) attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans.

*In addition, the court may order the division of vehicles to suspend the driving privilege of such offender for up to 30 days.*

(e) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.

(f) Any city ordinance or county resolution prohibiting the acts prohibited by this section shall provide a minimum penalty which is not less than the minimum penalty prescribed by this section.

(g) This section shall be part of and supplemental to the Kansas liquor control act.

New Sec. 15. Refusal to submit to a request by a law enforcement officer to submit to a breath, blood or urine test pursuant to K.S.A. 8-1001 or 8-1002, and amendments thereto, shall be a class B misdemeanor.

Sec. 16. K.S.A. 8-258, 8-285 and 41-727 and K.S.A. 2000 Supp. 8-255, 8-262, 8-1001 and 8-1014 are hereby repealed.

Sec. 17. On and after July 1, 2001, K.S.A. 2000 Supp. 8-1002, 8-1008, 8-1015, 8-1016 and 8-1567a are hereby repealed.”;

By renumbering the remaining section accordingly;

On page 1, in the title, in line 10, by striking all after “driving”; by striking all of lines 11 through 13 and inserting “; powers and duties of the division of vehicles; operation of vehicles; concerning suspension or restriction of drivers’ licenses; amending K.S.A. 8-258, 8-285, and 41-727 and K.S.A. 2000 Supp. 8-255, 8-262, 8-1001, 8-1002, 8-1008, 8-1014, 8-1015, 8-1016 and 8-1567a and repealing the existing sections.”; and the bill be passed as amended.

The Committee on **Judiciary** recommends **SB 119** be amended on page 2, in line 24, by striking all after “(4)”; by striking all in lines 25 through 28; in line 29, by striking “(5)”; in line 37, by striking “(6)” and inserting “(5)”; in line 40, by striking “(7)” and inserting “(6)”; in line 43, by striking “(8)” and inserting “(7)”;;

On page 3, in line 33, by striking all after “(2)”; by striking all in lines 34 through 37; in line 38, by striking “(3)”;;

On page 4, in line 2, by striking “(4)” and inserting “(3)”; in line 11, by striking “(5)” and inserting “(4)”; in line 15, by striking “public institution” and inserting “facility”;

On page 5, in line 25, by striking all after “(2)”; by striking all in lines 26 through 29; in line 30, by striking “(3)”; in line 33, by striking “(4)” and inserting “(3)”; in line 36, by striking “(5)” and inserting “(4)”;;

On page 6, in line 22, by striking all after “(b)”; by striking all in lines 23 through 26; in line 27, by striking “(c)”; in line 31, by striking “(d)” and inserting “(c)”;;

On page 9, in line 22, by striking all after “(B)”; by striking all in lines 23 through 26; in line 27, by striking “(C)”; in line 32, by striking “(D)” and inserting “(C)”;;

On page 12, in line 37, by striking all after “(3)”; by striking all in lines 38 through 41; in line 42, by striking “(4)”;;

On page 13, in line 3, by striking "(5)" and inserting "(4)"; in line 5, by striking "(6)" and inserting "(5)"; in line 8, by striking "(7)" and inserting "(6)"; in line 10, by striking "(8)" and inserting "(7)"; in line 18, by striking "(9)" and inserting "(8)";

On page 14, in line 7, by striking all after "(b)"; by striking all in lines 8 through 11; in line 12, by striking "(c)"; in line 19, by striking "(d)" and inserting "(c)";

On page 15, in line 25, by striking all after "(2)"; by striking all in lines 26 through 29; in line 30, by striking "(3)"; in line 32, by striking "(4)" and inserting "(3)";

On page 16, following line 11, by inserting the following:

"Sec. 14. K.S.A. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity except (1) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections; (2) *a person who contracts with the Kansas guardianship program to provide services as a court-appointed guardian or conservator*; (3) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor; ~~and (3)~~ (4) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program; *and (5) employees of a mental health center.* "Employee" also includes an employee of an indigent health care clinic. "Employee" also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

(e) "Community service work" means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order or (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663, and amendments thereto.

(f) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a ~~physician's~~ *physician* assistant registered licensed by the state board of healing arts or a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary; or

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120 and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3).

(g) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(h) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(i) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

(j) *"Mental health center" means any mental health center organized pursuant to the provisions of K.S.A. 19-4001 through 19-4016, and amendments thereto, and licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b, and amendments thereto, when engaged in the performance of any duty created by statute, rules and regulations or contract between the mental health center and the department of social and rehabilitation services or a county pursuant to K.S.A. 19-4001 through 19-4016, and amendments thereto.*

Sec. 15. K.S.A. 75-6115 is hereby amended to read as follows: 75-6115. (a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than:

- (1) A charitable health care provider;
- (2) a hospital owned by a municipality and the employees thereof;
- (3) a local health department and the employees thereof;
- (4) an indigent health care clinic and the employees thereof; ~~or~~
- (5) a district coroner or deputy district coroner appointed pursuant to K.S.A. 22a-226 and amendments thereto; *or*

(6) *a mental health center and employees thereof.*

(b) Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than those health care providers enumerated in subsection (a), arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(c) As used in this section:

(1) "Indigent health care clinic" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(2) "Charitable health care provider" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(3) "Health care provider" shall have the meaning ascribed to such term under K.S.A. 40-3401, and amendments thereto.

(4) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

(5) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.;

By renumbering remaining sections accordingly;

Also on page 16, in line 13, after "38-1639" by striking "and" and inserting a comma; also in line 13, after "38-1662" by inserting "and 75-6115"; in line 14, after "22-3305" by striking "and" and inserting a comma; also in line 14, after "22-3431" by inserting ", 75-6102 and 75-6102a";

In the title, in line 10, before "amending", by inserting "relating to the tort claims act"; in line 11, after "38-1639" by striking "and" and inserting a comma; also in line 11, after "38-1662" by inserting "and 75-6115"; in line 12, after "22-3305" by striking "and" and inserting a comma; also in line 12, after "22-3431" by inserting "and 75-6102"; also in line 12, before the period by inserting "; also repealing K.S.A. 2000 Supp. 75-6102a"; and the bill be passed as amended.

The Committee on **Judiciary** recommends **SB 195** be amended on page 2, by striking all in lines 12 through 43;

On page 3, by striking all in lines 1 through 28 and inserting in lieu thereof the following: "Sec. 2. K.S.A. 2000 Supp. 65-503 is hereby amended to read as follows: 65-503. As used in this act:

(a) "Child placement agency" means a business or service conducted, maintained or operated by a person engaged in finding homes for children by placing or arranging for the placement of such children for adoption or foster care.

(b) "Child care resource and referral agency" means a business or service conducted, maintained or operated by a person engaged in providing resource and referral services, including information of specific services provided by child care facilities, to assist parents to find child care.

(c) (1) "Child care facility" means:

(A) ~~A facility maintained by a person who has control or custody of one or more children under 16 years of age, unattended by parent or guardian, for the purpose of providing the children with food or lodging, or both; an individual who provides child care, except child care provided to children related to the person individual by blood, marriage or legal adoption within the fifth degree of kinship;~~

(B) a children's home, orphanage, maternity home, day care facility or other facility of a type determined by the secretary to require regulation under the provisions of this act;

(C) a child placement agency or child care resource and referral agency, or a facility maintained by such an agency for the purpose of caring for children under 16 years of age;

or

(D) any receiving or detention home for children under 16 years of age provided or maintained by, or receiving aid from, any city or county or the state;

(E) a person who provides child care for children six years of age or older and in which any child attends 17 hours a week or more and for more than two consecutive weeks; or

(F) a person who provides child care for children six years of age or older if:

(i) The program is offered for 16 hours a week or less;

(ii) no more than 11 children are served per staff or volunteer;

(iii) the program meets the local fire safety and local building requirements; and

(iv) the program is provided at no cost or with a nominal membership fee. A child care facility meeting the requirements of this paragraph is exempt from licensure.

(2) "Child care facility" shall not include:

(A) A family day care home defined in K.S.A. 65-517 and amendments thereto;

(B) an instructional program for children as provided by K.S.A. 2000 Supp. 72-8238, and amendments thereto, administered by a board of education of any school district;

(C) an instructional program for only children six years of age or older for the purposes provided by subsection (e) of K.S.A. 2000 Supp. 72-8283, and amendments thereto, administered by a nonpublic school accredited by the state board of education;

(D) a summer instructional camp that is:

(i) Operated by a Kansas educational institution as defined in K.S.A. 2000 Supp. 74-32,120, and amendments thereto, or a postsecondary educational institution as defined in K.S.A. 2000 Supp. 74-3201b, and amendments thereto;

(ii) operated for not more than five weeks;

(iii) provides instruction to children, all of whom are 10 years of age or older; and

(iv) accredited by an agency or organization acceptable to the secretary of health and environment; or

(E) a summer program established by the school board of a school district as provided under K.S.A. 2000 Supp. 72-8237, and amendments thereto.

(d) "Person" means any individual, association, partnership, corporation, government, governmental subdivision or other entity.

(e) "Boarding school" means a facility which provides 24-hour care to school age children, provides education as its primary function, and is accredited by an accrediting agency acceptable to the secretary of health and environment.

(f) "Child" means an individual under 18 years of age or an individual under 21 years of age in the custody of a state agency pursuant to a juvenile court order.

(g) "Child care" means the care, supervision or guidance of a child by a person other than the child's parent or guardian.

(h) "Maternity center" means a facility which provides delivery services for normal, uncomplicated pregnancies but does not include a medical care facility as defined by K.S.A. 65-425, and amendments thereto.;

And by renumbering sections accordingly;

Also on page 3, in line 29, after "65-502" by inserting ", 65-503";

In the title, in line 13, by striking "65-502" and inserting "65-503"; in line 14, before the period, by inserting "; also repealing K.S.A. 65-502"; and the bill be passed as amended.

The Committee on **Judiciary** recommends **SB 205** be amended on page 1, in line 22, after "the" by inserting "alleged";

On page 3, in line 9, before "victim" by inserting "alleged"; and the bill be passed as amended.

The Committee on **Judiciary** recommends **SB 209** be amended on page 10, in line 16, by striking "statute book" and inserting "Kansas register"; and the bill be passed as amended.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

#### **INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was thereupon introduced and read by title:

**HB 2574**, An act relating to property taxation; concerning the valuation of vessels for such purposes, by Committee on Taxation.

#### **REPORT ON ENGROSSED BILLS**

**Sub. HB 2489; HB 2493** reported correctly engrossed March 20, 2001.

Also, **HB 2145, HB 2283** reported correctly engrossed March 21, 2001.

On motion of Rep. Weber, the House adjourned until 9:00 a.m., Thursday, March 22, 2001.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

