

# Journal of the House

SIXTY-THIRD DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Wednesday, May 5, 2004, 10:30 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.  
The roll was called with 123 members present.  
Reps. Barbieri-Lightner and Huff were excused on excused absence by the Speaker.  
Present later: Rep. Barbieri-Lightner.

Prayer by Chaplain Chamberlain:

Lord of the heavens and the earth, we stand today and praise your name. We are in awe at the wonder of the work of your hands and at the bounty of your grace.

Lord, each spring we are reminded that you bring life when there seems to be no hope of life. From the fallow field, you bring forth the staff of life. From the heavens, you send rain to satisfy the thirst of dry land. All about us we see the life that you give.

Bless us as we seek to participate in your world, O God. Let each of us be an instrument of life-giving grace. Help us discover the ways in which we can bring life where there seems to be no life, where we can nourish one another with the waters of compassion and love, where we can prepare ourselves and our land for the harvest that yields your kingdom on earth as it is in heaven. Amen.

The Pledge of Allegiance was led by Rep. Minor.

## MESSAGE FROM THE SENATE

The Senate concurs in House amendments to **SB 511**, and requests return of the bill.

## CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 317**, submits the following report:

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

On page 9, by striking all in lines 10 through 38 and inserting the following:

“Sec. 5. K.S.A. 2003 Supp. 60-729 is hereby amended to read as follows: 60-729. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

(b) *Except as otherwise provided by law, no garnishment shall be issued under article 7 of Chapter 60 of the Kansas Statutes Annotated, and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court for remittance to the state treasurer. The state treasurer shall deposit and credit the fees to the state general fund.*

Sec. 6. K.S.A. 2003 Supp. 61-3502 is hereby amended to read as follows: 61-3502. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person

can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

*(b) Except as otherwise provided by law, no garnishment shall be issued under article 35 of chapter 61 of the Kansas Statutes Annotated, and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court for remittance to the state treasurer. The state treasurer shall deposit and credit the fees to the state general fund.*

New Sec. 7. (a) As used in this section:

(1) "Home inspection" means a noninvasive visual examination of the mechanical, electrical or plumbing systems or the structural and essential components of a residential dwelling or any portion thereof designed to identify material defects in those systems and components and performed for a fee in connection with or preparation for a proposed or possible residential real estate transfer. The term also includes any consultation regarding the property that is represented to be a home inspection or that is described by any similar term. The term does not include an examination of a single system or component of a residential dwelling such as, for example, its electrical or plumbing system or its roof. The term also does not include an examination that is limited to inspection for or of one or more of the following: Wood destroying insects, underground tanks and wells, septic systems; swimming pools and spas, alarm systems, air and water quality, tennis courts and playground equipment, pollutants, toxic chemicals and environmental hazards.

(2) "Home inspection report" means a written report on the results of a home inspection.

(3) "Home inspector" means an individual who performs a home inspection.

(b) Any clause or provision in an agreement or contract issued by a home inspector for a home inspection report which contains language limiting or disclaiming the home inspector's liability as to any system or component of the residential dwelling covered by such report is hereby declared to be against public policy and void.

(c) Nothing contained herein shall restrict or prohibit a home inspector from limiting the scope of the home inspection report or the ability of the home inspector to identify those portions of the home which could not be inspected, and therefore are not included in the home inspection report.

(d) Any cause of action authorized by this section shall be commenced within one year after the date the agreement or contract is signed by both parties.;

And by renumbering the remaining sections accordingly;

Also on page 9, in line 39, by striking "K.S.A. 45-222 and"; also in line 39, after the comma by inserting "60-729,;" in line 40, by striking "and" and inserting a comma; also in line 40, after "61-3101" by inserting "and 61-3502";

On page 1, in the title, in line 16, by striking "attor-"; in line 17, by striking "ney fees" and inserting "docket fees; home inspector's liability"; also in line 17, by striking "K.S.A. 45-222 and"; also in line 17, after the comma by inserting "60-729,;" in line 18, by striking "and" where it appears the first time and inserting a comma; also in line 18, after "61-3101" by inserting "and 61-3502";

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

MICHAEL R. O'NEAL  
DOUG PATTERSON  
JANICE L. PAULS  
*Conferees on part of House*

JOHN VRATIL  
DEREK SCHMIDT  
GRETA GOODWIN  
*Conferees on part of Senate*

On motion of Rep. O'Neal to adopt the conference committee report on **SB 317**, Rep. Ballou offered a substitute motion to not adopt the conference committee report and asked that a new conference committee be appointed. The substitute motion prevailed.

Speaker Mays thereupon appointed Reps. O'Neal, Patterson and Pauls as third conferees on the part of the House.

There being no objection, the following remarks of Rep. Toelkes are spread upon the Journal:

In memory of Pvt. Jeremy Drexler who gave his life for his country in Iraq, we honor his memory and offer condolences to his family and we honor his life.

On motion of Rep. Aurand, the House recessed until 1:30 p.m.

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### EARLY AFTERNOON SESSION

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

#### MESSAGE FROM THE SENATE

Announcing passage of **HB 2703**, as amended.

The Senate adopts the conference committee report to agree to disagree on **H. Sub. for SB 2** and has appointed Senators Brungardt, Lyon and Gilstrap as second conferees on the part of the Senate.

The Senate adopts conference committee report on **HB 2418**.

#### CHANGE OF CONFEREES

Speaker pro tem Ballou announced the appointment of Rep. Patterson as a member of the conference committee on **HB 2621** to replace Rep. Tafanelli.

On motion of Rep. Aurand, the House recessed until 2:15 p.m.

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### AFTERNOON SESSION

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

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2418**, submits the following report:

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

On page 1, by striking all in lines 18 through 43;

On page 2, by striking all in lines 1 through 43;

On page 3, by striking all in lines 1 through 3;

On page 5, by striking all in lines 33 and 34 and inserting the following:

"Section 1. K.S.A. 20-2608 is hereby amended to read as follows: 20-2608. (a) Any judge may retire upon reaching age 65 or ~~commencing July 1, 1993, age 65 or~~ age 62 with the completion of 10 years of credited service or the first day of the month coinciding with or following the date that the total of the number of years of credited service and the number of years of attained age of the judge is equal to or more than 85 and upon making application for retirement to the board, ~~and~~. Any judge upon reaching age ~~70~~ 75 shall retire, ~~and, except that any duly elected or appointed justice of the supreme court shall retire upon reaching age 70.~~ Upon retiring, each such judge as described in this subsection shall receive retirement annuities as provided in K.S.A. 20-2610 and amendments thereto, except, that when any ~~incumbent judge~~ justice of the supreme court attains the age of 70, such judge may, if such judge desires, finish serving the term during which ~~said~~ such judge attains the age of 70.

(b) Notwithstanding the provisions of subsection (a), any judge who is otherwise eligible to retire may retire upon reaching age 60 and, having total years of service of not less than 10 years, and upon making application to the board. Any such judge who retires on and after July 1, 1993, and prior to attaining the age of 62 shall receive a retirement annuity pursuant to K.S.A. 20-2610 and amendments thereto based upon the normal retirement age

of 62 reduced by an amount equal to the product of (1) such annual retirement annuity payable had the judge retired on the normal retirement date, multiplied by (2) the product of .2% multiplied by the number of months' difference, to the nearest whole month, between the judge's attained age at the time of retirement and age 62.

(c) Notwithstanding the provisions of subsection (a), on or after July 1, 1993, any judge who is otherwise eligible to retire may retire upon reaching age 55 with the completion of 10 years of service, and upon making application to the board. Any such judge who retires prior to attaining the age of 62 pursuant to this subsection shall receive a retirement annuity pursuant to K.S.A. 20-2610 and amendments thereto based upon the normal retirement age of 62 reduced by an amount equal to the total of: (1) (A) The product of such annual retirement annuity payable had the judge retired on the normal retirement date, multiplied by (B) the product of .6% multiplied by the number of months' difference, to the nearest whole month, between the member's attained age at the time of retirement and age 60; and (2) for any judge who retired on or after July 1, 1993, the product of such annual retirement annuity payable had the judge retired on the normal retirement date, multiplied by 4.8%.

The provisions of this subsection apply to any judge who retires before the age of 62 and has attained age 55 but has not attained age 60, with the completion of 10 years of service.

Sec. 2. K.S.A. 20-2608 is hereby repealed.

Sec. 3. On and after July 1, 2004, K.S.A. 20-3010, as amended by section 2 of 2004 House Bill No. 2618, K.S.A. 2003 Supp. 20-3006, as amended by section 1 of 2004 House Bill No. 2618, and section 3 of 2004 House Bill No. 2618 are hereby repealed.”;

Also on page 5, in line 36, by striking “statute book” and inserting “Kansas register”;

Also on page 1, in the title, in line 13, before “amending” by inserting “concerning mandatory retirement;”; in line 14, by striking all after “K.S.A.”; in line 15, by striking all before the last period and inserting “20-2608 and repealing the existing section; also repealing K.S.A. 20-3010, as amended by section 2 of 2004 House Bill No. 2618, K.S.A. 2003 Supp. 20-3006, as amended by section 1 of 2004 House Bill No. 2618, and section 3 of 2004 House Bill No. 2618”;

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

JOHN VRATIL  
DEREK SCHMIDT  
GRETA GOODWIN  
*Conferees on part of Senate*

MICHAEL R. O'NEAL  
DOUG PATTERSON  
JANICE L. PAULS  
*Conferees on part of House*

On motion of Rep. O'Neal, the conference committee report on **HB 2418** was adopted.  
Call of the House was demanded.

On roll call, the vote was: Yeas 91; Nays 32; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Burroughs, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, DeCastro, Decker, Dreher, Faust-Goudeau, Flora, Freeborn, Gilbert, Goering, Gordon, Grant, Hayzlett, Hill, Holland, Holmes, Horst, Humerickhouse, Huntington, Hutchins, Jack, D. Johnson, Kassebaum, Kauffman, Landwehr, Larkin, Light, Loganbill, M. Long, Loyd, Mason, Mays, McCreary, McLeland, Merrick, J. Miller, Minor, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Owens, Patterson, Pauls, Phelps, Pottorff, Powell, Reardon, Rehorn, Reitz, Ruff, Sawyer, Schwab, Schwartz, Scoggins-Waite, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Vickrey, Wilk, D. Williams, J. Williams, Wilson, Yoder, Yonally.

Nays: Campbell, Davis, Dillmore, Edmonds, Faber, Feuerborn, Flaharty, Gatewood, Goico, Henderson, Henry, Howell, Huebert, Huy, E. Johnson, Kirk, Klein, Krehbiel,

Kuether, Lane, Long-Mast, McKinney, F. Miller, Jim Morrison, Osborne, Ostmeyer, Powers, B. Sharp, Thull, Toelkes, Ward, Winn.

Present but not voting: None.

Absent or not voting: Beggs, Huff.

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Holmes, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2703**.

#### MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. Holmes, the House concurred in Senate amendments to **HB 2703**, An act providing for the issuance of bonds by the Kansas development finance authority for the design of a prototype facility for the generation of electricity and hydrogen; amending K.S.A. 74- 8939 and repealing the existing section.

On roll call, the vote was: Yeas 113; Nays 10; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Burroughs, Carlin, Compton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dreher, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Freeborn, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Holmes, Horst, Huebert, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Kirk, Krehbiel, Kuether, Lane, Larkin, Light, Loganbill, Long-Mast, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Phelps, Pottorff, Powell, Powers, Rehorn, Reitz, Ruff, Sawyer, Schwab, Schwartz, Scoggins-Waite, B. Sharp, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: Campbell, Carter, Dillmore, Howell, Klein, Landwehr, M. Long, F. Miller, Novascone, Reardon.

Present but not voting: None.

Absent or not voting: Beggs, Huff.

The House stood at ease until the sound of the gavel.

Speaker pro tem Ballou called the House to order.

#### MESSAGE FROM THE SENATE

The Senate adopts conference committee report on **S. Sub. for HB 2899**.

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Neufeld, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **S. Sub. for HB 2899**.

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **Senate Substitute for HB 2899**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as Senate Substitute for House Bill No. 2899, as follows:

On page 1, by striking all in lines 13 through 39 and inserting:

“Section 1. K.S.A. 74-8711 is hereby amended to read as follows: 74-8711. (a) There is hereby established in the state treasury the lottery operating fund.

(b) *Except as provided by K.S.A. 2003 Supp. 74-8724, and amendments thereto*, the executive director shall remit all moneys collected from the sale of lottery tickets and shares

and any other moneys received by or on behalf of the Kansas lottery to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the lottery operating fund. Moneys credited to the fund shall be expended or transferred only as provided by this act. Expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director or by a person designated by the executive director.

(c) Moneys in the lottery operating fund shall be used for:

(1) The payment of expenses of the lottery, which shall include all costs incurred in the operation and administration of the Kansas lottery; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including but not limited to supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications and distribution of tickets and shares; and reimbursement of costs of facilities and services provided by other state agencies;

(2) the payment of compensation to lottery retailers;

(3) transfers of moneys to the lottery prize payment fund pursuant to K.S.A. 74-8712, and amendments thereto;

(4) transfers to the state general fund pursuant to K.S.A. 74-8713, and amendments thereto;

(5) transfers to the state gaming revenues fund pursuant to subsection (d) of this section and as otherwise provided by law; and

(6) transfers to the county reappraisal fund as prescribed by law.

(d) The director of accounts and reports shall transfer moneys in the lottery operating fund to the state gaming revenues fund created by K.S.A. 79-4801, and amendments thereto, on or before the 15th day of each month in an amount certified monthly by the executive director and determined as follows, whichever is greater:

(1) An amount equal to the moneys in the lottery operating fund in excess of those needed for the purposes described in subsections (c)(1) through (c)(4); or

(2) except for pull-tab lottery tickets and shares, an amount equal to not less than 30% of total monthly revenues from the sales of lottery tickets and shares less estimated returned tickets. In the case of pull-tab lottery tickets and shares, an amount equal to not less than 20% of the total monthly revenues from the sales of pull-tab lottery tickets and shares less estimated returned tickets.

Sec. 2. K.S.A. 2003 Supp. 74-8724 is hereby amended to read as follows: 74-8724. (a) Notwithstanding any provision of law to the contrary, the Kansas lottery commission shall establish an instant lottery scratch-off game designated as the veterans benefit game, which shall be conducted by the Kansas lottery. Tickets for the veterans benefit game established by this section shall be offered for sale only between May 1 through November 30, ~~2003, and May 1 through November 30, 2004~~ of each year.

(b) The Kansas lottery commission shall adopt rules and regulations governing the establishment of the veterans benefit game pursuant to K.S.A. 74-8710, and amendments thereto, except that subsection (b) of K.S.A. 74-8710, and amendments thereto, shall not apply to the veterans benefit game established by this section.

(c) Notwithstanding the provisions of K.S.A. 79-4801 *et seq.*, and K.S.A. 74-8711, and amendments thereto, all net profits, received from the sale of veterans benefit game lottery tickets, materials and games, as prescribed by rules and regulations adopted pursuant to subsection (b) of this section, shall be deposited in the state treasury and ~~credited~~ *shall be used* as follows: (1) ~~An~~ *The* amount equal to 50% of such net profits ~~to the national guard assistance account of the state general fund of the state board of regents to be used~~ *shall be appropriated for purposes directly benefitting members of the Kansas army and air national guard and their families to provide for Kansas national guard educational assistance act scholarships pursuant to K.S.A. 74-32,145 et seq., and amendments thereto, and (2) an, to the extent that moneys are available, for other purposes directly benefitting members of the Kansas army and air national guard and their families as provided by appropriation act; and* (2) the amount equal to 50% of such net profits ~~to the soldiers' home fee fund and the~~

~~veterans' home fee fund in an amount or amounts determined by the executive director of the Kansas commission on veterans affairs to be used shall be appropriated for operating expenditures and capital improvements for, or as otherwise provided by appropriation act, for the use and benefit of the Kansas veterans' home, the Kansas soldiers' home and the state veterans cemetery system.~~

(d) The Kansas lottery commission shall change the design or theme of the veterans benefit game regularly so that the game remains competitive with the other instant lottery scratch-off games offered by such commission. The tickets for the instant lottery game authorized by this section shall clearly state that the profits derived from the game shall be used to benefit veterans and veterans issues in this state.

Sec. 3. K.S.A. 74-8819 is hereby amended to read as follows: 74-8819. (a) Organizations licensed pursuant to K.S.A. 74-8813 or 74-8814, and amendments thereto, may conduct parimutuel wagering on the results of horse and greyhound races held on dates and at racetrack facilities approved by the commission and on simulcast races as provided by K.S.A. 74-8836, *and amendments thereto*. All persons participating in such wagering shall be present within the confines of the approved racetrack facility.

(b) Organization licensees shall issue a ticket to each person placing a wager, which ticket shall show the date and number of the race, the amount wagered and the number of the horse or greyhound selected by the person. The licensee may receive wagers on horses or greyhounds to finish first, second, third, fourth or any combination thereof within the same race or among two or more live races conducted or simulcast races displayed on the same day at the same racetrack facility, as authorized by the commission.

(c) After wagering has been closed for each live race conducted by the licensee, the organization licensee may deduct an amount not exceeding 18% of the total wagered in each parimutuel pool and the balance, less the breakage, shall be paid to holders of winning tickets for that pool in accordance with procedures authorized by the commission. The commission may authorize a higher amount not exceeding ~~22%~~ 25% to be deducted from the total wagered in parimutuel pools for multiple and exotic bets.

(d) From the amount deducted as provided in subsection (c), the organization licensee shall pay the purses as provided in K.S.A. 74-8820, and amendments thereto, and the tax as specified in K.S.A. 74-8823, and amendments thereto. The balance of the amount deducted shall be used for the purposes of the organization licensee as such purposes have been represented to the commission.

(e) The provisions of K.S.A. 74-8836, *and amendments thereto*, shall govern takeout and its distribution in the case of simulcast races displayed by an organization licensee.

(f) No organization licensee shall loan money or any other thing of value to any person for the purpose of permitting that person to wager on any race.

(g) All parimutuel tellers and clerks shall be employees of the organization licensee approved by the commission to conduct the parimutuel wagering at a race meeting.

Sec. 4. K.S.A. 74-8821 is hereby amended to read as follows: 74-8821. (a) The breakage deducted from the amounts paid to winning ticket holders for each parimutuel pool shall be computed by the organization licensee and disbursed as set forth in ~~subsections (b), (c) and (d) this section~~. An accounting of the amount and disposition of the breakage shall be made by each organization licensee as directed by the commission. Except as otherwise provided by K.S.A. 74-8836, and amendments thereto, the breakage on minus pools shall be calculated in multiples of \$.05 rather than \$.10.

(b) All breakage proceeds from parimutuel wagering conducted by the organization licensee on live horse races conducted by the licensee shall be remitted by the licensee to the commission not later than the 15th day of the month following the race from which the breakage is derived. The commission shall remit any such proceeds received to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the Kansas horse breeding development fund created by K.S.A. 74-8829, and amendments thereto.

(c) *Except as provided by subsection (e)*, all breakage proceeds from parimutuel wagering conducted by the organization licensee on live greyhound races conducted by the licensee

shall be distributed by the licensee not later than the 15th day of the month following the race from which the breakage is derived as follows:

(1) An amount equal to 50% of the breakage shall be used at racetrack facilities where derived to supplement open stakes races as approved by the commission; and

(2) an amount equal to 50% of the breakage shall be paid as purses directly to the breeders of Kansas-whelped greyhounds pursuant to rules and regulations of the commission.

(d) All breakage proceeds from parimutuel wagering conducted by a simulcast licensee on simulcast races displayed by the licensee shall be distributed as provided by K.S.A. 74-8836, and amendments thereto.

(e) *If a racetrack facility closes or discontinues conducting races and there are undistributed breakage proceeds from parimutuel wagering conducted by the organization licensee on live greyhound races, the licensee shall distribute such proceeds to charitable organizations who apply to the organizational licensee. Such proceeds shall be distributed in accordance with the licensee's charitable distribution guidelines. Within 30 days of such distribution, the licensee shall file a report with the commission disclosing the amounts of the distributions, the names of the distributees and the date on which the distributions were made.*

*The provisions of this subsection shall apply to any racetrack facility conducting races on or before October 31, 2001.*

Sec. 5. K.S.A. 74-8711, 74-8819 and 74-8821 and K.S.A. 2003 Supp. 74-8724 are hereby repealed.”;

By renumbering section 2 as section 6;

In the title, in line 9, by striking all after “concerning”; in line 10, by striking all before the period and inserting “lotteries; amending K.S.A. 74-8711, 74-8819 and 74-8821 and K.S.A. 2003 Supp. 74-8724 and repealing the existing sections”;

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

STEPHEN R. MORRIS

DAVID ADKINS

CHRISTINE DOWNEY

*Conferees on part of Senate*

MELVIN J. NEUFELD

CLARK SHULTZ

BILL FEUERBORN

*Conferees on part of House*

On motion of Rep. Neufeld, the conference committee report on **S. Sub. for HB 2899** was adopted.

Call of the House was demanded.

On roll call, the vote was: Yeas 89; Nays 34; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Ballard, Ballou, Bethell, Boyer, Burgess, Burroughs, Carlin, Compton, Cox, Craft, Crow, Davis, DeCastro, Decker, Dillmore, Dreher, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Gordon, Grant, Hayzlett, Henderson, Henry, Hill, Holland, Horst, Howell, Humerickhouse, Huntington, Jack, D. Johnson, Kassebaum, Kirk, Klein, Kuether, Lane, Larkin, Light, Loganbill, M. Long, Loyd, McKinney, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Neighbor, Newton, Novascone, O'Malley, O'Neal, Owens, Patterson, Pauls, Phelps, Pottorff, Reardon, Rehorn, Ruff, Sawyer, Schwab, Schwartz, Scoggins-Waite, B. Sharp, S. Sharp, Showalter, Shriver, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, Wilk, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: Barbieri-Lightner, Brunk, Campbell, Carter, Dahl, Edmonds, Freeborn, Goering, Goico, Holmes, Huebert, Hutchins, Huy, E. Johnson, Kauffman, Krehbiel, Landwehr, Long-Mast, Mason, Mays, McCreary, McLeland, Merrick, Myers, Neufeld, Osborne, Ostneyer, Powell, Powers, Reitz, Shultz, Siegfried, Sloan, D. Williams.

Present but not voting: None.

Absent or not voting: Beggs, Huff.



On motion of Rep. Aurand, the House recessed until 4:30 p.m.

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### LATE AFTERNOON SESSION

The House met pursuant to recess with Speaker Mays in the chair.

#### MESSAGE FROM THE SENATE

The Senate not adopts the conference committee report on **HB 2624**, requests a new conference committee be appointed and has appointed Senators Allen, Buhler and Betts as second conferees on the part of the Senate.

The Senate accedes to the request of the House for a conference on **SB 317** and has appointed Senators Vratil, Schmidt and Goodwin as third conferees on the part of the Senate.

The President announced the appointment of Senators Corbin, Donovan and Lee as members of the conference committee on **S. Sub. for HB 2375** to replace Senators Vratil, Schmidt and Goodwin.

The President announced the appointment of Senators Vratil, Schmidt and Goodwin as members of the conference committee on **HB 2621** to replace Senators Tyson, Taddiken and Lee.

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Aurand, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2624**.

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Aurand, the House acceded to the request of the Senate for a conference on **HB 2624**.

Speaker Mays thereupon appointed Reps. Vickrey, Ostmeier and Thull as second conferees on the part of the House.

On motion of Rep. Aurand, the House recessed until 5:30 p.m.

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### EARLY EVENING SESSION

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

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Edmonds, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **SB 520**.

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 520**, submits the following report:

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

On page 1, by striking all in lines 16 through 43;

By striking all on pages 2 through 4 and by inserting the following:

“Section 1. K.S.A. 2003 Supp. 20-2605 is hereby amended to read as follows: 20-2605.

(a) The board shall select and employ or retain a qualified actuary who shall serve at its pleasure as its technical advisor on matters regarding operation of the retirement system for judges. The actuary shall:

(1) As soon after the effective date as practicable and once every three years thereafter, make a general investigation of the actuarial experience under the retirement system for judges including mortality, retirement, employment turnover and interest, and recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on such investigation; make a valuation of the liabilities and reserves of the retirement system for judges, and a determination of the contributions required by the retirement system for judges to discharge its liabilities and recommend to the board rates of employer contributions required to establish and maintain the retirement system for judges on an actuarial reserve basis.

(2) Perform such other duties as may be assigned by the board.

(b) Upon the basis of the actuarial valuation and appraisal and upon the recommendation of the actuary, the board shall certify, on or before July 15 of each year, to the division of budget an actuarially determined estimate of the rate of contribution which will be required, together with all judges' contributions and other assets of the retirement system for judges to pay all liabilities which shall exist or accrue under the retirement system for judges, including amortization of the unfunded accrued liability ~~over a period of 40 years commencing on July 1, 1993~~ *as determined by the board*. The rate of contribution for the state determined under this section shall not include the costs of administration of the system.

(c) The division of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services the sum required to satisfy the state's obligation under the retirement system for judges as certified by the board and shall present the same to the legislature for allowance and appropriation.

(d) Except as otherwise provided by law, the actuarial cost of any legislation enacted by the Kansas legislature, except the actuarial cost of K.S.A. 74-49,114a, *and amendments thereto*, shall be reflected in the employer contribution rate in the fiscal year immediately following such enactment.

Sec. 2. K.S.A. 2003 Supp. 74-4902 is hereby amended to read as follows: 74-4902. As used in articles 49 and 49a of chapter 74 and amendments thereto, unless otherwise provided or the context otherwise requires:

(1) "Accumulated contributions" means the sum of all contributions by a member to the system which are credited to the member's account, with interest allowed thereon;

(2) "acts" means the provisions of articles 49 and 49a of the Kansas Statutes Annotated and amendments thereto;

(3) "actuarial equivalent" means an annuity or benefit of equal value to the accumulated contributions, annuity or benefit, when computed upon the basis of the actuarial tables in use by the system. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified in a way that precludes employer discretion;

(4) "actuarial tables" means the actuarial tables approved and in use by the board at any given time;

(5) "actuary" means the actuary or firm of actuaries employed or retained by the board at any given time;

(6) "agent" means the individual designated by each participating employer through whom system transactions and communication are directed;

(7) "beneficiary" means, *subject to the provisions of K.S.A. 74-4927, and amendments thereto*, any natural person or persons or estate named by a member to receive any benefits as provided for by this act. Designations of beneficiaries by a member who is a member of more than one retirement system made on or after July 1, 1987, shall be the basis of any benefits payable under all systems unless otherwise provided by law. Except as otherwise provided by subsection (33) of this section, if there is no named beneficiary living at time of member's death, any benefits provided for by this act shall be paid to: (A) The member's surviving spouse; (B) the member's dependent child or children; (C) the member's dependent parent or parents; (D) the member's nondependent child or children; (E) the member's nondependent parent or parents; (F) the estate of the deceased member; in the order of preference as specified in this subsection.

(8) "board of trustees," "board" or "trustees" means the managing body of the system which is known as the Kansas public employees retirement system board of trustees;

(9) "compensation" means, except as otherwise provided, all salary, wages and other remuneration payable to a member for personal services performed for a participating employer, including maintenance or any allowance in lieu thereof provided a member as part of compensation, but not including reimbursement for travel or moving expenses or on and after July 1, 1994, payment pursuant to an early retirement incentive program made prior to the retirement of the member. Beginning with the employer's fiscal year which begins in calendar year 1991 or for employers other than the state of Kansas, beginning with the fiscal year which begins in calendar year 1992, when the compensation of a member who remains in substantially the same position during any two consecutive years of participating service used in calculating final average salary is increased by an amount which exceeds 15%, then the amount of such increase which exceeds 15% shall not be included in compensation, except that (A) any amount of compensation for accumulated sick leave or vacation or annual leave paid to the member, (B) any increase in compensation for any member due to a reclassification or reallocation of such member's position or a reassignment of such member's job classification to a higher range or level and (C) any increase in compensation as provided in any contract entered into prior to January 1, 1991, and still in force on the effective date of this act, pursuant to an early retirement incentive program as provided in K.S.A. 72-5395 *et seq.* and amendments thereto, shall be included in the amount of compensation of such member used in determining such member's final average salary and shall not be subject to the 15% limitation provided in this subsection. Any contributions by such member on the amount of such increase which exceeds 15% which is not included in compensation shall be returned to the member. Unless otherwise provided by law, beginning with the employer's fiscal year coinciding with or following July 1, 1985, compensation shall include any amounts for tax sheltered annuities or deferred compensation plans. Beginning with the employer's fiscal year which begins in calendar year 1991, compensation shall include amounts under sections 403b, 457 and 125 of the federal internal revenue code of 1986 and, as the board deems appropriate, any other section of the federal internal revenue code of 1986 which defers or excludes amounts from inclusion in income. For purposes of applying limits under the federal internal revenue code "compensation" shall have the meaning as provided in K.S.A. 74-49,123 and amendments thereto;

(10) "credited service" means the sum of participating service and prior service and in no event shall credited service include any service which is credited under another retirement plan authorized under any law of this state;

(11) "dependent" means a parent or child of a member who is dependent upon the member for at least ½ of such parent or child's support;

(12) "effective date" means the date upon which the system becomes effective by operation of law;

(13) "eligible employer" means the state of Kansas, and any county, city, township, special district or any instrumentality of any one or several of the aforementioned or any noncommercial public television or radio station located in this state which receives state funds allocated by the Kansas public broadcasting commission whose employees are covered by social security. If a class or several classes of employees of any above defined employer are not covered by social security, such employer shall be deemed an eligible employer only with respect to such class or those classes of employees who are covered by social security;

(14) "employee" means any appointed or elective officer or employee of a participating employer whose employment is not seasonal or temporary and whose employment requires at least 1,000 hours of work per year, and any such officer or employee who is concurrently employed performing similar or related tasks by two or more participating employers, who each remit employer and employee contributions on behalf of such officer or employee to the system, and whose combined employment is not seasonal or temporary, and whose combined employment requires at least 1,000 hours of work per year, but not including: (A) Any employee who is a contributing member of the United States civil service retirement system; (B) any employee who is a contributing member of the federal employees retirement system; (C) any employee who is a leased employee as provided in section 414 of the federal

internal revenue code of a participating employer; and (D) any employee or class of employees specifically exempted by law. After June 30, 1975, no person who is otherwise eligible for membership in the Kansas public employees retirement system shall be barred from such membership by reason of coverage by, eligibility for or future eligibility for a retirement annuity under the provisions of K.S.A. 74-4925 and amendments thereto, except that no person shall receive service credit under the Kansas public employees retirement system for any period of service for which benefits accrue or are granted under a retirement annuity plan under the provisions of K.S.A. 74-4925 and amendments thereto. After June 30, 1982, no person who is otherwise eligible for membership in the Kansas public employees retirement system shall be barred from such membership by reason of coverage by, eligibility for or future eligibility for any benefit under another retirement plan authorized under any law of this state, except that no such person shall receive service credit under the Kansas public employees retirement system for any period of service for which any benefit accrues or is granted under any such retirement plan. Employee shall include persons who are in training at or employed by, or both, a sheltered workshop for the blind operated by the secretary of social and rehabilitation services. The entry date for such persons shall be the beginning of the first pay period of the fiscal year commencing in calendar year 1986. Such persons shall be granted prior service credit in accordance with K.S.A. 74-4913 and amendments thereto. However, such persons classified as home industry employees shall not be covered by the retirement system. Employees shall include any member of a board of county commissioners of any county and any council member or commissioner of a city whose compensation is equal to or exceeds \$5,000 per year;

(15) "entry date" means the date as of which an eligible employer joins the system. The first entry date pursuant to this act is January 1, 1962;

(16) "executive director" means the managing officer of the system employed by the board under this act;

(17) "final average salary" means in the case of a member who retires prior to January 1, 1977, and in the case of a member who retires after January 1, 1977, and who has less than five years of participating service after January 1, 1967, the average highest annual compensation paid to such member for any five years of the last 10 years of participating service immediately preceding retirement or termination of employment, or in the case of a member who retires on or after January 1, 1977, and who has five or more years of participating service after January 1, 1967, the average highest annual compensation paid to such member on or after January 1, 1967, for any five years of participating service preceding retirement or termination of employment, or, in any case, if participating service is less than five years, then the average annual compensation paid to the member during the full period of participating service, or, in any case, if the member has less than one calendar year of participating service such member's final average salary shall be computed by multiplying such member's highest monthly salary received in that year by 12; in the case of a member who became a member under subsection (3) of K.S.A. 74-4925 and amendments thereto, or who became a member with a participating employer as defined in subsection (3) of K.S.A. 74-4931 and amendments thereto and who elects to have compensation paid in other than 12 equal installments, such compensation shall be annualized as if the member had elected to receive 12 equal installments for any such periods preceding retirement; in the case of a member who retires after July 1, 1987, the average highest annual compensation paid to such member for any four years of participating service preceding retirement or termination of employment; in the case of a member who retires on or after July 1, 1993, whose date of membership in the system is prior to July 1, 1993, and any member who is in such member's membership waiting period on July 1, 1993, and whose date of membership in the system is on or after July 1, 1993, the average highest annual compensation, as defined in subsection (9), paid to such member for any four years of participating service preceding retirement or termination of employment or the average highest annual salary, as defined in subsection (34), paid to such member for any three years of participating service preceding retirement or termination of employment, whichever is greater; and in the case of a member who retires on or after July 1, 1993, and whose date of membership in the system is on or after July 1, 1993, the average highest annual salary, as defined in subsection (34), paid to such member for any three years of participating

service preceding retirement or termination of employment. Final average salary shall not include any purchase of participating service credit by a member as provided in subsection (2) of K.S.A. 74-4919h and amendments thereto which is completed within five years of retirement. For any application to purchase or repurchase service credit for a certain period of service as provided by law received by the system after May 17, 1994, for any member who will have contributions deducted from such member's compensation at a percentage rate equal to two or three times the employee's rate of contribution or will begin paying to the system a lump-sum amount for such member's purchase or repurchase and such deductions or lump-sum payment commences after the commencement of the first payroll period in the third quarter, "final average salary" shall not include any amount of compensation or salary which is based on such member's purchase or repurchase. Any application to purchase or repurchase multiple periods of service shall be treated as multiple applications. For purposes of this subsection, the date that such member is first hired as an employee for members who are employees of employers that elected to participate in the system on or after January 1, 1994, shall be the date that such employee's employer elected to participate in the system. In the case of any former member who was eligible for assistance pursuant to K.S.A. 74-4925 and amendments thereto prior to July 1, 1998, for the purpose of calculating final average salary of such member, such member's final average salary shall be based on such member's salary while a member of the system or while eligible for assistance pursuant to K.S.A. 74-4925 and amendments thereto, whichever is greater;

(18) "fiscal year" means, for the Kansas public employees retirement system, the period commencing July 1 of any year and ending June 30 of the next;

(19) "Kansas public employees retirement fund" means the fund created by this act for payment of expenses and benefits under the system and referred to as the fund;

(20) "leave of absence" means a period of absence from employment without pay, authorized and approved by the employer, and which after the effective date does not exceed one year;

(21) "member" means an eligible employee who is in the system and is making the required employee contributions; any former employee who has made the required contributions to the system and has not received a refund if such member is within five years of termination of employment with a participating employer; or any former employee who has made the required contributions to the system, has not yet received a refund and has been granted a vested benefit;

(22) "military service" means service in the uniformed forces of the United States, for which retirement benefit credit must be given under the provisions of USERRA or service in the armed forces of the United States or in the commissioned corps of the United States public health service, which service is immediately preceded by a period of employment as an employee or by the entering into of an employment contract with a participating employer and is followed by return to employment as an employee with the same or another participating employer within 12 months immediately following discharge from such military service, except that if the board determines that such return within 12 months was made impossible by reason of a service-connected disability, the period within which the employee must return to employment with a participating employer shall be extended not more than two years from the date of discharge or separation from military service;

(23) "normal retirement date" means the date on or after which a member may retire with full retirement benefits pursuant to K.S.A. 74-4914 and amendments thereto;

(24) "participating employer" means an eligible employer who has agreed to make contributions to the system on behalf of its employees;

(25) "participating service" means the period of employment after the entry date for which credit is granted a member;

(26) "prior service" means the period of employment of a member prior to the entry date for which credit is granted a member under this act;

(27) "prior service annual salary" means the highest annual salary, not including any amounts received as payment for overtime or as reimbursement for travel or moving expense, received for personal services by the member from the current employer in any one of the three calendar years immediately preceding January 1, 1962, or the entry date of the employer, whichever is later, except that if a member entered the employment of the

state during the calendar year 1961, the prior service annual salary shall be computed by multiplying such member's highest monthly salary received in that year by 12;

(28) "retirant" means a member who has retired under this system;

(29) "retirement benefit" means a monthly income or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to this act or as otherwise allowed to be paid at the discretion of the board, with benefits accruing from the first day of the month coinciding with or following retirement and ending on the last day of the month in which death occurs. Upon proper identification a surviving spouse may negotiate the warrant issued in the name of the retirant. If there is no surviving spouse, the last warrant shall be payable to the designated beneficiary;

(30) "retirement system" or "system" means the Kansas public employees retirement system as established by this act and as it may be amended;

(31) "social security" means the old age, survivors and disability insurance section of the federal social security act;

(32) "total disability" means a physical or mental disability which prevents the member from engaging, for remuneration or profit, in any occupation for which the member is reasonably suited by education, training or experience;

(33) "trust" means an express trust, created by a trust instrument, including a will, designated by a member to receive payment of the insured death benefit under K.S.A. 74-4927 and amendments thereto and payment of the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto. A designation of a trust shall be filed with the board. If there is a designated trust at the time of the member's death, the insured death benefit for the member under K.S.A. 74-4927 and amendments thereto and the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto shall be paid to the trust in lieu of the member's beneficiary. If no will is admitted to probate within six months after the death of the member or no trustee qualifies within such six months or if the designated trust fails, for any reason whatsoever, the insured death benefit under K.S.A. 74-4927 and amendments thereto and the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto shall be paid in accordance with the provisions of subsection (7) of this section as in other cases where there is no named beneficiary living at the time of the member's death and any payments so made shall be a full discharge and release to the system from any further claims;

(34) "salary" means all salary and wages payable to a member for personal services performed for a participating employer, including maintenance or any allowance in lieu thereof provided a member as part of salary. Salary shall not include reimbursement for travel or moving expenses, payment for accumulated sick leave or vacation or annual leave, severance pay or any other payments to the member determined by the board to not be payments for personal services performed for a participating employer constituting salary or on and after July 1, 1994, payment pursuant to an early retirement incentive program made prior to the retirement of the member. When the salary of a member who remains in substantially the same position during any two consecutive years of participating service used in calculating final average salary is increased by an amount which exceeds 15%, then the amount of such increase which exceeds 15% shall not be included in salary. Any contributions by such member on the amount of such increase which exceeds 15% which is not included in compensation shall be returned to the member. Unless otherwise provided by law, salary shall include any amounts for tax sheltered annuities or deferred compensation plans. Salary shall include amounts under sections 403b, 457 and 125 of the federal internal revenue code of 1986 and, as the board deems appropriate, any other section of the federal internal revenue code of 1986 which defers or excludes amounts from inclusion in income. For purposes of applying limits under the federal internal revenue code "salary" shall have the meaning as provided in K.S.A. 74-49,123 and amendments thereto. In any case, if participating service is less than three years, then the average annual salary paid to the member during the full period of participating service, or, in any case, if the member has less than one calendar year of participating service such member's final average salary shall be computed by multiplying such member's highest monthly salary received in that year by 12;

(35) "federal internal revenue code" means the federal internal revenue code of 1954 or 1986, as in effect on July 1, 2002, and as applicable to a governmental plan; and

(36) "USERRA" means the federal uniformed services employment and reemployment rights act of 1994 as in effect on July 1, 1998.

Sec. 3. K.S.A. 2003 Supp. 74-4920 is hereby amended to read as follows: 74-4920. (1) (a) Upon the basis of each annual actuarial valuation and appraisal as provided for in subsection (3)(a) of K.S.A. 74-4908 and amendments thereto, the board shall certify, on or before July 15 of each year, to the division of the budget in the case of the state and to the agent for each other participating employer an actuarially determined estimate of the rate of contribution which will be required, together with all accumulated contributions and other assets of the system, to be paid by each such participating employer to pay all liabilities which shall exist or accrue under the system, including amortization of the actuarial accrued liability over a period of 40 years commencing on July 1, 1993, and the actuarial accrued liability for members of the faculty and other persons who are employed by the state board of regents or by educational institutions under its management assisted by the state board of regents in the purchase of retirement annuities as provided in K.S.A. 74-4925 and amendments thereto, as provided in this section *as determined by the board*. The actuarial accrued liability for all participating employers other than the state board of regents relating to members of the faculty and other persons described in this section, shall be amortized by annual payments that increase 4% for each year remaining in the amortization period. For all participating employers other than the state board of regents relating to members of the faculty and other persons described in this section, the projected unit credit *The board shall determine the* actuarial cost method shall to be used in annual actuarial valuations, commencing with the 1993 valuation, to determine the employer contribution rates that shall be certified by the board. The actuarial accrued liability for members of the faculty and other persons described in this subsection assisted by the state board of regents in the purchase of retirement annuities as provided in K.S.A. 74-4925 and amendments thereto shall be amortized by annual level payments over a period of 11 years commencing July 1, 1993. Such certified rate of contribution, *amortization methods and periods and actuarial cost method* shall be based on the standards set forth in subsection (3)(a) of K.S.A. 74-4908 and amendments thereto and shall not be based on any other purpose outside of the needs of the system.

(b) (i) For employers affiliating on and after January 1, 1999, upon the basis of an annual actuarial valuation and appraisal of the system conducted in the manner provided for in K.S.A. 74-4908 and amendments thereto, the board shall certify, on or before July 15 of each year to each such employer an actuarially determined estimate of the rate of contribution which shall be required to be paid by each such employer to pay all of the liabilities which shall accrue under the system from and after the entry date as determined by the board, upon recommendation of the actuary. Such rate shall be termed the employer's participating service contribution and shall be uniform for all participating employers. Such additional liability shall be amortized over a period of 34 years commencing on July 1, 1999, by annual payments that increase 4% for each year remaining in the amortization period *as determined by the board*. For all participating employers described in this section, the ~~projected unit credit~~ *board shall determine the* actuarial cost method shall to be used in annual actuarial valuations to determine the employer contribution rates that shall be certified by the board.

(ii) The board shall determine for each such employer separately an amount sufficient to amortize ~~over a period of not to exceed 34 years commencing July 1, 1999~~, all liabilities for prior service costs which shall have accrued at the time of entry into the system. On the basis of such determination the board shall annually certify to each such employer separately an actuarially determined estimate of the rate of contribution which shall be required to be paid by that employer to pay all of the liabilities for such prior service costs. Such rate shall be termed the employer's prior service contribution.

(2) The division of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services the sum required to satisfy the state's obligation under this act as certified by the board and shall present the same to the legislature for allowance and appropriation.

(3) Each other participating employer shall appropriate and pay to the system a sum sufficient to satisfy the obligation under this act as certified by the board.

(4) Each participating employer is hereby authorized to pay the employer's contribution from the same fund that the compensation for which such contribution is made is paid from or from any other funds available to it for such purpose. Each political subdivision, other than an instrumentality of the state, which is by law authorized to levy taxes for other purposes, may levy annually at the time of its levy of taxes, a tax which may be in addition to all other taxes authorized by law for the purpose of making its contributions under this act and, in the case of cities and counties, to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774 and amendments thereto by cities located in the county, which tax, together with any other fund available, shall be sufficient to enable it to make such contribution. In lieu of levying the tax authorized in this subsection, any taxing subdivision may pay such costs from any employee benefits contribution fund established pursuant to K.S.A. 12-16,102 and amendments thereto. Each participating employer which is not by law authorized to levy taxes as described above, but which prepares a budget for its expenses for the ensuing year and presents the same to a governing body which is authorized by law to levy taxes as described above, may include in its budget an amount sufficient to make its contributions under this act which may be in addition to all other taxes authorized by law. Such governing body to which the budget is submitted for approval, may levy a tax sufficient to allow the participating employer to make its contributions under this act, which tax, together with any other fund available, shall be sufficient to enable the participating employer to make the contributions required by this act.

(5) (a) The rate of contribution certified to a participating employer as provided in this section shall apply during the fiscal year of the participating employer which begins in the second calendar year following the year of the actuarial valuation. ~~For the fiscal year commencing in calendar year 1993, the employer rate of contribution for the state of Kansas and for participating employers under K.S.A. 74-4931 and amendments thereto shall be 3.1% of the amount of compensation upon which members contribute during the period. For the fiscal year commencing in calendar year 1994, the employer rate of contribution for the state of Kansas and for participating employers under K.S.A. 74-4931 and amendments thereto shall be 3.2% of the amount of compensation upon which members contribute during the period. For the fiscal year commencing in calendar year 1994, the employer rate of contribution for participating employers other than the state of Kansas shall be 2.2% of the amount of compensation upon which members contribute during the period. Except as specifically provided in this section, for the fiscal year commencing in calendar year 1995, the rate of contribution certified to a participating employer shall in no event exceed such participating employer's contribution rate for the immediately preceding fiscal year by more than 0.1% of the amount of compensation upon which members contribute during the period.~~

(b) (i) Except as specifically provided in this section, for fiscal years commencing in calendar year 1996 and in each subsequent calendar year, the rate of contribution certified to the state of Kansas shall in no event exceed the state's contribution rate for the immediately preceding fiscal year by more than 0.2% of the amount of compensation upon which members contribute during the period.

(ii) Except as specifically provided in this subsection, for the fiscal years commencing in the following calendar years, the rate of contribution certified to the state of Kansas shall in no event exceed the state's contribution rate for the immediately preceding fiscal year by more than the following amounts expressed as a percentage of compensation upon which members contribute during the period: ~~(A)~~ (A) For the fiscal year commencing in calendar year 2005, an amount not to exceed more than 0.4% of the amount of the immediately preceding fiscal year; ~~(B)~~ (B) for the fiscal year commencing in calendar year 2006, an amount not to exceed more than 0.5% of the amount of the immediately preceding fiscal year; and ( for the fiscal year commencing in calendar year 2007 and in each subsequent calendar year, an amount not to exceed more than 0.6% of the amount of the immediately preceding fiscal ~~years~~ year.



(iii) Except as specifically provided in this section, for fiscal years commencing in calendar year 1997 and in each subsequent calendar year, the rate of contribution certified to participating employers other than the state of Kansas shall in no event exceed such participating employer's contribution rate for the immediately preceding fiscal year by more than 0.15% of the amount of compensation upon which members contribute during the period.

(iv) *Except as specifically provided in this subsection, for the fiscal years commencing in the following calendar years, the rate of contribution certified to participating employers other than the state of Kansas shall in no event exceed the contribution rate for such employers for the immediately preceding fiscal year by more than the following amounts expressed as a percentage of the compensation upon which members contribute during the period: (A) For the fiscal year commencing in calendar year 2006, an amount not to exceed more than 0.4% of the amount of the immediately preceding fiscal year; (B) for the fiscal year commencing in calendar year 2007, an amount not to exceed more than 0.5% of the amount of the immediately preceding fiscal year; and (C) for the fiscal year commencing in calendar year 2008 and in each subsequent calendar year, an amount not to exceed more than 0.6% of the amount of the immediately preceding fiscal year.*

(v) ~~There shall be an employer rate of contribution certified to the state of Kansas and there shall be a separate employer rate of contribution certified to participating employers under K.S.A. 74-4931 and amendments thereto. There shall be a separate employer rate of contribution certified to all other participating employers other than the state of Kansas.~~

(6) The actuarial cost of any legislation enacted in the 1994 session of the Kansas legislature will be included in the June 30, 1994, actuarial valuation in determining contribution rates for participating employers.

(7) The actuarial cost of the provisions of K.S.A. 74-4950i will be included in the June 30, 1998, actuarial valuation in determining contribution rates for participating employers. The actuarial accrued liability incurred for the provisions of K.S.A. 74-4950i shall be amortized over 15 years.

(8) Except as otherwise provided by law, the actuarial cost of any legislation enacted by the Kansas legislature, except the actuarial cost of K.S.A. 74-49,114a, and amendments thereto, shall be in addition to the employer contribution rates certified for the employer contribution rate in the fiscal year immediately following such enactment.

(9) Notwithstanding the provisions of subsection (8), the actuarial cost of the provisions of K.S.A. 74-49,109 *et seq.* and amendments thereto shall be first reflected in employer contribution rates effective with the first day of the first payroll period for the fiscal year 2005. The actuarial accrued liability incurred for the provisions of K.S.A. 74-49,109 *et seq.* and amendments thereto shall be amortized over 10 years.

(10) The board with the advice of the actuary may fix the contribution rates for participating employers joining the system after one year from the first entry date or for employers who exercise the option contained in K.S.A. 74-4912 and amendments thereto at rates different from the rate fixed for employers joining within one year of the first entry date.

(11) For employers affiliating on and after January 1, 1999, the rates of contribution certified to the participating employer as provided in this section shall apply during the fiscal year immediately following such certification, but the rate of contribution during the first year following the employer's entry date shall be equal to 7% of the amount of compensation on which members contribute during the year. Any amount of such first year's contribution which may be in excess of the necessary current service contribution shall be credited by the board to the respective employer's prior service liability.

(12) Employer contributions shall in no way be limited by any other act which now or in the future establishes or limits the compensation of any member.

(13) Notwithstanding any provision of law to the contrary, each participating employer shall remit quarterly, or as the board may otherwise provide, all employee deductions and required employer contributions to the executive director for credit to the Kansas public employees retirement fund within three days after the end of the period covered by the remittance by electronic funds transfer. Remittances of such deductions and contributions received after such date are delinquent. Delinquent payments due under this subsection

shall be subject to interest at the rate established for interest on judgments under subsection (a) of K.S.A. 16-204 and amendments thereto. At the request of the board, delinquent payments which are due or interest owed on such payments, or both, may be deducted from any other moneys payable to such employer by any department or agency of the state.

Sec. 4. K.S.A. 74-4921 is hereby amended to read as follows: 74-4921. (1) There is hereby created in the state treasury the Kansas public employees retirement fund. All employee and employer contributions shall be deposited in the state treasury to be credited to the Kansas public employees retirement fund. The fund is a trust fund and shall be used solely for the exclusive purpose of providing benefits to members and member beneficiaries and defraying reasonable expenses of administering the fund. Investment income of the fund shall be added or credited to the fund as provided by law. All benefits payable under the system, refund of contributions and overpayments, purchases or investments under the law and expenses in connection with the system unless otherwise provided by law shall be paid from the fund. The director of accounts and reports is authorized to draw warrants on the state treasurer and against such fund upon the filing in the director's office of proper vouchers executed by the chairperson or the executive director of the board. As an alternative, payments from the fund may be made by credits to the accounts of recipients of payments in banks, savings and loan associations and credit unions. A payment shall be so made only upon the written authorization and direction of the recipient of payment and upon receipt of such authorization such payments shall be made in accordance therewith. Orders for payment of such claims may be contained on (a) a letter, memorandum, telegram, computer printout or similar writing, or (b) any form of communication, other than voice, which is registered upon magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used for the electronic communication of messages.

(2) The board shall have the responsibility for the management of the fund and shall discharge the board's duties with respect to the fund solely in the interests of the members and beneficiaries of the system for the exclusive purpose of providing benefits to members and such member's beneficiaries and defraying reasonable expenses of administering the fund and shall invest and reinvest moneys in the fund and acquire, retain, manage, including the exercise of any voting rights and disposal of investments of the fund within the limitations and according to the powers, duties and purposes as prescribed by this section.

(3) Moneys in the fund shall be invested and reinvested to achieve the investment objective which is preservation of the fund to provide benefits to members and member beneficiaries, as provided by law and accordingly providing that the moneys are as productive as possible, subject to the standards set forth in this act. No moneys in the fund shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

(4) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund, the board shall exercise the judgment, care, skill, prudence and diligence under the circumstances then prevailing, which persons of prudence, discretion and intelligence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and not in regard to speculation but in regard to the permanent disposition of similar funds, considering the probable income as well as the probable safety of their capital.

(5) Notwithstanding subsection (4): (a) Total investments in common stock may be made in the amount of up to 60% of the total book value of the fund;

(b) the board may invest or reinvest moneys of the fund in alternative investments if the following conditions are satisfied:

(i) The total of ~~such~~ *the annual alternative investments investment* does not exceed more than ~~5%~~ *1%* of the total *market value of* investment assets of the fund. ~~If the total of such alternative investments exceeds more than 5% of the total investment assets of the fund on the effective date of this act, the board shall not invest or reinvest any moneys of the fund in alternative investments until the total of such alternative investments is less the 5% of the total investment assets of the fund subject to the 5% limitation contained in this~~

subsection. Nothing in this subsection requires the board to liquidate or sell the system's holdings in any alternative investment held by the system on the effective date of this act, unless such liquidation or sale would be in the best interest of the members and beneficiaries of the system and be prudent under the standards contained in this section. The 5% limitation contained in this section shall not have been violated if the total of such alternative investments exceeds 5% of the total investment assets of the fund as a result of market forces acting to increase the value of such alternative investments relative to the rest of the system's investments, however, the board shall not invest or reinvest any moneys of the fund in alternative investments until the total of such alternative investments is less than 5% of the total investment assets of the fund subject to the 5% limitation contained in this subsection *as measured from the end of the preceding calendar year*;

(ii) if in addition to the system, there are at least two other sophisticated investors, as defined by section 301 of the securities and exchange act of 1933;

(iii) the system's share in any individual alternative investment is limited to an investment representing not more than 20% of any such individual alternative investment;

(iv) the system has received a favorable and appropriate recommendation from a qualified, independent expert in investment management or analysis in that particular type of alternative investment;

(v) the alternative investment is consistent with the system's investment policies and objectives as provided in subsection (6);

(vi) the individual alternative investment does not exceed more than 2.5% of the total alternative investments made under this subsection. If the alternative investment is made pursuant to participation by the system in a multi-investor pool, the 2.5% limitation contained in this subsection is applied to the underlying individual assets of such pool and not to investment in the pool itself. The total of such alternative investments made pursuant to participation by the system in any one individual multi-investor pool shall not exceed more than 20% of the total of alternative investments made by the system pursuant to this subsection. Nothing in this subsection requires the board to liquidate or sell the system's holdings in any alternative investments made pursuant to participation by the system in any one individual multi-investor pool held by the system on the effective date of this act, unless such liquidation or sale would be in the best interest of the members and beneficiaries of the system and be prudent under the standards contained in this section. The 20% limitation contained in this subsection shall not have been violated if the total of such investment in any one individual multi-investor pool exceeds 20% of the total alternative investments of the fund as a result of market forces acting to increase the value of such a multi-investor pool relative to the rest of the system's alternative investments; however, the board shall not invest or reinvest any moneys of the fund in any such individual multi-investor pool until the value of such individual multi-investor pool is less than 20% of the total alternative investments of the fund;

(vii) the board has received and considered the investment manager's due diligence findings submitted to the board as required by subsection (6)(c); and

(viii) prior to the time the alternative investment is made, the system has in place procedures and systems to ensure that the investment is properly monitored and investment performance is accurately measured.

For purposes of this act, "alternative investment" means nontraditional investments outside the established nationally recognized public stock exchanges and government securities market. Alternative investments shall include, but not be limited to, private placements, venture capital, partnerships, limited partnerships and leveraged buyout partnerships; and

(c) except as otherwise provided, the board may invest or reinvest moneys of the fund in real estate investments if the following conditions are satisfied:

(i) The system has received a favorable and appropriate recommendation from a qualified, independent expert in investment management or analysis in that particular type of real estate investment;

(ii) the real estate investment is consistent with the system's investment policies and objectives as provided in subsection (6); and

(iii) the ~~board~~ *system* has received and considered the investment manager's due diligence findings ~~submitted to the board as required by subsection (6)(c).~~

(6) Subject to the objective set forth in subsection (3) and the standards set forth in subsections (4) and (5) the board shall formulate policies and objectives for the investment and reinvestment of moneys in the fund and the acquisition, retention, management and disposition of investments of the fund. Such policies and objectives shall include:

(a) Specific asset allocation standards and objectives;

(b) establishment of criteria for evaluating the risk versus the potential return on a particular investment;

(c) a requirement that all investment managers submit such manager's due diligence findings on each investment to the board or investment advisory committee for approval or rejection prior to making any alternative investment;

(d) a requirement that all investment managers shall immediately report all instances of default on investments to the board and provide the board with recommendations and options, including, but not limited to, curing the default or withdrawal from the investment; and

(e) establishment of criteria that would be used as a guideline for determining when no additional add-on investments or reinvestments would be made and when the investment would be liquidated.

The board shall review such policies and objectives, make changes considered necessary or desirable and readopt such policies and objectives on an annual basis.

(7) The board may enter into contracts with one or more persons whom the board determines to be qualified, whereby the persons undertake to perform the functions specified in subsection (2) to the extent provided in the contract. Performance of functions under contract so entered into shall be paid pursuant to rates fixed by the board subject to provisions of appropriation acts and shall be based on specific contractual fee arrangements. The system shall not pay or reimburse any expenses of persons contracted with pursuant to this subsection, except that after approval of the board, the system may pay approved investment related expenses subject to provisions of appropriation acts. The board shall require that a person contracted with to obtain commercial insurance which provides for errors and omissions coverage for such person in an amount to be specified by the board, provided that such coverage shall be at least the greater of \$500,000 or 1% of the funds entrusted to such person up to a maximum of \$10,000,000. The board shall require a person contracted with to give a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the board, with corporate surety authorized to do business in this state. Such persons contracted with the board pursuant to this subsection and any persons contracted with such persons to perform the functions specified in subsection (2) shall be deemed to be agents of the board and the system in the performance of contractual obligations.

(8) (a) In the acquisition or disposition of securities, the board may rely on the written legal opinion of a reputable bond attorney or attorneys, the written opinion of the attorney of the investment counselor or managers, or the written opinion of the attorney general certifying the legality of the securities.

(b) The board shall employ or retain qualified investment counsel or counselors or may negotiate with a trust company to assist and advise in the judicious investment of funds as herein provided.

(9) (a) Except as provided in subsection (7) and this subsection, the custody of money and securities of the fund shall remain in the custody of the state treasurer, except that the board may arrange for the custody of such money and securities as it considers advisable with one or more member banks or trust companies of the federal reserve system or with one or more banks in the state of Kansas, or both, to be held in safekeeping by the banks or trust companies for the collection of the principal and interest or other income or of the proceeds of sale. The services provided by the banks or trust companies shall be paid pursuant to rates fixed by the board subject to provisions of appropriation acts.

(b) The state treasurer and the board shall collect the principal and interest or other income of investments or the proceeds of sale of securities in the custody of the state treasurer and pay same when so collected into the fund.

(c) The principal and interest or other income or the proceeds of sale of securities as provided in clause (a) of this subsection (9) shall be reported to the state treasurer and the board and credited to the fund.

(10) The board shall with the advice of the director of accounts and reports establish the requirements and procedure for reporting any and all activity relating to investment functions provided for in this act in order to prepare a record monthly of the investment income and changes made during the preceding month. The record will reflect a detailed summary of investment, reinvestment, purchase, sale and exchange transactions and such other information as the board may consider advisable to reflect a true accounting of the investment activity of the fund.

(11) The board shall provide for an examination of the investment program annually. The examination shall include an evaluation of current investment policies and practices and of specific investments of the fund in relation to the objective set forth in subsection (3), the standard set forth in subsection (4) and other criteria as may be appropriate, and recommendations relating to the fund investment policies and practices and to specific investments of the fund as are considered necessary or desirable. The board shall include in its annual report to the governor as provided in K.S.A. 74-4907, and amendments thereto, a report or a summary thereof covering the investments of the fund.

(12) (a) An annual financial-compliance audit of the system, including any performance audit subjects which are directed to be included in such annual audit by the legislative post audit committee, performance audits of the system as prescribed under the Kansas governmental operations law, and such other audits as are directed by the legislative post audit committee under the Kansas legislative post audit act shall be conducted. The annual financial-compliance audit shall include, but not be limited to, a review of alternative investments of the system with any estimates of permanent impairments to the value of such alternative investments reported by the system pursuant to K.S.A. 74-4907, and amendments thereto.

(b) In accordance with this subsection (12), the annual financial-compliance audit may include one or more performance audit subjects as directed by the legislative post audit committee. In considering performance audit subjects to be included in any financial-compliance audit conducted pursuant to this subsection (12), the legislative post audit committee shall consider recommendations and requests for performance audits, relating to the system or the management thereof, by the joint committee on pensions, investments and benefits or by any other committee or individual member of the legislature. Commencing with the financial-compliance audit for the fiscal year ending June 30, 1998, the legislative post audit committee shall specify if one or more performance audit subjects shall be included in the financial-compliance audit conducted pursuant to this subsection (12), in addition to such other subjects as may be directed to be included in the financial-compliance audit by the legislative post audit committee. Except as otherwise determined by the legislative post audit committee pursuant to this subsection (12), commencing with the financial-compliance audit for the fiscal year ending June 30, 1998, one or more performance audit subjects specified by the legislative post audit committee shall be included at least once every two fiscal years in a financial-compliance audit conducted pursuant to this subsection (12). The legislative post audit committee may direct that one or more performance audit subjects are to be included in a financial-compliance audit conducted pursuant to this subsection (12) not more than once during a specific period of three fiscal years, in lieu of once every two fiscal years.

(c) The auditor to conduct the financial-compliance audit required pursuant to this subsection (12) shall be specified in accordance with K.S.A. 46-1122, and amendments thereto. If the legislative post audit committee specifies under such statute that a firm, as defined by K.S.A. 46-1112, and amendments thereto, is to perform all or part of the audit work of such audit, such firm shall be selected and shall perform such audit work as provided in K.S.A. 46-1123, and amendments thereto, and K.S.A. 46-1125 through 46-1127, and amendments thereto. The audits required pursuant to this subsection (12) shall be conducted in accordance with generally accepted governmental auditing standards. The financial-compliance audit required pursuant to this subsection (12) shall be conducted as soon after the close of the fiscal year as practicable, but shall be completed no later than

six months after the close of the fiscal year. The post auditor shall annually compute the reasonably anticipated cost of providing the financial-compliance audit pursuant to this subsection (12), subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon such approval, the system shall reimburse the division of post audit for the amount approved by the contract audit committee. The furnishing of the financial-compliance audit pursuant to this subsection (12) shall be a transaction between the legislative post auditor and the system and shall be settled in accordance with the provisions of K.S.A. 75-5516, and amendments thereto.

(d) Any internal assessment or examination of alternative investments of the system performed by any person or entity employed or retained by the board which evaluates or monitors the performance of alternative investments shall be reported to the legislative post auditor so that such report may be reviewed in accordance with the annual financial-compliance audits conducted pursuant to this subsection (12).

Sec. 5. K.S.A. 2003 Supp. 74-4927 is hereby amended to read as follows: 74-4927. (1) The board may establish a plan of death and long-term disability benefits to be paid to the members of the retirement system as provided by this section. The long-term disability benefit shall not be payable until the member has been prevented from carrying out each and every duty pertaining to the member's employment as a result of sickness or injury for a period of 180 days and the annual benefit shall not exceed an amount equal to 66 2/3% of the member's annual rate of compensation on the date such disability commenced and shall be payable in equal monthly installments. In the event that a member's compensation is not fixed at an annual rate but on an hourly, weekly, biweekly, monthly or any other basis than annual, the board shall prescribe by rule and regulation a formula for establishing a reasonable rate of annual compensation to be used in determining the amount of the death or long-term disability benefit for such member. Such plan shall provide that:

(A) For deaths occurring prior to January 1, 1987, the right to receive such death benefit shall cease upon the member's attainment of age 70 or date of retirement whichever first occurs. The right to receive such long-term disability benefit shall cease (i) for a member who becomes eligible for such benefit before attaining age 60, upon the date that such member attains age 65 or the date of such member's retirement, whichever first occurs, (ii) for a member who becomes eligible for such benefit at or after attaining age 60, the date that such member has received such benefit for a period of five years, upon the date that such member attains age 70, or upon the date of such member's retirement, whichever first occurs, (iii) for all disabilities incurred on or after January 1, 1987, for a member who becomes eligible for such benefit at or after attaining age 70, the date that such member has received such benefit for a period of 12 months or upon the date of such member's retirement, whichever first occurs, and (iv) for all disabilities incurred on or after January 1, 1987, for a member who becomes eligible for such benefit at or after attaining age 75, the date that such member has received such benefit for a period of six months or upon the date of such member's retirement, whichever first occurs.

(B) Long-term disability benefit payments shall be in lieu of any accidental total disability benefit that a member may be eligible to receive under subsection (3) of K.S.A. 74-4916 and amendments thereto. The member must make an initial application for social security disability benefits and, if denied such benefits, the member must pursue and exhaust all administrative remedies of the social security administration which include, but are not limited to, reconsideration and hearings. Such plan may provide that any amount which a member receives as a social security benefit or a disability benefit or compensation from any source by reason of any employment including, but not limited to, workers compensation benefits may be deducted from the amount of long-term disability benefit payments under such plan. During the period in which such member is pursuing such administrative remedies prior to a final decision of the social security administration, social security disability benefits may be estimated and may be deducted from the amount of long-term disability benefit payments under such plan. Such long-term disability payments shall accrue from the later of the 181st day of total disability or the first day upon which the member ceases to draw compensation from the employer. If the social security benefit, workers compensation benefit, other income or wages or other disability benefit by reason of employment, or any part thereof, is paid in a lump-sum, the amount of the reduction shall

be calculated on a monthly basis over the period of time for which the lump-sum is given. In no case shall a member who is entitled to receive long-term disability benefits receive less than \$50 per month. As used in this section, "workers compensation benefits" means the total award of disability benefit payments under the workers compensation act notwithstanding any payment of attorney fees from such benefits as provided in the workers compensation act.

(C) The plan may include other provisions relating to qualifications for benefits; schedules and graduation of benefits; limitations of eligibility for benefits by reason of termination of employment or membership; conversion privileges; limitations of eligibility for benefits by reason of leaves of absence, military service or other interruptions in service; limitations on the condition of long-term disability benefit payment by reason of improved health; requirements for medical examinations or reports; or any other reasonable provisions as established by rule and regulation of uniform application adopted by the board.

(D) On and after April 30, 1981, the board may provide under the plan for the continuation of long-term disability benefit payments to any former member who forfeits the entitlement to continued service credit under the retirement system or continued assistance in the purchase of retirement annuities under K.S.A. 74-4925 and amendments thereto and to continued long-term disability benefit payments and continued death benefit coverage, by reason of the member's withdrawal of contributions from the retirement system or the repurchase of retirement annuities which were purchased with assistance received under K.S.A. 74-4925 and amendments thereto. Such long-term disability benefit payments may be continued until such individual dies, attains age 65 or is no longer disabled, whichever occurs first.

(E) Any visually impaired person who is in training at and employed by a sheltered workshop for the blind operated by the secretary of social and rehabilitation services and who would otherwise be eligible for the long-term disability benefit as described in this section shall not be eligible to receive such benefit due to visual impairment as such impairment shall be determined to be a preexisting condition.

(2) (A) In the event that a member becomes eligible for a long-term disability benefit under the plan authorized by this section such member shall be given participating service credit for the entire period of such disability. Such member's final average salary shall be computed in accordance with subsection (17) of K.S.A. 74-4902 and amendments thereto except that the years of participating service used in such computation shall be the years of salaried participating service.

(B) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding retirement, such member's final average salary shall be adjusted upon retirement by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's final average salary shall be adjusted upon retirement by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's final average salary shall be adjusted upon retirement by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers as published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of retirement, for each year of disability after July 1, 1998.

(C) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding death, such member's current annual rate shall be adjusted by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's current annual rate shall be adjusted upon death by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's current annual rate shall be adjusted upon death by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of death, for each year of disability after July 1, 1998.

(3) (A) To carry out the legislative intent to provide, within the funds made available therefor, the broadest possible coverage for members who are in active employment or involuntarily absent from such active employment, the plan of death and long-term disability benefits shall be subject to adjustment from time to time by the board within the limitations of this section. The plan may include terms and provisions which are consistent with the terms and provisions of group life and long-term disability policies usually issued to those employers who employ a large number of employees. The board shall have the authority to establish and adjust from time to time the procedures for financing and administering the plan of death and long-term disability benefits authorized by this section. Either the insured death benefit or the insured disability benefit or both such benefits may be financed directly by the system or by one or more insurance companies authorized and licensed to transact group life and group accident and health insurance in this state.

(B) The board may contract with one or more insurance companies, which are authorized and licensed to transact group life and group accident and health insurance in Kansas, to underwrite or to administer or to both underwrite and administer either the insured death benefit or the long-term disability benefit or both such benefits. Each such contract with an insurance company under this subsection shall be entered into on the basis of competitive bids solicited and administered by the board. Such competitive bids shall be based on specifications prepared by the board.

(i) In the event the board purchases one or more policies of group insurance from such company or companies to provide either the insured death benefit or the long-term disability benefit or both such benefits, the board shall have the authority to subsequently cancel one or more of such policies and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves established by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund.

(ii) In addition, the board shall have the authority to cancel any policy or policies of group life and long-term disability insurance in existence on the effective date of this act and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves established by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund. Notwithstanding any other provision of law, no premium tax shall be due or payable by any such company or companies on any such policy or policies purchased by the board nor shall any brokerage fees or commissions be paid thereon.

(4) (A) There is hereby created in the state treasury the group insurance reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. The cost of the plan of death and long-term disability benefits shall be paid from the group insurance reserve fund, which shall be administered by the board. Except as otherwise provided by this subsection, each participating employer shall appropriate and pay to the system in such manner as the board shall prescribe in addition to the employee and employer retirement contributions an amount equal to .6% of the amount of compensation on which the members' contributions to the Kansas public employees retirement system are based for deposit in the group insurance reserve fund. Notwithstanding the provisions of this subsection, no participating employer shall appropriate and pay to the system any amount provided for by this subsection for deposit in the group insurance reserve fund for the period commencing on April 1, 2000, and ending on December 31, 2001, for the period commencing July 1, 2002, and ending December 31, 2002, or for the period commencing April 1, 2003, and ending on June 30, 2004.

(B) The director of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services a sum to pay the state's contribution to the group insurance reserve fund as provided by this section and shall present the same to the legislature for allowances and appropriation.

(C) The provisions of subsection (4) of K.S.A. 74-4920 and amendments thereto shall apply for the purpose of providing the funds to make the contributions to be deposited to the group insurance reserve fund.



(D) Any dividend or retrospective rate credit allowed by an insurance company or companies shall be credited to the group insurance reserve fund and the board may take such amounts into consideration in determining the amounts of the benefits under the plan authorized by this section.

(5) The death benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as insured death benefit. The long-term disability benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as long-term disability benefit.

(6) The board is hereby authorized to establish an optional death benefit plan. Except as provided in subsection (7), such optional death benefit plan shall be made available to all employees who are covered or may hereafter become covered by the plan of death and long-term disability benefits authorized by this section. The cost of the optional death benefit plan shall be paid by the applicant either by means of a system of payroll deductions or direct payment to the board. The board shall have the authority and discretion to establish such terms, conditions, specifications and coverages as it may deem to be in the best interest of the state of Kansas and its employees which should include term death benefits for the person's period of active state employment regardless of age, but in no case, ~~on and after January 1, 1999,~~ shall the maximum allowable coverage be less than \$200,000. The cost of the optional death benefit plan shall not be established on such a basis as to unreasonably discriminate against any particular age group. The board shall have full administrative responsibility, discretion and authority to establish and continue such optional death benefit plan and the director of accounts and reports of the department of administration shall when requested by the board and from funds appropriated or available for such purpose establish a system to make periodic deductions from state payrolls to cover the cost of the optional death benefit plan coverage under the provisions of this subsection (6) and shall remit all deductions together with appropriate accounting reports to the system. There is hereby created in the state treasury the optional death benefit plan reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. All funds received by the board, whether in the form of direct payments, payroll deductions or otherwise, shall be accounted for separately from all other funds of the retirement system and shall be paid into the optional death benefit plan reserve fund, from which the board is authorized to make the appropriate payments and to pay the ongoing costs of administration of such optional death benefit plan as may be incurred in carrying out the provisions of this subsection (6).

(7) Any employer other than the state of Kansas which is currently a participating employer of the Kansas public employees retirement system or is in the process of affiliating with the Kansas public employees retirement system may also elect to affiliate for the purposes of subsection (6). All such employers shall make application for affiliation with such system, to be effective on January 1 next following application. ~~Such optional death benefit plan shall not be available for employees of employers specified under this subsection until after July 1, 1999.~~

(8) *For purposes of the death benefit provided under the plan of death and long-term disability benefits authorized by this section and the optional death benefit plan authorized by subsection (6), commencing on the effective date of this act, in the case of medical or financial hardship of the member as determined by the executive director, or otherwise commencing January 1, 2005, the member may name a beneficiary or beneficiaries other than the beneficiary or beneficiaries named by the member to receive other benefits as provided by the provisions of K.S.A. 74-4901 et seq., and amendments thereto.*

Sec. 6. K.S.A. 74-4957 is hereby amended to read as follows: 74-4957. (1) The normal retirement date for a member of the system who is appointed or employed prior to July 1, 1989, and who does not make an election pursuant to K.S.A. 74-4955a and amendments thereto shall be the first day of the month coinciding with or following termination of employment not followed by employment with any participating employer within 30 days, and the attainment of age 55 and the completion of 20 years of credited service *or the completion of 32 years of credited service regardless of the age of the member.* Any member

may retire on such member's normal retirement date or on the first day of any month thereafter.

(2) *Early retirement.* Any member who is appointed or employed prior to July 1, 1989, and who does not make an election pursuant to K.S.A. 74-4955a and amendments thereto may retire before such member's normal retirement date on the first day of any month coinciding with or following termination of employment not followed by employment with any participating employer within 30 days and the attainment of age 50 and the completion of 20 years of credited service.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section and K.S.A. 74-4955a, 74-4957a, 74-4958a, 74-4960a, 74-4963a and 74-4964a and amendments thereto, the normal retirement date for any member who was, up to the entry date of such member's employer, covered by a pension system under the provisions of K.S.A. 13-14a01 to 13-14a14, inclusive, or 14-10a01 to 14-10a15, inclusive, and amendments thereto, shall be the first day of the month coinciding with or following the attainment of age 50 and the completion of 25 years of credited service.

(4) In no event shall a member be eligible to retire until such member has been a contributing member of the system for 12 months of participating service, and shall have given such member's employer prior notice of retirement.

(5) If a retirant who retired on or after July 1, 1994, is employed, elected or appointed in or to any position or office for which compensation for service is paid in an amount equal to \$15,000 or more in any one such calendar year, by the same state agency or the same police or fire department of any county, city, township or special district or the same sheriff's office of a county during the final two years of such retirant's participation, such retirant shall not receive any retirement benefit for any month for which such retirant serves in such position or office. The participating employer shall report to the system within 30 days of when the compensation paid to the retirant is equal to or exceeds any limitation provided by this section. Any retirant employed by a participating employer in the Kansas police and firemen's retirement system shall not make contributions nor receive additional credit under such system for such service except as provided by this section. Upon request of the executive director of the system, the secretary of revenue shall provide such information as may be needed by the executive director to carry out the provisions of this act.

Sec. 7. K.S.A. 74-4967 is hereby amended to read as follows: 74-4967. (1) Upon the basis of an annual actuarial valuation and appraisal of the system conducted in the manner provided for in K.S.A. 74-4908 and amendments thereto, the board shall certify, on or before July 15 of each year to each participating employer an actuarially determined estimate of the rate of contribution which shall be required to be paid by each such participating employer to pay all of the liabilities which shall accrue under the system from and after the entry date as determined by the board, upon recommendation of the actuary. Such rate shall be uniform for all participating employers, and shall be comprised of a rate for benefits accruing after June 30, 1993, and a rate for amortization of the additional liability for benefits provided by this act which is attributable to service rendered before July 1, 1993. Such additional liability shall be amortized ~~over a period of 40 years commencing on July 1, 1993, by annual payments that increase 4% for each year remaining in the amortization period as determined by the board.~~ The employer's rate of contribution determined under this section shall not include the costs of administration of the system.

(2) The board shall determine for each employer separately an amount sufficient to amortize ~~over a period of not to exceed 40 years~~ all liabilities for past service costs which shall have accrued at the time of entry into the system. On the basis of such determination the board shall annually certify to each participating employer separately an actuarially determined estimate of the rate of contribution which shall be required to be paid by that participating employer to pay all of the liabilities for such past service costs. Such rate shall be termed the employer's prior service contribution. The board may enter into agreements with any participating employer which has employees or retirants under the special pension systems established under K.S.A. 13-14a01 to 13-14a14, inclusive, and amendments thereto or K.S.A. 14-10a01 to 14-10a15, inclusive, and amendments thereto, for the purpose of scheduling the payment of such past service costs in an orderly manner which will tend to stabilize the annual total financial burden on such employers in meeting their present and

future obligations under this system and such special systems, but in no event shall the annual prior service contribution be less than the interest cost on the total of such past service liability.

(3) Each participating employer shall appropriate and pay to the system a sum sufficient to satisfy the obligations under this act as certified by the board.

(4) Each participating employer is hereby authorized to pay the employer's contribution from the same fund that the compensation for which such contribution is made is paid from or from any other funds available to it for such purpose. Each employer may levy annually at the time of its levy of taxes, a tax which may be in addition to all other taxes authorized by law for the purpose of making its contributions under this act, and, in the case of cities and counties, to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located in such county which tax, together with any other fund available, shall be sufficient to enable it to make such contribution. In lieu of levying the tax authorized in this subsection, any taxing subdivision may pay such costs from any employee benefits contribution fund established pursuant to K.S.A. 12-16,102 and amendments thereto.

(5) Employer contributions shall in no way be limited by any other act which now or in the future establishes or limits the compensation of any member.

(6) The rate of contribution certified to each participating employer as provided in this section shall apply during the fiscal year of such participating employer which begins in the second calendar year following the year of the actuarial valuation, but the rate of contribution during the first year following the employer's entry date shall be equal to 16% of the amount of compensation on which members contribute during the year.

(7) Each participating employer shall remit quarterly, or as the board may otherwise provide, all employee deductions and required employer contributions to the executive director for credit to the Kansas public employees retirement fund within 20 days after the end of the period covered by the remittance or within 25 days after forms or written instructions from the system were mailed by the system to such employer, whichever is later. Remittances of such deductions and contributions received after such date are delinquent. Delinquent payments due under this subsection (7) shall be subject to interest at the rate established for interest on judgments under subsection (a) of K.S.A. 16-204 and amendments thereto. At the request of the board, delinquent payments which are due or interest owed on such payments, or both, may be deducted from any other moneys payable to such employer by any department or agency of the state.

(8) Except as otherwise provided by law, the actuarial cost of any legislation enacted by the Kansas legislature, except the actuarial cost of K.S.A. 74-49,114a, shall be reflected in the employer contribution rate in the fiscal year immediately following such enactment.

New Sec. 8. Notwithstanding the provisions of K.S.A. 74-4921, and amendments thereto, any employer contributions remitted in accordance with the provisions of K.S.A. 20-2605, 74-4920, 74-4939 and 74-4967, and amendments thereto, for the purpose of paying the actuarial cost of the provisions of K.S.A. 74-49,109 *et seq.*, and amendments thereto, shall be deposited in the KDFFA series 2003H bond debt service fund, which is hereby created in the state treasury. Such fund shall be administered by the Kansas public employees retirement system. The executive director of the Kansas public employees retirement system shall certify to the director of accounts and reports an amount to reimburse the state general fund for bond debt service payments authorized pursuant to law for each fiscal year commencing in fiscal year 2005, and ending in fiscal year 2014. The director of accounts and reports shall transfer such amount certified as provided by this section to the state general fund not later than June 30 of each such fiscal year.

New Sec. 9. On and after the effective date of this act for each fiscal year commencing with fiscal year 2005, notwithstanding the provisions of K.S.A. 74-4939 and amendments thereto or any other statute, all moneys appropriated for the department of education from the state general fund commencing with fiscal year 2005, and each ensuing fiscal year thereafter, by appropriation act of the legislature, in the KPERS employer contributions account and all moneys appropriated for the department of education from the state general fund or any special revenue fund for each fiscal year commencing with fiscal year 2005, and

each ensuing fiscal year thereafter, by any such appropriation act in that account or any other account for payment of employer contributions for school districts, shall be distributed by the department of education to school districts in accordance with this section. Notwithstanding the provisions of K.S.A. 74-4939, and amendments thereto, the department of education shall disburse to each school district that is an eligible employer as specified in subsection (1) of K.S.A. 74-4931 and amendments thereto an amount certified by the board of trustees of the Kansas public employees retirement system which is equal to the participating employer's obligation of such school district to the system in accordance with policies and procedures which are hereby authorized and directed to be adopted by the department of education for the purposes of this section and in accordance with any requirements prescribed by the board of trustees of the Kansas public employees retirement system. Upon receipt of each such disbursement of moneys, the school district shall deposit the entire amount thereof into a special retirement contributions fund of the school district, which shall be established by the school district in accordance with such policies and procedures and which shall be used for the sole purpose of receiving such disbursements from the department of education and making the remittances to the system in accordance with this section and such policies and procedures. Upon receipt of each such disbursement of moneys from the department of education, the school district shall remit, in accordance with the provisions of such policies and procedures and in the manner and on the date or dates prescribed by the board of trustees of the Kansas public employees retirement system, an equal amount to the Kansas public employees retirement system from the special retirement contributions fund of the school district to satisfy such school district's obligation as a participating employer. Notwithstanding the provisions of K.S.A. 74-4939 and amendments thereto, each school district that is an eligible employer as specified in subsection (1) of K.S.A. 74-4931 and amendments thereto shall show within the budget of such school district all amounts received from disbursements into the special retirement contributions fund of such school district. Notwithstanding the provisions of any other statute, no official action of the school board of such school district shall be required to approve a remittance to the system in accordance with this section and such policies and procedures. All remittances of moneys to the system by a school district in accordance with this subsection and such policies and procedures shall be deemed to be expenditures of the school district.

New Sec. 10. (a) (1) Notwithstanding the provisions of K.S.A. 74-4971 and amendments thereto, on or after the effective date of this act, the Kansas highway patrol shall affiliate with the Kansas police and firemen's retirement system established under the provisions of K.S.A. 74-4951 *et seq.* and amendments thereto pursuant to the provisions of this act for membership in the system of members of the capitol area security patrol who have successfully completed the required course of instruction for law enforcement officers approved by the Kansas law enforcement training center and are certified pursuant to the provisions of K.S.A. 74-5607a, and amendments thereto. For purposes of such affiliation for membership in the system of members of the capitol area security patrol, the Kansas highway patrol shall be considered a new participating employer. The Kansas highway patrol shall make application for affiliation with such system in the manner provided by K.S.A. 74-4954 and amendments thereto, to be effective on July 1 next following application. The Kansas highway patrol shall affiliate for membership in the system of such members of the capitol area security patrol for participating service credit.

(2) The Kansas highway patrol shall appropriate and pay a sum sufficient to satisfy any obligations as certified by the board of trustees of the retirement system and the employer contributions of the Kansas highway patrol shall be as provided in subsection (1) of K.S.A. 74-4967 and amendments thereto.

(b) (1) Each such member of the capitol area security patrol employed by the Kansas highway patrol on the date of affiliation, may become a member of the Kansas police and firemen's retirement system on the first day of the payroll period of such member, coinciding with or following the entry date of the Kansas highway patrol as provided in this section, only by filing with the board of trustees of the system, on or before the entry date of the Kansas highway patrol as provided in this section, a written election to become a member of the system. Failure to file such written election shall be presumed to be an election not

to become a member of the system. Such election, whether to become or not to become a member, shall be irrevocable.

(2) Each such member of the capitol area security patrol who is on an authorized leave of absence or is in the military service on the entry date of the Kansas highway patrol as provided in this section may become a member of the Kansas police and firemen's retirement system on the first day of the first payroll period of such member, coinciding with such member's return to active employment and payroll of the Kansas highway patrol, only by filing with the board of trustees of the system within 10 days after such return to active employment a written election to become a member of the system. Failure to file such written election shall be presumed to be an election not to become a member of the system. Such election, whether to become a member or not to become a member, shall be irrevocable.

(c) Every such person who is employed as a member of the capitol area security patrol on or after the entry date of the Kansas Highway patrol into the Kansas police and firemen's retirement system as provided in this section shall become a member of the Kansas police and firemen's retirement system on the first day of such employment.

(d) If the Kansas highway patrol affiliates as provided in this act and each such member of the capitol area security patrol who elects to become a member as provided in this act, the Kansas highway patrol and each such member shall be subject to the provisions of K.S.A. 74-4951 *et seq.* and amendments thereto as applicable.

(e) The division of the budget and the governor shall include in the budget and in the budget request for appropriations for personnel services the amount required to satisfy the employer's obligation under this act as certified by the board of trustees of the system, and shall present the same to the legislature for allowance and appropriations.

(f) The determination of retirement, death or disability benefits shall be computed upon the basis of "credited service" as used in K.S.A. 74-4951 *et seq.*, and amendments thereto, but shall include only participating service with the person's participating employer, commencing on and after the effective date of affiliation by the participating employer with the Kansas police and fireman's retirement system.

New Sec. 11. (a) (1) Notwithstanding the provisions of K.S.A. 74-4971 and amendments thereto, on or after the effective date of this act, the Kansas highway patrol shall affiliate with the Kansas police and firemen's retirement system established under the provisions of K.S.A. 74-4951 *et seq.* and amendments thereto pursuant to the provisions of this act for membership in the system of members of the motor carriers inspection staff of the Kansas highway patrol who have successfully completed the required course of instruction for law enforcement officers approved by the Kansas law enforcement training center and are certified pursuant to the provisions of K.S.A. 74-5607a, and amendments thereto. For purposes of such affiliation for membership in the system of such members, the Kansas highway patrol shall be considered a new participating employer. The Kansas highway patrol shall make application for affiliation with such system in the manner provided by K.S.A. 74-4954 and amendments thereto, to be effective on July 1 next following application. The Kansas highway patrol shall affiliate for membership in the system of such members for participating service credit.

(2) The Kansas highway patrol shall appropriate and pay a sum sufficient to satisfy any obligations as certified by the board of trustees of the retirement system and the employer contributions of the Kansas highway patrol shall be as provided in subsection (1) of K.S.A. 74-4967 and amendments thereto.

(b) (1) Each such member of the motor carriers inspection staff employed by the Kansas highway patrol on the date of affiliation, may become a member of the Kansas police and firemen's retirement system on the first day of the payroll period of such member, coinciding with or following the entry date of the Kansas highway patrol as provided in this section, only by filing with the board of trustees of the system, on or before the entry date of the Kansas highway patrol as provided in this section, a written election to become a member of the system. Failure to file such written election shall be presumed to be an election not to become a member of the system. Such election, whether to become or not to become a member, shall be irrevocable.

(2) Each such member of the motor carriers inspection staff of the Kansas highway patrol who is on an authorized leave of absence or is in the military service on the entry date of the Kansas highway patrol as provided in this section may become a member of the Kansas police and firemen's retirement system on the first day of the first payroll period of such member, coinciding with such member's return to active employment and payroll of the Kansas highway patrol, only by filing with the board of trustees of the system within 10 days after such return to active employment a written election to become a member of the system. Failure to file such written election shall be presumed to be an election not to become a member of the system. Such election, whether to become a member or not to become a member, shall be irrevocable.

(c) Every such person who is employed as a member of the motor carriers inspection staff of the Kansas highway patrol on or after the entry date of the Kansas Highway patrol into the Kansas police and firemen's retirement system as provided in this section shall become a member of the Kansas police and firemen's retirement system on the first day of such employment.

(d) If the Kansas highway patrol affiliates as provided in this act and each such member of the motor carriers inspection staff of the Kansas highway patrol who elects to become a member as provided in this act, the Kansas highway patrol and each such member shall be subject to the provisions of K.S.A. 74-4951 *et seq.* and amendments thereto as applicable.

(e) The division of the budget and the governor shall include in the budget and in the budget request for appropriations for personnel services the amount required to satisfy the employer's obligation under this act as certified by the board of trustees of the system, and shall present the same to the legislature for allowance and appropriations.

(f) The determination of retirement, death or disability benefits shall be computed upon the basis of "credited service" as used in K.S.A. 74-4951 *et seq.*, and amendments thereto, but shall include only participating service with the person's participating employer, commencing on and after the effective date of affiliation by the participating employer with the Kansas police and fireman's retirement system.

Sec. 12. K.S.A. 74-4921, 74-4957 and 74-4967 and K.S.A. 2003 Supp. 20-2605, 74-4902, 74-4920 and 74-4927 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.":

On page 1, in line 12, by striking all after "concerning"; by striking all in line 13 and by inserting "retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; employer contributions; beneficiaries; investments; affiliation and membership; amending K.S.A. 74-4921, 74-4957 and 74-4967 and K.S.A. 2003 Supp. 20-2605, 74-4902, 74-4920 and 74-4927 and repealing the existing sections."

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

JOHN EDMONDS  
BILL MCCREARY  
GERALDINE FLAHERTY  
*Conferees on part of House*

DAVE KERR  
STEPHEN R. MORRIS  
CHRISTINE DOWNEY  
*Conferees on part of Senate*

On motion of Rep. Edmonds to adopt the conference committee report on **SB 520**, Rep. Yonally offered a substitute motion to not adopt the conference committee report and asked that a new conference committee be appointed. The substitute motion did not prevail.

The question then reverted back to the original motion of Rep. Edmonds and the conference committee report was adopted.

On roll call, the vote was: Yeas 96; Nays 24; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Bethell, Brunk, Burgess, Burroughs, Campbell, Carter, Compton, Cox, Craft, Dahl, Davis, DeCastro, Decker, Dreher, Edmonds,

Faber, Faust-Goudeau, Flaharty, Flora, Freeborn, Gatewood, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Hill, Holland, Holmes, Horst, Howell, Huebert, Humerickhouse, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Krehbiel, Kuether, Landwehr, Lane, Larkin, Light, Loganbill, M. Long, Long-Mast, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Phelps, Powell, Reardon, Rehorn, Sawyer, Schwab, Schwartz, Scoggins-Waite, B. Sharp, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thull, Toelkes, Wilk, D. Williams, Wilson, Yoder.

Nays: Boyer, Carlin, Crow, Dillmore, Feuerborn, Huntington, Kirk, Klein, Loyd, Minor, Neighbor, Pottorff, Powers, Reitz, Ruff, S. Sharp, Showalter, Shriver, Thimesch, Vickrey, Ward, J. Williams, Winn, Yonally.

Present but not voting: None.

Absent or not voting: Beggs, Gilbert, Henry, Huff, Mason.

#### EXPLANATION OF VOTE

MR. SPEAKER: I vote no on **SB 520**. It sets the stage for serious problems in the future. The provision that requires the state department of education to send the KPERS employer contributions to the school district, then have the school district pay it back to the KPERS fund as an expenditure is clearly the first step to requiring school districts to fund KPERS at the local level. One of these days, when the state needs a few dollars, it will come from this distribution and school district retirement benefits will start to become a local expense, not a state obligation, which they have been from the start.—JIM YONALLY

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Wilk, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **SB 235**.

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 235**, submits the following report:

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

On page 1, by striking all in lines 24 through 43;

By striking all on pages 2 through 18 and inserting the following:

“Section 1. K.S.A. 12-1771a is hereby amended to read as follows: 12-1771a. (a) The governing body of a city may establish an increment in ad valorem taxes using the procedure set forth in subsection (b) for projects that are initiated upon a finding that the area is a blighted area as defined under K.S.A. 12-1770a, and amendments thereto, when the following conditions exist:

(1) The proposed district has been identified by the Kansas department of health and environment or the United States environmental protection agency to be an environmentally contaminated area;

(2) the city has entered into a consent decree or settlement agreement or has taken action expressing an intent to enter into a consent decree or settlement agreement with the Kansas department of health and environment or the United States environmental protection agency that addresses the investigation and remediation of the environmental contamination;

(3) the consent decree or settlement agreement contains a provision that has the effect of releasing property owners who are not responsible for the contamination from the responsibility of paying the response costs of the investigation and remediation of the contamination; and

(4) the city intends to establish a redevelopment district pursuant to K.S.A. 12-1771, and amendments thereto, to ~~wholly finance or partially~~ finance, *in whole or in part*, the investigation and remediation of contamination within such district.

(b) An environmental increment established after a city has found that the conditions described in subsection (c) of K.S.A. 12-1770a, and amendments thereto, exists shall be set on a yearly basis. For purposes of this section, a yearly basis shall be a calendar year. Each year's increment shall be an amount sufficient to pay the direct costs of investigation and remediation of the contaminated condition anticipated to be incurred that year including principal and interest due on any special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part the remediation and investigation, costs relating to remediation investigation and feasibility studies, operation and maintenance expenses and other expenses relating directly to the investigation and remediation of contamination. Each year's environmental increment shall not exceed 20% of the amount of taxes that are produced by all taxing subdivisions within any currently existing or subsequently created redevelopment district area in the year the redevelopment district is first established, notwithstanding that such subdivision was not required to receive notice of the establishment of the district.

(c) The budget that establishes the yearly environmental increment shall be certified by the city to the county clerk and county treasurer no later than August 25th, preceding the calendar year for which the budget is being set. Funds derived from an environmental increment established by this section and interest on all funds derived from an environmental increment established by this section may be used only for projects involving the investigation and remediation of contamination in the district.

(d) The real property taxes produced by the environmental increment established under subsection (b) from a redevelopment district established under the provisions of K.S.A. 12-1771, and amendments thereto, and this section shall be allocated and paid by the county treasurer to the treasurer of the city and deposited in a special separate fund of the city to pay the direct cost of investigation and remediation of contamination in the redevelopment district. Any funds collected by the city from parties determined to be responsible in any manner for the contaminated condition shall be either: (1) Deposited in the same separate special fund created hereunder, and with all interest earned thereon, may be used only for projects involving the investigation and remediation of contamination in the established redevelopment district; or (2) distributed to parties who have entered into a contract with the city to pay a portion of investigation and remediation of the contamination in the redevelopment district and the terms of such contract provide that such parties are entitled to reimbursement for a portion of funds they have expended for such investigation and remediation of contamination from the recovery of costs that are collected from other third party responsible parties.

(e) A redevelopment district created under the provisions of this section shall constitute a separate taxing district. If all costs for such investigation and remediation of contamination in the redevelopment district have been paid and moneys remain in the special fund, such moneys shall be remitted to each taxing subdivision which paid moneys into the special fund on the basis of the proportion which the total amount of moneys paid by such taxing subdivision into the special fund bears to the total amount of all moneys paid by all taxing subdivisions into the fund.

(f) Nothing in this section shall prevent any city from establishing a redevelopment district for other purposes pursuant to K.S.A. 12-1770 *et seq.*, and amendments thereto, which may include part or all of the real property included in the district established under this section.

(g) Redevelopment projects relating to environmental investigation and remediation under this section, ~~and amendments thereto,~~ shall be completed within 20 years from the date ~~a city enters into a consent decree agreement with the Kansas department of health and environment or the United States environmental protection agency issues an order or enters into a consent decree with the governing body of the city approving such project, unless the board of county commissioners and the board of education identified in K.S.A. 12-1771, and amendments thereto, approve a request in writing from the city to extend the project a maximum of 10 years beyond the original 20.~~

(h) Nothing in this section shall be construed to affect the obligations of the county to annually review the fair market value of property in accordance with procedures set by law or to affect the right of any taxpayer to protest and appeal the appraised or reappraised value of their property in accordance with procedures set forth by law.



(i) Commencing with the regular session of the legislature in 1993, each city that establishes a redevelopment district under this section shall make a status report on a biennial basis to the standing committee on commerce of the senate and the standing committee on economic development of the house of representatives during the month of January. The status report shall contain information on the status of the investigation and remediation of contamination in the redevelopment district.

(j) For the purposes of this act, the governing body of a city, in contracts entered into with the Kansas department of health and environment or the United States environmental protection agency, may pledge increments receivable in future years to pay costs directly relating to the investigation and remediation of environmentally contaminated areas. The provisions in such contracts pertaining to pledging increments in future years shall not be subject to K.S.A. 10-1101 *et seq.* or 79-2925 *et seq.*, and amendments thereto.

Sec. 2. K.S.A. 12-1771a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.”;

Also on page 1, in the title, by striking all in lines 16 through 21 and inserting the following:

“An ACT concerning cities; relating to certain redevelopment projects; amending K.S.A. 12-1771a and repealing the existing section.”;

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

KENNY A. WILK  
LANA GORDON  
TOM BURROUGHS  
*Conferees on part of House*

KARIN S. BROWNLEE  
NICK JORDAN  
JIM BARONE  
*Conferees on part of Senate*

On motion of Rep. Wilk, the conference committee report on **SB 235** was adopted.

On roll call, the vote was: Yeas 119; Nays 1; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Dreher, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Freeborn, Gatewood, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Hill, Holland, Holmes, Horst, Howell, Huebert, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Lane, Larkin, Light, Loganbill, M. Long, Long-Mast, Loyd, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Phelps, Pottorff, Powell, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, Schwab, Schwartz, B. Sharp, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafarielli, Thimesch, Thull, Toelkes, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Winn, Yoder, Yonally.

Nays: Scoggins-Waite.

Present but not voting: None.

Absent or not voting: Beggs, Gilbert, Henry, Huff, Mason.

On motion of Rep. Aurand, the House recessed until 8:30 p.m.

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## EVENING SESSION

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

**INTRODUCTION OF ORIGINAL MOTIONS**

On motion of Rep. Edmonds, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **H. Sub. for SB 147**.

**CONFERENCE COMMITTEE REPORT**

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **House Substitute for SB 147**, submits the following report:

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

On page 4, in line 11, by striking "1982" and inserting "2002"; also in line 11, by striking "actually and regularly"; also in line 11, by striking "exclusively" and inserting "predominantly"; in line 15 by striking all after "exemption"; by striking all in line 16; in line 17, by striking all before the period; also in line 17, after the period, by inserting "For purposes of this provision, "predominantly" means: (1) At least 80% of the total use of the aircraft; or (2) utilization of the aircraft such that all of the aircraft costs are deductible for federal income tax purposes."; by striking all in lines 18 and 19 and by inserting the following:

"Sec. 6. K.S.A. 79-201f is hereby amended to read as follows: 79-201f. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

(a) Personal property which is moving in interstate commerce through or over the territory of the state of Kansas, *except public utility inventories subject to taxation pursuant to K.S.A. 79-5a01 et seq., and amendments thereto*;

(b) Personal property which has been shipped into the state of Kansas from outside the state which is stored in a warehouse or storage area operated by a warehouseman if such warehouseman keeps records of such property showing point of origin, date of receipt, type and quantity, date of withdrawal and ultimate destination notwithstanding (1) that the final destination of such personal property is unknown at the time of storage in Kansas or (2) that the interstate movement of such personal property has been interrupted for not more than five years by such storage in Kansas for reasons relating to the convenience, pleasure or business of the shipper or owner of the property unless the ultimate destination of the property is within the state of Kansas; and

(c) goods, wares and merchandise which are manufactured, assembled, joined, processed, packaged or labeled within this state, during the period of time in which they are stored in a warehouse or storage area operated by a warehouseman if such warehouseman keeps records of such property showing point of origin, date of receipt, type and quantity, date of withdrawal and ultimate destination. In order to qualify goods, wares and merchandise in any such warehouse or storage area for the exemption from taxation under this subsection, the owner of such goods, wares and merchandise must show by verified statement that the final destination of at least 30% of the sale or shipments from such warehouse or storage area during the previous calendar year were shipped in interstate commerce to a point outside the state of Kansas, and the amount of exempt property shall be computed as follows: The owner shall furnish the county appraiser with a report of the monthly average inventory for the preceding calendar year and a report of the value of shipments for final destination outside the state for each month of the previous calendar year. The owner shall be entitled to exemption of a percent of the average monthly inventory equivalent to the percent of value of total shipments to the value of shipments that were made in interstate commerce to points outside the state.

(d) For the purposes of this section, "warehouseman" means any person, except a public utility as defined in K.S.A. 79-5a01 and amendments thereto, who is engaged in the business of storing goods for hire or who stores such person's own goods.

The provisions of this section shall apply to all taxable years commencing after December 31, 1983.

Sec. 7. K.S.A. 2003 Supp. 79-5a01 is hereby amended to read as follows: 79-5a01. (a) As used in this act, the terms "public utility" or "public utilities" ~~shall mean~~ means every

individual, company, corporation, association of persons, *brokers*, lessees or receivers that *now or hereafter own, control and hold for resale stored natural gas in an underground formation in this state, or now or hereafter are in control, manage or operate a business of:*

(1) A railroad or railroad corporation if such railroad or railroad corporation owns or holds, by deed or other instrument, an interest in right-of-way, track, franchise, roadbed or trackage in this state;

(2) transmitting to, from, through or in this state telegraphic messages;

(3) transmitting to, from, through or in this state telephonic messages;

(4) transporting or distributing to, from, through or in this state natural gas, oil or other commodities in pipes or pipelines, or engaging primarily in the business of storing natural gas in an underground formation;

(5) generating, conducting or distributing to, from, through or in this state electric power;

(6) transmitting to, from, through or in this state water if for profit or subject to regulation of the state corporation commission; *and*

(7) transporting to, from, through or in this state cargo or passengers by means of any vessel or boat used in navigating any of the navigable watercourses within or bordering upon this state.

(b) The terms "public utility" or "public utilities" shall not include: (1) Rural water districts established under the laws of the state of Kansas; or (2) any individual, company, corporation, association of persons, lessee or receiver owning or operating an oil or natural gas production gathering line which is situated within one county in this state and does not cross any state boundary line; (3) any individual, company, corporation, association of persons, lessee or receiver owning any vessel or boat operated upon the surface of any manmade waterway located entirely within one county in the state; or (4) for all taxable years commencing after December 31, 1998, any natural gas distribution system which is owned and operated by a nonprofit public utility described by K.S.A. 66-104c, and amendments thereto, and which is operated predominantly for the purpose of providing fuel for the irrigation of land devoted to agricultural use.

(c) *The provisions of subsection (a) as amended by this act shall be applicable to all taxable years commencing after December 31, 2003.*

Sec. 8. K.S.A. 2003 Supp. 79-32,101 is hereby amended to read as follows: 79-32,101. (a) At the time prescribed in this section: (1) Every individual shall pay estimated tax who can reasonably expect to owe, after withholding and credits, tax of at least ~~\$200~~ \$500 and who expects their withholding and credits to be less than (A) 90% of the tax shown on the return for the current year or (B) 100% of the tax shown for the preceding tax year; and

(2) every corporation shall pay estimated tax if its Kansas income tax liability can reasonably be expected to exceed \$500.

(b) In the case of a husband and wife, single payments under this section may be made by them jointly. If a joint payment is made, but a joint return is not made for the taxable year, the estimated tax for such year may be divided between them. Notification of the division of such payments shall be made at such time and in such manner as the director of taxation may provide, on forms issued by the director of taxation.

(c) If on or before January 31, or March 1, in the case of an individual referred to in subsection (b) of K.S.A. 79-32,102, *and amendments thereto*, relating to income from farming or fishing, of the succeeding year, the taxpayer files a return for the taxable year, and pays in full the amount of tax computed on the return, then, under rules and regulations of the secretary of revenue no payment otherwise required to be made under this section on January 15, or at any time during the preceding year, in the case of an individual referred to in subsection (b) of K.S.A. 79-32,102, *and amendments thereto*, relating to income from farming or fishing, is required to be made.

(d) An individual or corporation with a taxable year of less than 12 months shall make a declaration for less than 12 months as prescribed by rules and regulations of the secretary of revenue.

(e) The provisions of this section shall not apply to an estate or trust.

Sec. 9. K.S.A. 2003 Supp. 79-32,206 is hereby amended to read as follows: 79-32,206. For all taxable years commencing after December 31, 2001, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, the

premiums tax upon insurance companies imposed pursuant to K.S.A. 40-252, and amendments thereto, and the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, an amount equal to 15% of the property tax levied for property tax years 2002, 2003 and 2004, 20% of the property tax levied for property tax years 2005 and 2006, and 25% of the property tax levied for property tax year 2007, and all such years thereafter, actually and timely paid during an income or privilege taxable year upon commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (5) or (6) of class 2, machinery and equipment classified for such purposes in subclass (2) of class 2. For all taxable years commencing after December 31, 2004, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act an amount equal to 20% of the property tax levied for property tax years 2005 and 2006, and 25% of the property tax levied for property tax year 2007 and all such years thereafter, actually and timely paid during an income taxable year upon railroad machinery and equipment classified for property tax purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (3) of class 2. ~~Prior to the 2004 legislative session, the joint committee on economic development shall conduct a study of the economic impact of the foregoing provision.~~ If the amount of such tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company. *The secretary of revenue shall adopt rules and regulations regarding the filing of documents that support the amount of credit claimed pursuant to this section.*

Sec. 10. K.S.A. 2003 Supp. 79-3603, as amended by section 2 of 2004 Senate Bill No. 384, is hereby amended to read as follows: 79-3603. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.3%. Within a redevelopment district established pursuant to K.S.A. 74-8921, and amendments thereto, there is hereby levied and there shall be collected and paid an additional tax at the rate of 2% until the earlier of the date the bonds issued to finance or refinance the redevelopment project have been paid in full or the final scheduled maturity of the first series of bonds issued to finance any part of the project upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(b) (1) the gross receipts from intrastate telephone or telegraph services; (2) the gross receipts received from the sale of interstate telephone or telegraph services, which (A) originate within this state and terminate outside the state and are billed to a customer's telephone number or account in this state; or (B) originate outside this state and terminate within this state and are billed to a customer's telephone number or account in this state except that the sale of interstate telephone or telegraph service does not include: (A) Any interstate incoming or outgoing wide area telephone service or wide area transmission type service which entitles the subscriber to make or receive an unlimited number of communications to or from persons having telephone service in a specified area which is outside the state in which the station provided this service is located; (B) any interstate private communications service to the persons contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges; (C) any value-added nonvoice service in which computer processing applications are used to act on the form, content, code or protocol of the information to be transmitted; (D) any telecommunication service to a provider of telecommunication services which will be used to render telecommunications services, including carrier access services; or (E) any service or transaction defined in this section among entities classified as members of an affiliated group as provided by section 1504 of the federal internal revenue code of

1986, as in effect on January 1, 2001; and (3) the gross receipts from the provision of services taxable under this subsection which are billed on a combined basis with nontaxable services, shall be accounted for and the tax remitted as follows: The taxable portion of the selling price of those combined services shall include only those charges for taxable services if the selling price for the taxable services can be readily distinguishable in the retailer's books and records from the selling price for the nontaxable services. Otherwise, the gross receipts from the sale of both taxable and nontaxable services billed on a combined basis shall be deemed attributable to the taxable services included therein. Within 90 days of billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the secretary identifying the methodology to be used in determining the taxable portion of the selling price of those combined services. The burden of proving that any receipt or charge is not taxable shall be upon the retailer. Upon request from the customer, the retailer shall disclose to the customer the selling price for the taxable services included in the selling price for the taxable and nontaxable services billed on a combined basis;

(c) the gross receipts from the sale or furnishing of gas, water, electricity and heat, which sale is not otherwise exempt from taxation under the provisions of this act, and whether furnished by municipally or privately owned utilities, except that, on and after January 1, 2006, for sales of gas, electricity and heat delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises, and for agricultural use and also, for such use, all sales of propane gas, the state rate shall be 0%; and for all sales of propane gas, LP gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises, the state rate shall be 0%, but such tax shall not be levied and collected upon the gross receipts from: (1) The sale of a rural water district benefit unit; (2) a water system impact fee, system enhancement fee or similar fee collected by a water supplier as a condition for establishing service; or (3) connection or reconnection fees collected by a water supplier;

(d) the gross receipts from the sale of meals or drinks furnished at any private club, drinking establishment, catered event, restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public;

(e) the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services including admissions to state, county, district and local fairs, but such tax shall not be levied and collected upon the gross receipts received from sales of admissions to any cultural and historical event which occurs triennially;

(f) the gross receipts from the operation of any coin-operated device dispensing or providing tangible personal property, amusement or other services except laundry services, whether automatic or manually operated;

(g) the gross receipts from the service of renting of rooms by hotels, as defined by K.S.A. 36-501 and amendments thereto, or by accommodation brokers, as defined by K.S.A. 12-1692, and amendments thereto but such tax shall not be levied and collected upon the gross receipts received from sales of such service to the federal government and any agency, officer or employee thereof in association with the performance of official government duties;

(h) the gross receipts from the service of renting or leasing of tangible personal property except such tax shall not apply to the renting or leasing of machinery, equipment or other personal property owned by a city and purchased from the proceeds of industrial revenue bonds issued prior to July 1, 1973, in accordance with the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, and any city or lessee renting or leasing such machinery, equipment or other personal property purchased with the proceeds of such bonds who shall have paid a tax under the provisions of this section upon sales made prior to July 1, 1973, shall be entitled to a refund from the sales tax refund fund of all taxes paid thereon;

(i) the gross receipts from the rendering of dry cleaning, pressing, dyeing and laundry services except laundry services rendered through a coin-operated device whether automatic or manually operated;

(j) the gross receipts from the rendering of the services of washing and waxing of vehicles;

(k) the gross receipts from cable, community antennae and other subscriber radio and television services;

(l) (1) except as otherwise provided by paragraph (2), the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen for use by them in erecting structures, or building on, or otherwise improving, altering, or repairing real or personal property.

(2) Any such contractor, subcontractor or repairman who maintains an inventory of such property both for sale at retail and for use by them for the purposes described by paragraph (1) shall be deemed a retailer with respect to purchases for and sales from such inventory, except that the gross receipts received from any such sale, other than a sale at retail, shall be equal to the total purchase price paid for such property and the tax imposed thereon shall be paid by the deemed retailer;

(m) the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph *Ninth* of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities; and (2) entry fees and charges for participation in a special event or tournament sanctioned by a national sporting association to which spectators are charged an admission which is taxable pursuant to subsection (e);

(n) the gross receipts received from dues charged by public and private clubs, drinking establishments, organizations and businesses, payment of which entitles a member to the use of facilities for recreation or entertainment, but such tax shall not be levied and collected upon the gross receipts received from: (1) Dues charged by any organization exempt from property taxation pursuant to paragraphs *Eighth* and *Ninth* of K.S.A. 79-201, and amendments thereto; and (2) sales of memberships in a nonprofit organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, and whose purpose is to support the operation of a nonprofit zoo;

(o) the gross receipts received from the isolated or occasional sale of motor vehicles or trailers but not including: (1) The transfer of motor vehicles or trailers by a person to a corporation or limited liability company solely in exchange for stock securities or membership interest in such corporation or limited liability company; or (2) the transfer of motor vehicles or trailers by one corporation or limited liability company to another when all of the assets of such corporation or limited liability company are transferred to such other corporation or limited liability company; or (3) the sale of motor vehicles or trailers which are subject to taxation pursuant to the provisions of K.S.A. 79-5101 *et seq.*, and amendments thereto, by an immediate family member to another immediate family member. For the purposes of clause (3), immediate family member means lineal ascendants or descendants, and their spouses. *The base for computing the tax shall be the stated selling price of the motor vehicle or trailer or the value pursuant to subsections (a), (b)(1) and (b)(2) of K.S.A. 79-5105, and amendments thereto, whichever amount is higher. The actual selling price shall be the base for computing the tax on the isolated or occasional sale of wrecked or damaged vehicles.* In determining the base for computing the tax on such isolated or occasional sale, the fair market value of any motor vehicle or trailer traded in by the purchaser to the seller may be deducted from the selling price;

(p) the gross receipts received for the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility, the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a residence or the construction, reconstruction, restoration, replacement or repair of a bridge or highway.

For the purposes of this subsection:

(1) "Original construction" shall mean the first or initial construction of a new building or facility. The term "original construction" shall include the addition of an entire room or floor to any existing building or facility, the completion of any unfinished portion of any existing building or facility and the restoration, reconstruction or replacement of a building or facility damaged or destroyed by fire, flood, tornado, lightning, explosion or earthquake, but such term, except with regard to a residence, shall not include replacement, remodeling, restoration, renovation or reconstruction under any other circumstances;

(2) "building" shall mean only those enclosures within which individuals customarily are employed, or which are customarily used to house machinery, equipment or other property, and including the land improvements immediately surrounding such building;

(3) "facility" shall mean a mill, plant, refinery, oil or gas well, water well, feedlot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq., and amendments thereto, or of any municipal or quasi-municipal corporation, including the land improvements immediately surrounding such facility; and

(4) "residence" shall mean only those enclosures within which individuals customarily live;

(q) the gross receipts received for the service of repairing, servicing, altering or maintaining tangible personal property which when such services are rendered is not being held for sale in the regular course of business, and whether or not any tangible personal property is transferred in connection therewith. The tax imposed by this subsection shall be applicable to the services of repairing, servicing, altering or maintaining an item of tangible personal property which has been and is fastened to, connected with or built into real property;

(r) the gross receipts from fees or charges made under service or maintenance agreement contracts for services, charges for the providing of which are taxable under the provisions of subsection (p) or (q);

(s) ~~on and after January 1, 2005, the gross receipts received from the sale of *prewritten* computer software, the sale of the service of providing computer software other than *prewritten* computer software and the sale of the services of modifying, altering, updating or maintaining *prewritten* computer software, whether the *prewritten* computer software is installed or delivered electronically by tangible storage media physically transferred to the purchaser or by load and leave;~~

(t) the gross receipts received for telephone answering services, mobile telecommunication services, beeper services and other similar services. On and after August 1, 2002, the provisions of the federal mobile telecommunications sourcing act as in effect on January 1, 2002, shall be applicable to all sales of mobile telecommunication services taxable pursuant to this subsection. The secretary of revenue is hereby authorized and directed to perform any act deemed necessary to properly implement such provisions;

(u) the gross receipts received from the sale of prepaid calling service as defined in K.S.A. 2003 Supp. 79-3673, and amendments thereto; and

(v) the gross receipts received from the sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701, et seq., and amendments thereto, shall be taxed at a rate of: (1) 4.9% on July 1, 2000, and before July 1, 2001; and (2) 2.5% on July 1, 2001, and before July 1, 2002. From and after July 1, 2002, all sales of bingo cards, bingo faces and instant bingo tickets by licensees under K.S.A. 79-4701 et seq., and amendments thereto, shall be exempt from taxes imposed pursuant to this section.

Sec. 11. On and after January 1, 2005, K.S.A. 2003 Supp. 79-3606, as amended by section 18 of 2004 House Bill No. 2713, is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, motor vehicles taxed pursuant to K.S.A. 79-5117, and amendments thereto, tires taxed pursuant to K.S.A. 65-3424d, and amendments thereto, drycleaning and laundry services taxed pursuant to K.S.A. 65-34,150, and amendments thereto, and

gross receipts from regulated sports contests taxed pursuant to the Kansas professional regulated sports act, and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or public hospital authority or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or public hospital authority or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state, hospital or public hospital authority is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital or public hospital authority, school or educational institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or district described in subsection (s), the total cost of which is paid from funds of such political subdivision or district and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision or district. Nothing in this subsection or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state or any such district. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, district described in subsection (s), public or private nonprofit hospital or public hospital authority, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the



contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, district described in subsection (s), hospital or public hospital authority, school or educational institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. As an alternative to the foregoing procedure, any such contracting entity may apply to the secretary of revenue for agent status for the sole purpose of issuing and furnishing project exemption certificates to contractors pursuant to rules and regulations adopted by the secretary establishing conditions and standards for the granting and maintaining of such status. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) ~~sales of aircraft including remanufactured and modified aircraft, sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft sold to persons using directly or through an authorized agent such aircraft and aircraft repair, modification and replacement parts as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government or agency or instrumentality of such foreign government and all sales of aircraft, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft for use outside of the United States and sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft;~~

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

(o) all sales of animals, fowl and aquatic plants and animals, the primary purpose of which is use in agriculture or aquaculture, as defined in K.S.A. 47-1901, and amendments thereto, the production of food for human consumption, the production of animal, dairy, poultry or aquatic plant and animal products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) all sales of drugs dispensed pursuant to a prescription order by a licensed practitioner or a mid-level practitioner as defined by K.S.A. 65-1626, and amendments thereto. As used in this subsection, "drug" means a compound, substance or preparation and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages, recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, and supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or intended to affect the structure or any function of the body;

(q) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(r) all sales of prosthetic devices and mobility enhancing equipment prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry, *and in addition to such sales, all sales of hearing aids, as defined by subsection (c) of K.S.A. 74-5807, and amendments thereto, and replacement parts therefor, including batteries, by a person licensed in the practice of dispensing and fitting hearing aids pursuant to the provisions of K.S.A. 74-5808, and amendments thereto.* For the purposes of this subsection: (1) "Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include durable medical equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer; and (2) "prosthetic device" means a replacement, corrective or supportive device including repair and replacement parts for same worn on or

in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction or support a weak or deformed portion of the body;

(s) except as provided in K.S.A. 2003 Supp. 82a-2101, and amendments thereto, all sales of tangible personal property or services purchased directly or indirectly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 *et seq.*, and amendments thereto, by a rural water district organized or operating under the authority of K.S.A. 82a-612, and amendments thereto, or by a water supply district organized or operating under the authority of K.S.A. 19-3501 *et seq.*, 19-3522 *et seq.* or 19-3545, and amendments thereto, which property or services are used in the construction activities, operation or maintenance of the district;

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term "farm machinery and equipment or aquaculture machinery and equipment" shall include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

(u) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(v) all sales of ~~food products~~ *tangible personal property* to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization, and all sales of ~~food products~~ *tangible personal property* for use in preparing meals for consumption by indigent or homeless individuals whether or not such meals are consumed at a place designated for such purpose, *and all sales of food products by or on behalf of any such contractor or organization for any such purpose*;

(w) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes: (1) To residential premises for noncommercial use by the occupant of such premises; (2) for agricultural use and also, for such use, all sales of propane gas; (3) for use in the severing of oil; and (4) to any property which is exempt from property taxation pursuant to K.S.A. 79-201b *Second* through *Sixth*. As used in this paragraph, "severing" shall have the meaning ascribed thereto by subsection (k) of K.S.A. 79-4216, and amendments thereto. For all sales of natural gas, electricity and heat delivered through mains, lines or pipes pursuant to the provisions of subsection (w)(1) and (w)(2), the provisions of this subsection shall expire on December 31, 2005;

(x) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises occurring prior to January 1, 2006;

(y) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(z) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418 and amendments thereto;

(aa) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state for use in the trans-

mission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of used mobile homes or manufactured homes. As used in this subsection: (1) "Mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202 and amendments thereto; and (2) "sales of used mobile homes or manufactured homes" means sales other than the original retail sale thereof;

(cc) all sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business or retail business which meets the requirements established in K.S.A. 74-50,115 and amendments thereto, and the sale and installation of machinery and equipment purchased for installation at any such business or retail business. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business or retail business, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the business or retail business a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto. As used in this subsection, "business" and "retail business" have the meanings respectively ascribed thereto by K.S.A. 74-50,114 and amendments thereto;

(dd) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture;

(ee) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(ff) on and after July 1, 1988, all sales of new mobile homes or manufactured homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, "mobile homes" and "manufactured homes" shall have the meanings ascribed thereto by K.S.A. 58-4202 and amendments thereto;

(gg) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(hh) all sales of medical supplies and equipment, including durable medical equipment, purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes. As used in this subsection, "durable medical equipment" means equipment including repair and replacement parts for such equipment, but does not include mobility enhancing equipment as defined in subsection (r) which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury and is not worn in or on the body;

(ii) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(jj) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based mental re-

tardation facility or mental health center organized pursuant to K.S.A. 19-4001 *et seq.*, and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto *and all sales of tangible personal property or services purchased by contractors during the time period from July, 2003, through June, 2004, for the purpose of constructing, equipping, maintaining or furnishing a new facility for a community-based mental retardation facility or mental health center located in Riverton, Cherokee County, Kansas, which would have been eligible for sales tax exemption pursuant to this subsection if purchased directly by such facility or center.* This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(kk) (1) (A) all sales of machinery and equipment which are used in this state as an integral or essential part of an integrated production operation by a manufacturing or processing plant or facility;

(B) all sales of installation, repair and maintenance services performed on such machinery and equipment; and

(C) all sales of repair and replacement parts and accessories purchased for such machinery and equipment.

(2) For purposes of this subsection:

(A) "Integrated production operation" means an integrated series of operations engaged in at a manufacturing or processing plant or facility to process, transform or convert tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Integrated production operations shall include: (i) Production line operations, including packaging operations; (ii) preproduction operations to handle, store and treat raw materials; (iii) post production handling, storage, warehousing and distribution operations; and (iv) waste, pollution and environmental control operations, if any;

(B) "production line" means the assemblage of machinery and equipment at a manufacturing or processing plant or facility where the actual transformation or processing of tangible personal property occurs;

(C) "manufacturing or processing plant or facility" means a single, fixed location owned or controlled by a manufacturing or processing business that consists of one or more structures or buildings in a contiguous area where integrated production operations are conducted to manufacture or process tangible personal property to be ultimately sold at retail. Such term shall not include any facility primarily operated for the purpose of conveying or assisting in the conveyance of natural gas, electricity, oil or water. A business may operate one or more manufacturing or processing plants or facilities at different locations to manufacture or process a single product of tangible personal property to be ultimately sold at retail;

(D) "manufacturing or processing business" means a business that utilizes an integrated production operation to manufacture, process, fabricate, finish, or assemble items for wholesale and retail distribution as part of what is commonly regarded by the general public as an industrial manufacturing or processing operation or an agricultural commodity processing operation. (i) Industrial manufacturing or processing operations include, by way of illustration but not of limitation, the fabrication of automobiles, airplanes, machinery or transportation equipment, the fabrication of metal, plastic, wood, or paper products, electricity power generation, water treatment, petroleum refining, chemical production, wholesale bottling, newspaper printing, ready mixed concrete production, and the remanufacturing of used parts for wholesale or retail sale. Such processing operations shall include operations at an oil well, gas well, mine or other excavation site where the oil, gas, minerals, coal, clay, stone, sand or gravel that has been extracted from the earth is cleaned, separated, crushed, ground, milled, screened, washed, or otherwise treated or prepared before its transmission to a refinery or before any other wholesale or retail distribution. (ii) Agricultural commodity processing operations include, by way of illustration but not of limitation, meat packing, poultry slaughtering and dressing, processing and packaging farm and dairy products in sealed containers for wholesale and retail distribution, feed grinding, grain milling, frozen food processing, and grain handling, cleaning, blending, fumigation, drying and aeration operations engaged in by grain elevators or other grain storage facilities. (iii) Manufacturing or processing businesses do not include, by way of illustration but not of limitation, nonin-

dustrial businesses whose operations are primarily retail and that produce or process tangible personal property as an incidental part of conducting the retail business, such as retailers who bake, cook or prepare food products in the regular course of their retail trade, grocery stores, meat lockers and meat markets that butcher or dress livestock or poultry in the regular course of their retail trade, contractors who alter, service, repair or improve real property, and retail businesses that clean, service or refurbish and repair tangible personal property for its owner;

(E) "repair and replacement parts and accessories" means all parts and accessories for exempt machinery and equipment, including, but not limited to, dies, jigs, molds, patterns and safety devices that are attached to exempt machinery or that are otherwise used in production, and parts and accessories that require periodic replacement such as belts, drill bits, grinding wheels, grinding balls, cutting bars, saws, refractory brick and other refractory items for exempt kiln equipment used in production operations;

(F) "primary" or "primarily" mean more than 50% of the time.

(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

(A) To receive, transport, convey, handle, treat or store raw materials in preparation of its placement on the production line;

(B) to transport, convey, handle or store the property undergoing manufacturing or processing at any point from the beginning of the production line through any warehousing or distribution operation of the final product that occurs at the plant or facility;

(C) to act upon, effect, promote or otherwise facilitate a physical change to the property undergoing manufacturing or processing;

(D) to guide, control or direct the movement of property undergoing manufacturing or processing;

(E) to test or measure raw materials, the property undergoing manufacturing or processing or the finished product, as a necessary part of the manufacturer's integrated production operations;

(F) to plan, manage, control or record the receipt and flow of inventories of raw materials, consumables and component parts, the flow of the property undergoing manufacturing or processing and the management of inventories of the finished product;

(G) to produce energy for, lubricate, control the operating of or otherwise enable the functioning of other production machinery and equipment and the continuation of production operations;

(H) to package the property being manufactured or processed in a container or wrapping in which such property is normally sold or transported;

(I) to transmit or transport electricity, coke, gas, water, steam or similar substances used in production operations from the point of generation, if produced by the manufacturer or processor at the plant site, to that manufacturer's production operation; or, if purchased or delivered from offsite, from the point where the substance enters the site of the plant or facility to that manufacturer's production operations;

(J) to cool, heat, filter, refine or otherwise treat water, steam, acid, oil, solvents or other substances that are used in production operations;

(K) to provide and control an environment required to maintain certain levels of air quality, humidity or temperature in special and limited areas of the plant or facility, where such regulation of temperature or humidity is part of and essential to the production process;

(L) to treat, transport or store waste or other byproducts of production operations at the plant or facility; or

(M) to control pollution at the plant or facility where the pollution is produced by the manufacturing or processing operation.

(4) The following machinery, equipment and materials shall be deemed to be exempt even though it may not otherwise qualify as machinery and equipment used as an integral or essential part of an integrated production operation: (A) Computers and related peripheral equipment that are utilized by a manufacturing or processing business for engineering of the finished product or for research and development or product design; (B) machinery and equipment that is utilized by a manufacturing or processing business to manufacture or rebuild tangible personal property that is used in manufacturing or processing operations,

including tools, dies, molds, forms and other parts of qualifying machinery and equipment; (C) portable plants for aggregate concrete, bulk cement and asphalt including cement mixing drums to be attached to a motor vehicle; (D) industrial fixtures, devices, support facilities and special foundations necessary for manufacturing and production operations, and materials and other tangible personal property sold for the purpose of fabricating such fixtures, devices, facilities and foundations. An exemption certificate for such purchases shall be signed by the manufacturer or processor. If the fabricator purchases such material, the fabricator shall also sign the exemption certificate; and (E) a manufacturing or processing business' laboratory equipment that is not located at the plant or facility, but that would otherwise qualify for exemption under subsection (3)(E).

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:

(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;

(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

(C) transportation, transmission and distribution equipment not primarily used in a production, warehousing or material handling operation at the plant or facility, including the means of conveyance of natural gas, electricity, oil or water, and equipment related thereto, located outside the plant or facility;

(D) office machines and equipment including computers and related peripheral equipment not used directly and primarily to control or measure the manufacturing process;

(E) furniture and other furnishings;

(F) buildings, other than exempt machinery and equipment that is permanently affixed to or becomes a physical part of the building, and any other part of real estate that is not otherwise exempt;

(G) building fixtures that are not integral to the manufacturing operation, such as utility systems for heating, ventilation, air conditioning, communications, plumbing or electrical;

(H) machinery and equipment used for general plant heating, cooling and lighting;

(I) motor vehicles that are registered for operation on public highways; or

(J) employee apparel, except safety and protective apparel that is purchased by an employer and furnished gratuitously to employees who are involved in production or research activities.

(6) Subsections (3) and (5) shall not be construed as exclusive listings of the machinery and equipment that qualify or do not qualify as an integral or essential part of an integrated production operation. When machinery or equipment is used as an integral or essential part of production operations part of the time and for nonproduction purpose at other times, the primary use of the machinery or equipment shall determine whether or not such machinery or equipment qualifies for exemption.

(7) The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this subsection;

(ll) all sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health;

(mm) all sales of seeds and tree seedlings; fertilizers, insecticides, herbicides, germicides, pesticides and fungicides; and services, purchased and used for the purpose of producing plants in order to prevent soil erosion on land devoted to agricultural use;

(nn) except as otherwise provided in this act, all sales of services rendered by an advertising agency or licensed broadcast station or any member, agent or employee thereof;

(oo) all sales of tangible personal property purchased by a community action group or agency for the exclusive purpose of repairing or weatherizing housing occupied by low income individuals;

(pp) all sales of drill bits and explosives actually utilized in the exploration and production of oil or gas;

(qq) all sales of tangible personal property and services purchased by a nonprofit museum or historical society or any combination thereof, including a nonprofit organization which is organized for the purpose of stimulating public interest in the exploration of space by providing educational information, exhibits and experiences, which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(rr) all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

(ss) all sales of tangible personal property and services purchased by a public broadcasting station licensed by the federal communications commission as a noncommercial educational television or radio station;

(tt) all sales of tangible personal property and services purchased by or on behalf of a not-for-profit corporation which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the sole purpose of constructing a Kansas Korean War memorial;

(uu) all sales of tangible personal property and services purchased by or on behalf of any rural volunteer fire-fighting organization for use exclusively in the performance of its duties and functions;

(vv) all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:

(1) The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;

(2) the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;

(3) the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;

(4) the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;

(5) the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;

(6) the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers;

(7) the Kansas chapters of the Parkinson's disease association for the purpose of eliminating Parkinson's disease through medical research and public and professional education related to such disease; ~~and~~

(8) the National Kidney Foundation of Kansas and Western Missouri for the purpose of eliminating kidney disease through medical research and public and private education related to such disease;

(9) *the heartstrings community foundation for the purpose of providing training, employment and activities for adults with developmental disabilities;*

(10) *the Cystic Fibrosis Foundation, Heart of America Chapter, for the purposes of assuring the development of the means to cure and control cystic fibrosis and improving the quality of life for those with the disease; and*

(11) *the spina bifida association of Kansas for the purpose of providing financial, educational and practical aid to families and individuals with spina bifida. Such aid includes, but is not limited to, funding for medical devices, counseling and medical educational opportunities;*



(ww) all sales of tangible personal property purchased by the Habitat for Humanity for the exclusive use of being incorporated within a housing project constructed by such organization;

(xx) all sales of tangible personal property and services purchased by a nonprofit zoo which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, or on behalf of such zoo by an entity itself exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986 contracted with to operate such zoo and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo which would be exempt from taxation under the provisions of this section if purchased directly by such nonprofit zoo or the entity operating such zoo. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any nonprofit zoo. When any nonprofit zoo shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the nonprofit zoo concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the nonprofit zoo concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(yy) all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;

(zz) all sales of machinery and equipment purchased by over-the-air, free access radio or television station which is used directly and primarily for the purpose of producing a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. For purposes of this subsection, machinery and equipment shall include, but not be limited to, that required by rules and regulations of the federal communications commission, and all sales of electricity which are essential or necessary for the purpose of producing a broadcast signal or is such that the failure of the electricity would cause broadcasting to cease;

(aaa) all sales of tangible personal property and services purchased by a religious organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code, and used exclusively for religious purposes, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization which would be exempt from taxation under the provisions of this section if purchased directly by such organization. Nothing in this subsec-

tion shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such organization. When any such organization shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to such organization concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such organization concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. Sales tax paid on and after July 1, 1998, but prior to the effective date of this act upon the gross receipts received from any sale exempted by the amendatory provisions of this subsection shall be refunded. Each claim for a sales tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of sales tax paid as determined under the provisions of this subsection. All refunds shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee;

(bbb) all sales of food for human consumption by an organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof;

(ccc) on and after July 1, 1999, all sales of tangible personal property and services purchased by a primary care clinic or health center the primary purpose of which is to provide services to medically underserved individuals and families, and which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code, and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center which would be exempt from taxation under the provisions of this section if purchased directly by such clinic or center. Nothing in this subsection shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any such clinic or center. When any such clinic or center shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such

certificate. Upon completion of the project the contractor shall furnish to such clinic or center concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, such clinic or center concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(ddd) on and after January 1, 1999, and before January 1, 2000, all sales of materials and services purchased by any class II or III railroad as classified by the federal surface transportation board for the construction, renovation, repair or replacement of class II or III railroad track and facilities used directly in interstate commerce. In the event any such track or facility for which materials and services were purchased sales tax exempt is not operational for five years succeeding the allowance of such exemption, the total amount of sales tax which would have been payable except for the operation of this subsection shall be recouped in accordance with rules and regulations adopted for such purpose by the secretary of revenue;

(eee) on and after January 1, 1999, and before January 1, 2001, all sales of materials and services purchased for the original construction, reconstruction, repair or replacement of grain storage facilities, including railroad sidings providing access thereto;

(fff) all sales of material handling equipment, racking systems and other related machinery and equipment that is used for the handling, movement or storage of tangible personal property in a warehouse or distribution facility in this state; all sales of installation, repair and maintenance services performed on such machinery and equipment; and all sales of repair and replacement parts for such machinery and equipment. For purposes of this subsection, a warehouse or distribution facility means a single, fixed location that consists of buildings or structures in a contiguous area where storage or distribution operations are conducted that are separate and apart from the business' retail operations, if any, and which do not otherwise qualify for exemption as occurring at a manufacturing or processing plant or facility. Material handling and storage equipment shall include aeration, dust control, cleaning, handling and other such equipment that is used in a public grain warehouse or other commercial grain storage facility, whether used for grain handling, grain storage, grain refining or processing, or other grain treatment operation; ~~and~~

(ggg) all sales of tangible personal property and services purchased by or on behalf of the Kansas Academy of Science which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and used solely by such academy for the preparation, publication and dissemination of education materials; *and*

*(hhh) all sales of tangible personal property and services purchased by or on behalf of all domestic violence shelters that are member agencies of the Kansas coalition against sexual and domestic violence.*

Sec. 12. K.S.A. 2003 Supp. 79-3607 is hereby amended to read as follows: 79-3607. (a) Retailers shall make returns to the director at the times prescribed by this section upon forms prescribed and furnished by the director stating: (1) The name and address of the retailer; (2) the total amount of gross sales of all tangible personal property and taxable services rendered by the retailer during the period for which the return is made; (3) the total amount received during the period for which the return is made on charge and time

sales of tangible personal property made and taxable services rendered prior to the period for which the return is made; (4) deductions allowed by law from such total amount of gross sales and from total amount received during the period for which the return is made on such charge and time sales; (5) receipts during the period for which the return is made from the total amount of sales of tangible personal property and taxable services rendered during such period in the course of such business, after deductions allowed by law have been made; (6) receipts during the period for which the return is made from charge and time sales of tangible personal property made and taxable services rendered prior to such period in the course of such business, after deductions allowed by law have been made; (7) gross receipts during the period for which the return is made from sales of tangible personal property and taxable services rendered in the course of such business upon the basis of which the tax is imposed. The return shall include such other pertinent information as the director may require. In making such return, the retailer shall determine the market value of any consideration, other than money, received in connection with the sale of any tangible personal property in the course of the business and shall include such value in the return. Such value shall be subject to review and revision by the director as hereinafter provided. Refunds made by the retailer during the period for which the return is made on account of tangible personal property returned to the retailer shall be allowed as a deduction under subdivision (4) of this section in case the retailer has theretofore included the receipts from such sale in a return made by such retailer and paid taxes therein imposed by this act. The retailer shall, at the time of making such return, pay to the director the amount of tax herein imposed, except as otherwise provided in this section. The director may extend the time for making returns and paying the tax required by this act for any period not to exceed 60 days under such rules and regulations as the secretary of revenue may prescribe. When the total tax for which any retailer is liable under this act, does not exceed the sum of \$80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year. When the total tax liability does not exceed ~~\$1,600~~ \$3,200 in any calendar year, the retailer shall file returns quarterly on or before the 25th day of the month following the end of each calendar quarter. When the total tax liability exceeds ~~\$1,600~~ \$3,200 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. When the total tax liability exceeds \$32,000 in any calendar year, the retailer shall be required to pay the sales tax liability for the first 15 days of each month to the director on or before the 25th day of that month. Any such payment shall accompany the return filed for the preceding month. A retailer will be considered to have complied with the requirements to pay the first 15 days' liability for any month if, on or before the 25th day of that month, the retailer paid 90% of the liability for that fifteen-day period, or 50% of such retailer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs computed at the rate applicable in the month in which the fifteen-day period occurs, and, in either case, paid any underpayment with the payment required on or before the 25th day of the following month. Such retailers shall pay their sales tax liabilities for the remainder of each such month at the time of filing the return for such month. Determinations of amounts of liability in a calendar year for purposes of determining filing requirements shall be made by the director upon the basis of amounts of liability by those retailers during the preceding calendar year or by estimates in cases of retailers having no previous sales tax histories. The director is hereby authorized to modify the filing schedule for any retailer when it is apparent that the original determination was inaccurate.

(b) All model 1, model 2 and model 3 sellers are required to file returns electronically. Any model 1, model 2 or model 3 seller may submit its sales and use tax returns in a simplified format approved by the director. Any seller that is registered under the agreement, which does not have a legal requirement to register in this state, and is not a model 1, model 2 or model 3 seller, may submit its sales and use tax returns as follows: (1) Upon registration, the director shall provide to the seller the returns required;

(2) seller shall file a return anytime within one year of the month of initial registration, and future returns are required on an annual basis in succeeding years; and

(3) in addition to the returns required in subsection (b)(2), sellers are required to submit returns in the month following any month in which they have accumulated state and local sales tax funds for this state in the amount of \$1,600 or more.

Sec. 13. K.S.A. 79-4508 is hereby amended to read as follows: 79-4508. (a) *Commencing in the tax year beginning after December 31, 2003*, the amount of any claim pursuant to this act shall be computed by deducting the amount computed under column (2) from the amount of claimant's property tax accrued and/or rent constituting property tax accrued.

(1)		(2)
Claimants household income		Deduction from property tax accrued and/or rent constituting property tax accrued
At least	But not more than	
\$0	\$3,000	\$0
3,001	4,000	12%
4,001	<del>25,000</del> 26,300	12% plus 4% of every \$1,000, or fraction thereof, of income in excess of \$4,001

(b) The director of taxation shall prepare a table under which claims under this act shall be determined. The amount of claim for each bracket shall be computed only to the nearest \$1.

(c) The claimant may elect not to record the amount claimed on the claim. The claim allowable to persons making this election shall be computed by the department which shall notify the claimant by mail of the amount of the allowable claim.

Sec. 14. K.S.A. 2003 Supp. 82a-2101 is hereby amended to read as follows: 82a-2101. (a) On and after January 1, 2002, there is hereby imposed a clean drinking water fee at the rate of \$.03 per 1,000 gallons of water sold at retail by a public water supply system and delivered through mains, lines or pipes. Such fee shall be paid, administered, enforced and collected in the manner provided for the fee imposed by subsection (a)(1) of K.S.A. 82a-954, and amendments thereto. The price to the consumer of water sold at retail by any such system shall not include the amount of such fee.

(b) (1) A public water supply system may elect to opt out of the fee imposed by this section by notifying, before October 1, 2001, the Kansas water office and the department of revenue of the election to opt out. *Except as provided by subsection (b)(2)*, such election shall be irrevocable. Such public water supply system shall continue to pay all applicable sales tax on direct and indirect purchases of tangible personal property and services purchased by such system.

(2) *On and after January 1, 2005, any public water supply system which elected to opt out of the fee imposed by subsection (a) may elect to collect such fee as provided by subsection (a) and direct and indirect purchases of tangible personal property and services by such system shall be exempt from sales tax as provided by K.S.A. 79-3606, and amendments thereto. Such election shall be irrevocable.*

(c) The director of taxation shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received or collected from the fee imposed pursuant to this section. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit ~~5%~~ <sup>5/106</sup> thereof to the state highway fund and the remainder to the state general fund.

New Sec. 15. (a) In accordance with the provisions of section 1 of article 11 of the Kansas constitution, all wireless communication towers, broadcast towers, antenna and relay sites, except public utility property valued and assessed pursuant to K.S.A. 79-5a01 *et seq.*, and amendments thereto, are hereby defined as commercial and industrial machinery and equipment, and shall be classified for property tax purposes as tangible personal property within subclass 5 of class 2 of section 1 of article 11 of the Kansas constitution. All such property shall be valued in accordance with the provisions of subsection (b)(2)(E) of K.S.A. 79-1439, and amendments thereto.

(b) The provisions of this section shall apply to all taxable years commencing after December 31, 2002.

New Sec. 16. (a) (1) For any foreign or domestic for profit corporation, or professional corporation or association, duly registered and authorized to do business in Kansas by the secretary of state and which has taxable equity attributable to Kansas of \$100,000 or more, such entity shall pay an annual franchise tax to the secretary of revenue at the rate of .125% of such entity's taxable equity attributable to Kansas, except that such annual franchise tax for any such entity shall not exceed \$20,000.

(2) For any foreign or domestic limited liability company, foreign or domestic limited partnership or foreign or domestic limited liability partnership duly registered and authorized to do business in Kansas by the secretary of state and which has net capital accounts located or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income of \$100,000 or more, such entity shall pay an annual franchise tax to the secretary of revenue at the rate of .125% of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, or for a one-member LLC taxed as a sole proprietorship which has net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the preceding taxable year of \$100,000 or more, .125% of net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the preceding taxable year, except that such annual franchise tax for any such entity shall not exceed \$20,000.

(3) For any business trust duly registered and authorized to do business in Kansas by the secretary of state which has corpus as shown on its balance sheet at the end of the preceding taxable year as required to be reported on its annual report filed with the secretary of revenue of \$100,000 or more, such entity shall pay an annual franchise tax to the secretary of revenue at the rate of .125% of the corpus as shown on its balance sheet at the end of the preceding taxable year as required to be reported to the secretary of revenue or in the case of a foreign business trust which has a corpus which is located in or which it uses or intends to use in this state as shown on its balance sheet at the end of the preceding taxable year as required to be reported to the secretary of revenue of \$100,000 or more, .125% of that portion of the corpus which is located in or which it uses or intends to use in this state as shown on its balance sheet at the end of the preceding taxable year as required to be reported to the secretary of revenue, except that the annual franchise tax for any such entity shall not exceed \$20,000. Such balance sheet shall be as of the end of the tax period, certified by the trustee, fairly and truly reflecting the trust assets and liabilities and specifically setting out its corpus, and, in the case of a foreign business trust, fairly and truly reflecting an allocation of its moneys and other assets as between those located, used or to be used, in this state and those located, used or to be used elsewhere.

(b) (1) Every corporation or association, business trust, limited liability company, limited partnership or limited liability partnership subject to taxation under this act, regardless of whether such entity has a franchise tax liability, shall make a return, stating specifically such information as may be required by the forms, rules and regulations of the secretary of revenue, which return shall include a balance sheet listing all assets and liabilities as of the end of the tax year, as reported in the federal income tax return on form 1120 or, if no such federal return is required to be filed, such balance sheet information as otherwise required by the secretary, and such further information showing the allocation or apportionment calculations in computing the amount of the franchise tax. The return of a corporation or association shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer so authorized to act. The fact that an individual's name is signed on a return shall be *prima facie* evidence that such individual is authorized to sign such return on behalf of such corporation. In cases where receivers, trustees in bankruptcy or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation for which the return is made. The returns of a limited liability partnership shall be signed by a partner of the limited liability partnership. The returns of a limited liability company shall be signed by a member of the limited liability company.

(2) All returns shall be filed in the office of the director of taxation on or before the 15th day of the fourth month following the close of the taxable year, except as provided in subsection (b) (3).

(3) The director of taxation may grant a reasonable extension of time for filing returns in accordance with rules and regulations of the secretary of revenue. Whenever any such extension of time to file is requested by a taxpayer and granted by the director, no penalty authorized by K.S.A. 79-3228, and amendments thereto, shall be imposed if 90% of the liability is paid on or before the original due date.

(c) (1) All taxes imposed under the provisions of the Kansas franchise tax act shall be paid on the 15th day of the fourth month following the close of the taxable year. When the tax as shown to be due on a return is less than \$5, such tax shall be canceled and no payment need be remitted by the taxpayer.

(2) The director of taxation may extend the time for payment of the tax, or any installment thereof, for a reasonable period of time not to exceed six months from the date fixed for payment thereof. Such extension may exceed six months in the case of a taxpayer who is abroad. Interest shall be charged at the rate prescribed by K.S.A. 79-2968, and amendments thereto, for the period of such extension.

(d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229, 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i, 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to the administration and enforcement of this section.

(e) All taxes paid pursuant to the provisions of this act shall be rounded off to the nearest \$1, and unless other disposition is specifically provided by law, the taxes collected under the provisions of this act and all overpayments which may not be refunded under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. The secretary of revenue shall not refund any overpayment of franchise taxes which is equal to \$5 or less, shall not credit any domestic corporation or foreign corporation, association, business trust, limited liability company, limited partnership or limited liability partnership with any amount which may not be refunded under this section, and shall not require reimbursement for any underpayment of franchise taxes which is less than \$5. Franchise tax refunds shall be paid to the claimant from the income tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation, but no warrant issued hereunder shall be drawn in an amount less than \$5. No interest shall be allowed on any payment made to a claimant pursuant to this act.

(f) As used in this section: (1) "Act" means the Kansas franchise tax act;

(2) "net book value as calculated on an income tax basis located in or used in this state" means the net book value of a limited liability company multiplied by a percentage which is the average of the following three percentages: (A) The average value of the limited liability company's real and tangible personal property owned or rented and used in this state during the next preceding tax period divided by the average total value of the limited liability company's real and tangible personal property owned or rented and used during the next preceding tax period; (B) the total amount of compensation paid by the limited liability company in this state during the next preceding tax period divided by the total amount of compensation paid everywhere by the limited liability company during the next preceding tax period; and (C) the total sales of the limited liability company in this state during the next preceding tax period divided by the total sales of the limited liability company everywhere during the next preceding tax period. If a limited liability company has no real and tangible property owned or rented and used, compensation paid or sales made for the preceding tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity;

(3) "net capital accounts located in or used in this state" means the net capital accounts of a limited partnership or limited liability partnership as stated on the federal income tax return multiplied by a percentage which is the average of the following three percentages: (A) The average value of such entity's real and tangible personal property owned or rented and used in this state during the next preceding tax period divided by the average total value of such entity's real and tangible personal property owned or rented and used during the

next preceding tax period; (B) the total amount of compensation paid by such entity in this state during the next preceding tax period divided by the total amount of compensation paid everywhere by such entity during the next preceding tax period; and (C) the total sales of such entity in this state during the next preceding tax period divided by the total sales of such entity everywhere during the next preceding tax period. If such entity has no real and tangible personal property owned or rented and used, compensation paid or sales made for the preceding tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity;

(4) "shareholder's equity" means the sum of: (1) Paid-in capital stock, except that paid-in capital stock shall not include any capital stock issued by a corporation and reacquired by such corporation through gift, purchase or otherwise and available for resale or retirement; (2) capital paid in, in excess of par; and (3) retained earnings, all as stated on such corporation's federal income tax return;

(5) "Shareholder's equity attributable to Kansas" means the shareholder's equity of a corporation multiplied by a percentage which is the average of the following three percentages: (A) The average value of the corporation's real and tangible personal property owned or rented and used in this state during the next preceding tax period divided by the average total value of the corporation's real and tangible personal property owned or rented and used during the next preceding tax period; (B) the total amount of compensation paid by the corporation in this state during the next preceding tax period divided by the total amount of compensation paid everywhere by the corporation during the next preceding tax period; and (C) the total sales of the corporation in this state during the next preceding tax period divided by the total sales of the corporation everywhere during the next preceding tax period. If a corporation has no real and tangible personal property owned or rented and used, compensation paid or sales made for the preceding tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity; and

(6) "taxable equity attributable to Kansas" means shareholder's equity attributable to Kansas.

(g) The provisions of this section shall apply to all tax years commencing after December 31, 2003.

(h) The provisions of this section shall be known and may be cited as the Kansas franchise tax act.

Sec. 17. K.S.A. 17-1513 is hereby amended to read as follows: 17-1513. Each corporation organized under the provisions of this act shall make an annual report to the secretary of state, and pay the annual franchise ~~tax~~ fee, as prescribed by K.S.A. 17-7503 *and amendments thereto*.

Sec. 18. K.S.A. 17-1618 is hereby amended to read as follows: 17-1618. Each association formed under this act, or acts amendatory thereto, shall prepare and make an annual report to the secretary of state, and pay the annual franchise ~~tax~~ fee, as prescribed by K.S.A. 17-7504 and amendments thereto, except that the report shall be filed at the time prescribed by law for filing the association's annual Kansas income tax return. If any such association shall apply for an extension of time for filing its annual income tax return pursuant to the internal revenue code or subsection (c) of K.S.A. 79-3221 and amendments thereto, such association shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of time for filing the annual report. Such application for an extension of time for filing the annual report shall include a copy of the application for extension for filing its annual income tax return filed pursuant to the internal revenue code or K.S.A. 79-3221 and amendments thereto.

Sec. 19. K.S.A. 2003 Supp. 17-2036 is hereby amended to read as follows: 17-2036. Every business trust shall make an annual report in writing to the secretary of state, showing its financial condition at the close of business on the last day of its tax period under the Kansas income tax act next preceding the date of filing, but if a business trust's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms provided by the secretary of state and shall be filed at the time prescribed by law for filing the business trust's annual Kansas income tax return, except that if any such business trust shall receive



an extension of time for filing its annual income tax return from the internal revenue service or pursuant to subsection (c) of K.S.A. 79-3221, and amendments thereto, the time for filing the report hereunder shall be extended, correspondingly, upon filing with the secretary of state a copy of the extension granted by the internal revenue service or the director of taxation. The report shall contain the following:

(a) Executed copies of all amendments to the instrument by which the business trust was created, or to prior amendments thereto, which have been adopted and have not theretofore been filed under K.S.A. 17-2033, and amendments thereto, and accompanied by the fee prescribed therein for each such amendment;

(b) a verified list of the names and addresses of its trustees as of the end of its tax period; and

(c) a balance sheet as of the end of its tax period, certified by the trustee, fairly and truly reflecting its assets and liabilities and specifically setting out its corpus, and, in the case of a foreign business trust, fairly and truly reflecting an allocation of its moneys and other assets as between those located, used, or to be used in this state and those located, used or to be used elsewhere.

At the time of filing its annual report, the business trust shall pay to the secretary of state an annual franchise ~~tax fee~~ in an amount equal to ~~\$2 for each \$1,000 of its corpus as shown by its balance sheet, or, in the case of a foreign business trust, in an amount equal to \$2 for each \$1,000 of that portion of its corpus which is located in or which it uses or intends to use in this state as shown by its balance sheet, except that in any case no such tax shall be less than \$40 nor more than \$5,000~~ \$40.

The failure of any domestic or foreign business trust to file its annual report and pay its annual franchise ~~tax fee~~ within 90 days from the date on which they are due, as aforesaid, shall work a forfeiture of its authority to transact business in this state and all of the remedies, procedures, and penalties specified in K.S.A. 17-7509 and 17-7510, and amendments thereto, with respect to a corporation which fails to file its annual report or pay its annual franchise ~~tax fee~~ within 90 days after they are due, shall be applicable to such business trust.

Sec. 20. K.S.A. 2003 Supp. 17-2718 is hereby amended to read as follows: 17-2718. (a) Each professional corporation organized under the laws of this state shall file with the secretary of state an annual report in writing and a copy or duplicate thereof, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if any such corporation's tax period is other than the calendar year it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The report shall be filed at the time prescribed by law for filing the corporation's annual Kansas income tax return, except that such corporation may apply to the secretary of state not more than 90 days after the due date of its annual report for an extension of the time for filing the report, and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221, and amendments thereto. The report shall be made on a form provided by the secretary of state, containing the following information:

(1) The names and residence addresses of all officers, directors and shareholders of the professional corporation;

(2) a statement that each officer, director and shareholder is or is not a qualified person as defined in K.S.A. 17-2707, and amendments thereto, and setting forth the date on which any shares of the corporation were no longer owned by a qualified person; and

(3) the amount of capital stock issued.

(b) The report shall be signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report will be dated and subscribed by the person as true, under penalty of perjury. The copy of the annual report or the duplicate original copy of the annual report shall be forwarded to the regulatory board which licenses the shareholders described in the report. At the time of filing its annual report, each professional

corporation shall pay the annual franchise ~~tax~~ fee prescribed by K.S.A. 17-7503, and amendments thereto.

Sec. 21. K.S.A. 2003 Supp. 17-4634 is hereby amended to read as follows: 17-4634. (a) Every corporation organized under the electric cooperative act of this state shall make an annual report in writing to the secretary of state, showing the financial condition of the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if any such corporation's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The report shall be filed on or before the fifteenth day of the fourth month following the close of the tax year of the electric cooperative. An extension for filing the annual report may be granted upon the filing of a written application with the secretary of state prior to the due date of the report, except that no such extension may be granted for a period of more than ~~ninety (90)~~ 90 days. The report shall be made on a form provided by the secretary of state, containing the following information:

- (1) The name of the corporation;
- (2) the location of the principal office;
- (3) the name of the president, secretary and treasurer and the names of directors with the residence address of each;
- (4) the number of memberships issued;
- (5) a balance sheet showing the financial condition of the corporation at the close of business on the last day of its tax period next preceding the date of filing; and

(6) the change or changes, if any, in the particulars made since the last annual report.

(b) Such reports shall be signed by the president, vice-president or secretary of the corporation, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing such annual report, each such corporation shall pay an annual franchise ~~tax of~~ fee in an amount equal to \$40.

Sec. 22. K.S.A. 2003 Supp. 17-4677 is hereby amended to read as follows: 17-4677. (a) Every cooperative organized under the renewable energy electric generation cooperative act shall make an annual report in writing to the secretary of state, showing the financial condition of the cooperative at the close of business on the last day of its tax period next preceding the date of filing, but if any such cooperative's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The report shall be filed on or before the 15th day of the fourth month following the close of the tax year of the electric cooperative. An extension for filing the annual report may be granted upon the filing of a written application with the secretary of state prior to the due date of the report, except that no such extension may be granted for a period of more than 90 days. The report shall be made on a form provided by the secretary of state, containing the following information:

- (1) The name of the cooperative;
- (2) the location of the principal office of the cooperative;
- (3) the names and addresses of the president, secretary, treasurer and directors of the cooperative;
- (4) the number of members of the cooperative;
- (5) a balance sheet showing the financial condition of the cooperative at the close of business on the last day of its tax period next preceding the date of filing; and

(6) the change or changes, if any, in the particulars made since the last annual report.

(b) The annual report shall be signed by the president, vice-president or secretary of the cooperative, sworn to before an officer duly authorized to administer oaths, and forwarded to the secretary of state. At the time of filing such annual report, the cooperative shall pay an annual franchise ~~tax of \$20~~ fee in an amount equal to \$40.

Sec. 23. K.S.A. 2003 Supp. 17-7503 is hereby amended to read as follows: 17-7503. (a) Every domestic corporation organized for profit shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms prescribed by the secretary of state. The report shall be

filed at the time prescribed by law for filing the corporation's annual Kansas income tax return, except that if any such corporation shall apply for an extension of time for filing its annual income tax return under the internal revenue service or under subsection (c) of K.S.A. 79-3221, and amendments thereto, such corporation shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing the report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221, and amendments thereto. Such application shall include a copy of the application to income tax authorities. The report shall contain the following information:

- (1) The name of the corporation;
- (2) the location of the principal office;
- (3) the names of the president, secretary, treasurer and members of the board of directors, with the residence address of each;
- (4) the number of shares of capital stock issued and the amount of capital stock paid up;
- (5) the nature and kind of business in which the corporation is engaged; and
- (6) a list of stockholders owning at least 5% of the capital stock of the corporation, with the post office address of each.

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

- (1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;
- (2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;
- (3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;
- (4) the total number of stockholders of the corporation;
- (5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;
- (6) the number of acres of agricultural land, held and reported in each category under provision (5), state separately, being irrigated; and
- (7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

(c) The report shall be signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report will be dated and subscribed by the person as true, under penalty of perjury. At the time of filing such annual report it shall be the duty of each domestic corporation organized for profit to pay to the secretary of state an annual franchise tax fee in an amount equal to ~~\$2 for each \$1,000 of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than \$40 or more than \$5,000.~~ The amount of any such franchise tax paid by the corporation to the secretary as provided by this subsection shall not be disclosed by the secretary \$40.

Sec. 24. K.S.A. 2003 Supp. 17-7504 is hereby amended to read as follows: 17-7504. (a) Every corporation organized not for profit shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation's tax period is other than the calendar year, it shall give notice thereof to the secretary of state prior to December 31 of the year it commences such tax period. The reports shall be made on forms prescribed by the secretary of state. The report shall be filed on the 15th day of the sixth month following the close of the taxable year, except that such corporation may apply to the secretary of state not more than 90 days after the due date of its annual report for an extension of the time for filing the report, and an extension shall be granted for a period of time corresponding to that granted under the internal

revenue code or K.S.A. 79-3221, and amendments thereto. The report shall contain the following information:

- (1) The name of the corporation;
- (2) the location of the principal office;
- (3) the names of the president, secretary and treasurer, and the members of the board of directors, with the residence address of each;
- (4) the number of memberships or the number of shares of capital stock issued and the amount of capital stock paid up.

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

- (1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;
- (2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;
- (3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;
- (4) the total number of stockholders of the corporation;
- (5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;
- (6) the number of acres of agricultural land, held and reported in each category under paragraph (5) of this subsection (b), stated separately, being irrigated; and
- (7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

(c) The report shall be signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report will be dated and subscribed by the person as true, under penalty of perjury. At the time of filing such report, each nonprofit corporation shall pay an annual ~~privilege franchise fee of \$40~~ *in an amount equal to \$40* for all tax years commencing after December 31, ~~2001~~ 2003.

Sec. 25. K.S.A. 2003 Supp. 17-7505 is hereby amended to read as follows: 17-7505. (a) Every foreign corporation organized for profit, or organized under the cooperative type statutes of the state, territory or foreign country of incorporation, now or hereafter doing business in this state, and owning or using a part or all of its capital in this state, and subject to compliance with the laws relating to the admission of foreign corporations to do business in Kansas, shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation operates on a fiscal year other than the calendar year it shall give written notice thereof to the secretary of state prior to December 31 of the year commencing such fiscal year. The report shall be made on a form prescribed by the secretary of state. The report shall be filed at the time prescribed by law for filing the corporation's annual Kansas income tax return, except that if any such corporation shall apply for an extension of time for filing its annual income tax return under the internal revenue service or under subsection (c) of K.S.A. 79-3221, and amendments thereto, such corporation shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing the report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221, and amendments thereto. Such application shall include a copy of the application to income tax authorities. The report shall contain the following facts:

- (1) The name of the corporation and under the laws of what state or country organized;
- (2) the location of its principal office;

(3) the names of the president, secretary, treasurer and members of the board of directors, with the residence address of each;

(4) the number of shares of capital stock issued and the amount of capital stock paid up;

(5) the nature and kind of business in which the company is engaged and its place or places of business both within and without the state of Kansas;

(6) the value of the property owned and used by the company in Kansas, where situated, and the value of the property owned and used outside of Kansas and where situated; and

(7) the corporation's shareholder's equity attributable to Kansas.

(b) Every corporation subject to the provisions of this section which holds agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, within this state shall show the following additional information on the report:

(1) The acreage and location listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by or to the corporation;

(2) the purposes for which such agricultural land is owned or leased and, if leased, to whom such agricultural land is leased;

(3) the value of the nonagricultural assets and the agricultural assets, stated separately, owned and controlled by the corporation both within and without the state of Kansas and where situated;

(4) the total number of stockholders of the corporation;

(5) the number of acres owned or operated by the corporation, the number of acres leased by the corporation and the number of acres leased to the corporation;

(6) the number of acres of agricultural land, held and reported in each category under paragraph (5) of this subsection (b), stated separately, being irrigated; and

(7) whether any of the agricultural land held and reported under this subsection was acquired after July 1, 1981.

The report shall be signed by its president, secretary, treasurer or other officer duly authorized so to act, or by any two of its directors, or by an incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on such report shall be prima facie evidence that such individual is authorized to sign the report on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This report will be dated and subscribed by the person as true, under penalty of perjury. At the time of filing its annual report, each such foreign corporation shall pay to the secretary of state an annual franchise tax fee in an amount equal to \$2 for each \$1,000 of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the foreign corporation to the secretary as provided by this subsection shall not be disclosed by the secretary \$40.

Sec. 26. K.S.A. 2003 Supp. 17-7507 is hereby amended to read as follows: 17-7507. No corporation shall be required to file its first annual report under this act, or pay any annual franchise tax fee required to accompany such report, unless such corporation has filed its articles of incorporation or certificate of good standing at least six months prior to the last day of its tax period. If any corporation shall file with the secretary of state a notice of change in its tax period, and the next annual report filed by such corporation subsequent to such notice is based on a tax period of less than 12 months. The annual tax liability shall be determined by multiplying the annual franchise tax liability for such year by a fraction the numerator of which is the number of months, or any portion thereof, covered by the annual report and the denominator of which is 12. Notwithstanding the foregoing, the minimum annual franchise tax shall be \$40.

Sec. 27. K.S.A. 2003 Supp. 17-7509 is hereby amended to read as follows: 17-7509. (a) In case any corporation organized for profit which is required to file an annual report and pay the annual franchise tax fee prescribed by this act shall fail or neglect to make such report at the time prescribed, such corporation shall be subject to a penalty of \$75. Such penalty and the annual tax or taxes fee or fees required to be paid by this act may be recovered by an action in the name of the state, and all moneys recovered shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) ~~On complaint of the secretary of state that any corporation has failed to pay the annual taxes prescribed by this act, it shall be the duty of the county or district attorney, or the attorney general, to institute such action in the district court of Shawnee county, Kansas, or of any county in which such corporation has an office or place of business.~~

~~(c) The penalties provided for in subsection (a) also may be assessed against any corporation for the reason that such corporation has been canceled or its existence forfeited pursuant to the Kansas general corporation code. No penalty shall be charged pursuant to this subsection, if a corporation is assessed penalties pursuant to grounds specified in subsection (a).~~

Sec. 28. K.S.A. 17-7510 is hereby amended to read as follows: 17-7510. (a) In addition to any other penalties, the failure of any domestic corporation to file the annual report in accordance with the provisions of this act or to pay the annual ~~taxes herein~~ franchise fee provided for within 90 days of the time for filing and paying the same shall work the forfeiture of the articles of incorporation of such domestic corporation. Within 60 days after the date such annual report and ~~taxes~~ fee are due, the secretary of state, by mail, shall notify any corporation that has failed to submit such report and ~~taxes~~ fee when due that its articles of incorporation shall be forfeited unless the annual report is filed and the ~~taxes thereon are~~ fee is paid within 90 days from the date such report and ~~taxes~~ fee were due. Any corporation that fails to submit such report and ~~taxes~~ fee within such time shall forfeit its articles of incorporation, and the secretary of state shall notify the attorney general that the articles of incorporation of such corporation have been forfeited.

(b) In addition to any other penalties, the failure of any foreign corporation to file the annual report or pay the annual franchise ~~taxes~~ fee prescribed by this act within 90 days from the time provided for filing and paying the same shall work a forfeiture of its right or authority to do business in this state. Within 60 days after the date such annual report and ~~taxes~~ fee are due, the secretary of state, by mail, shall notify any corporation that has failed to submit such report and ~~taxes~~ fee when due that its authority to do business in this state shall be forfeited unless the annual report and ~~taxes thereon are~~ fee is paid within 90 days from the date such report and ~~taxes~~ fee were due. Any corporation that fails to submit such report and ~~taxes~~ fees within such time shall forfeit its authority to do business in this state, and the secretary of state shall publish a notice of such forfeiture in the Kansas register.

This section shall not be construed to restrict the state from invoking any other remedies provided by law.

Sec. 29. K.S.A. 17-7511 is hereby amended to read as follows: 17-7511. Pursuant to the authority granted by subsection (c) of K.S.A. 79-3234, the secretary of state, as a legal representative of the state, may inspect the annual Kansas income tax return of any corporation for the purpose of verifying any information contained in the annual report filed by such corporation with the secretary of state pursuant to this act. The secretary of state shall not disclose any information obtained from any such return, except as may be necessary to commence an appropriate administrative or judicial proceeding against the corporation filing the same, *and shall disclose to the secretary of revenue any information and allow the secretary to inspect as necessary the annual report for purposes of verifying any information contained on the franchise tax return as provided in section 13 and amendments thereto.*

Sec. 30. K.S.A. 17-7512 is hereby amended to read as follows: 17-7512. The provisions of this act relating to the filing of annual reports and the payment of franchise taxes *and fees* shall not apply to banking, insurance or savings and loan corporations or associations or to credit unions or any firemen's relief association under the jurisdiction and supervision of the insurance commissioner or to Kansas Venture Capital, Inc. or to venture capital companies certified by the secretary of commerce pursuant to article 83 of chapter 74 of the Kansas Statutes Annotated and amendments thereto.

Sec. 31. K.S.A. 2003 Supp. 17-76,125 is hereby amended to read as follows: 17-76,125. A foreign limited liability company may cancel its registration by filing with the secretary of state a certificate of cancellation executed by the members, together with the fee required by this act and the annual report and franchise ~~tax~~ fee for any tax period which has ended. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the state of Kansas.

Sec. 32. K.S.A. 2003 Supp. 17-76,139 is hereby amended to read as follows: 17-76,139.

(a) Every limited liability company organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. If the limited liability company applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability company shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

- (1) The name of the limited liability company; and
- (2) a list of the members owning at least 5% of the capital of the company, with the post office address of each.

(b) Every foreign limited liability company shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice in writing of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. If the limited liability company applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability company also shall apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the limited liability company.

(c) The annual report required by this section shall be signed by a member of the limited liability company and forwarded to the secretary of state. At the time of filing the report, the limited liability company shall pay to the secretary of state an annual franchise ~~tax fee~~ in an amount equal to ~~\$2 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, or for a one-member LLC taxed as a sole proprietorship, \$2 for each \$1,000 of net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the preceding taxable year, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited liability company to the secretary as provided by this subsection shall not be disclosed by the secretary \$40.~~

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise ~~tax fee~~, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise ~~tax fee~~, shall be applicable to the articles of organization of any domestic limited liability company or to the authority of any foreign limited liability company which fails to file its annual report or pay the franchise ~~tax fee~~ within 90 days of the time prescribed in this section for filing and paying the same. Whenever the articles of organization of a domestic limited liability company or the authority of any foreign limited liability company are forfeited for failure to file an annual report or to pay the required franchise ~~tax fee~~, the domestic limited liability company or the authority of a foreign limited liability company may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed

by the secretary of state and paying to the secretary of state all fees ~~and taxes~~, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the forfeiture and the company may resume its business as if the forfeiture had never occurred.

(f) No limited liability company shall be required to file its first annual report under this act, or pay any annual franchise ~~tax fee~~ required to accompany such report, unless such limited liability company has filed its articles of organization or application for authority at least six months prior to the last day of its tax period. ~~If any limited liability company files with the secretary of state a notice of change in its tax period and the next annual report filed by such limited liability company subsequent to such notice is based on a tax period of less than 12 months, the annual tax liability shall be determined by multiplying the annual franchise tax liability for such year by a fraction, the numerator of which is the number of months or any portion thereof covered by the annual report and the denominator of which is 12, except that the tax shall not be less than \$40.~~

Sec. 33. K.S.A. 2003 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules



and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(46) Any information or material received by the secretary of state pursuant to subsection (b) of K.S.A. 2003 Supp. 44-1518, and amendments thereto, except when such information is required to be submitted in an application pursuant to K.S.A. 2003 Supp. 44-1520, and amendments thereto.

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

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

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

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

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of

the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Sec. 34. K.S.A. 2003 Supp. 56-1a606 is hereby amended to read as follows: 56-1a606. (a) Every limited partnership organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited partnership's tax period is other than the calendar year, it shall give notice of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited partnership's annual Kansas income tax return. If the limited partnership applies for an extension of time for filing its annual income tax return under the internal revenue code or under K.S.A. 79-3221 and amendments thereto, the limited partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221 and amendments thereto. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

(1) The name of the limited partnership; and

(2) a list of the partners owning at least 5% of the capital of the partnership, with the post office address of each.

(c) Every limited partnership subject to the provisions of this section which is a limited corporate partnership, as defined in K.S.A. 17-5903 and amendments thereto, and which holds agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state shall show the following additional information on the report:

(1) The number of acres and location, listed by section, range, township and county of each lot, tract or parcel of agricultural land in this state owned or leased by the limited partnership; and

(2) whether any of the agricultural land held and reported under subsection (c)(1) was acquired after July 1, 1981.

(d) The annual report shall be signed by the general partner or partners of the limited partnership, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing the report, the limited partnership shall pay to the secretary of state an annual franchise ~~tax fee~~ in an amount equal to ~~\$2 for each \$1,000 of the partners' net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited partnership to the secretary as provided by this subsection shall not be disclosed by the secretary \$40.~~

(e) The provisions of K.S.A. 17-7509 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise ~~tax fee~~, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a domestic corporation's articles of incorporation for failure to file an annual report or pay the required franchise ~~tax fee~~, shall be applicable to the certificate of partnership of any limited partnership which fails to file its annual report or pay the franchise ~~tax fee~~ within 90 days of the time prescribed in this section for filing and paying the same. Whenever the certificate of partnership of a limited partnership is forfeited for failure to file an annual report or to pay the required franchise ~~tax fee~~, the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees ~~and taxes~~, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506 and amendments thereto for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

Sec. 35. K.S.A. 2003 Supp. 56-1a607 is hereby amended to read as follows: 56-1a607. (a) Every foreign limited partnership shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited partnership at the close of

business on the last day of its tax period next preceding the date of filing. If the limited partnership's tax period is other than the calendar year, it shall give notice of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited partnership's annual Kansas income tax return. If the limited partnership applies for an extension of time for filing its annual income tax return under the internal revenue code or under K.S.A. 79-3221 and amendments thereto, the limited partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code or K.S.A. 79-3221 and amendments thereto. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the limited partnership.

(c) Every foreign limited partnership subject to the provisions of this section which is a limited corporate partnership, as defined in K.S.A. 17-5903 and amendments thereto, and which holds agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, within this state shall show the following additional information on the report:

(1) The number of acres and location, listed by section, range, township and county of agricultural land in this state owned or leased by the limited partnership; and

(2) whether any of the agricultural land held and reported under subsection (c)(1) was acquired after July 1, 1981.

(d) The annual report shall be signed by the general partner or partners of the limited partnership, sworn to before an officer duly authorized to administer oaths and forwarded to the secretary of state. At the time of filing the report, the foreign limited partnership shall pay to the secretary of state an annual franchise ~~tax fee~~ in an amount equal to ~~\$2~~ for each ~~\$1,000~~ of the partners' net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than ~~\$40~~ or more than ~~\$5,000~~. The amount of any such franchise tax paid by the limited partnership to the secretary as provided by this subsection shall not be disclosed by the secretary ~~\$40~~.

(e) The provisions of K.S.A. 17-7509 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise ~~tax fee~~, and the provisions of subsection (b) of K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a foreign corporation's authority to do business in this state for failure to file an annual report or pay the required franchise ~~tax fee~~, shall be applicable to the authority of any foreign limited partnership which fails to file its annual report or pay the franchise ~~tax fee~~ within 90 days of the time prescribed in this section for filing and paying the same. Whenever the authority of a foreign limited partnership to do business in this state is forfeited for failure to file an annual report or to pay the required franchise ~~tax fee~~, the foreign limited partnership's authority to do business in this state may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees ~~and taxes~~, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506 and amendments thereto for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

Sec. 36. K.S.A. 56-1a608 is hereby amended to read as follows: 56-1a608. No limited partnership shall be required to file its first annual report under this act, or pay any annual franchise ~~tax fee~~ required to accompany such report, unless such limited partnership has filed its certificate of limited partnership or certificate of good standing at least six months prior to the last day of its tax period. ~~If any limited partnership files with the secretary of state a notice of change in its tax period and the next annual report filed by such limited partnership subsequent to such notice is based on a tax period of less than 12 months, there shall be no reduction or proration of the annual tax required to accompany such report.~~

Sec. 37. K.S.A. 2003 Supp. 56a-1201 is hereby amended to read as follows: 56a-1201. (a) Every limited liability partnership organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the

limited liability partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability partnership's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability partnership's annual Kansas income tax return. If the limited liability partnership applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

(1) The name of the limited liability partnership; and

(2) a list of the partners owning at least 5% of the capital of the partnership, with the post office address of each.

(c) The annual report shall be signed by a partner of the limited liability partnership and forwarded to the secretary of state. At the time of filing the report, the limited liability partnership shall pay to the secretary of state an annual franchise ~~tax fee~~ in an amount equal to \$2 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. The amount of any such franchise tax paid by the limited liability partnership to the secretary as provided by this subsection shall not be disclosed by the secretary \$40.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise ~~tax fee~~, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise ~~tax fee~~, shall be applicable to the statement of qualification of any limited liability partnership which fails to file its annual report or pay the franchise ~~tax fee~~ within 90 days of the time prescribed in this section for filing and paying the same. Whenever the statement of qualification of a limited liability partnership is forfeited for failure to file an annual report or to pay the required franchise ~~tax fee~~, the limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees ~~and taxes~~, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

Sec. 38. K.S.A. 2003 Supp. 56a-1202 is hereby amended to read as follows: 56a-1202. (a) Every foreign limited liability partnership shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the foreign limited liability partnership at the close of business on the last day of its tax period next preceding the date of filing. If the foreign limited liability partnership's tax period is other than the calendar year, it shall give notice in writing of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the foreign limited liability partnership's annual Kansas income tax return. If the foreign limited liability partnership applies for an extension of time for filing its annual income tax return under the internal revenue code, the foreign limited liability partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the foreign limited liability partnership.

(c) The annual report shall be signed by a partner of the foreign limited liability partnership and forwarded to the secretary of state. At the time of filing the report, the foreign limited liability partnership shall pay to the secretary of state an annual franchise *tax fee* in an amount equal to \$2 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$40 or more than \$5,000. ~~The amount of any such franchise tax paid by the foreign limited liability partnership to the secretary as provided by this subsection shall not be disclosed by the secretary \$40.~~

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise *tax fee*, and the provisions of subsection (a) of K.S.A. 17-7510, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise *tax fee*, shall be applicable to the statement of foreign qualification of any foreign limited liability partnership which fails to file its annual report or pay the franchise *tax fee* within 90 days of the time prescribed in this section for filing and paying the same. Whenever the statement of foreign qualification of a foreign limited liability partnership is forfeited for failure to file an annual report or to pay the required franchise *tax fee*, the statement of foreign qualification of the foreign limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees ~~and taxes~~, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration or revival of a corporation's articles of incorporation.

Sec. 39. K.S.A. 2003 Supp. 56a-1203 is hereby amended to read as follows: 56a-1203. No limited liability partnership or foreign limited liability partnership shall be required to file its first annual report under this act, or pay any annual franchise *tax fee* required to accompany such report, unless such partnership has filed its statement of qualification or foreign qualification at least six months prior to the last day of its tax period. ~~If any such partnership files with the secretary of state a notice of change in its tax period and the next annual report filed by such partnership subsequent to such notice is based on a tax period of less than 12 months, the annual tax liability shall be determined by multiplying the annual franchise tax liability for such year by a fraction, the numerator of which is the number of months or any portion thereof covered by the annual report and the denominator of which is 12, except that the tax shall not be less than \$40.~~

New Sec. 40. The secretary of state shall remit all moneys received from franchise fees, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 41. K.S.A. 2003 Supp. 79-32,105 is hereby amended to read as follows: 79-32,105. (a) The director shall remit the entire amount collected under the provisions of this act and from the income tax imposed upon individuals, corporations, estates or trusts pursuant to the "Kansas income tax act" less amounts withheld as provided in subsection (b) and any amounts credited to the IMPACT program repayment fund or the IMPACT program services fund under K.S.A. 74-50,107 and amendments thereto to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) A revolving fund, designated as "income tax refund fund" not to exceed \$4,000,000 shall be set apart and maintained by the director from income tax collections, *franchise tax collections*, withholding tax collections, and estimated tax collections and held by the state treasurer for prompt payment of all income tax refunds ~~and franchise tax refunds~~, for the payment of interest as provided in subsection (e), for payment of homestead property tax refunds in accordance with the homestead property tax refund act and for payment of property tax refunds allowed pursuant to the provisions of K.S.A. 2003 Supp. 79-255, and amendments thereto. The fund shall be in such amount, within the limit set by this section, as the director determines is necessary to meet current refunding requirements under this act.

(c) If the director discovers from the examination of the return, or upon claim duly filed by the taxpayer or upon final judgment of the court that the income tax, withholding tax, declaration of estimated tax or any penalty or interest paid by or credited to any taxpayer is in excess of the amount legally due for such tax or any other tax owed the state of Kansas, the director shall certify to the director of accounts and reports the name of the taxpayer, the amount of refund and such other information as the director may require. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the taxpayer out of the fund provided in subsection (b), except that no refund shall be made for a sum less than \$5, but such amount may be claimed by the taxpayer as a credit against the taxpayer's tax liability in the taxpayer's next succeeding taxable year.

(d) When a resident taxpayer dies, and the director determines that a refund is due the claimant not in excess of \$100, the director shall certify to the director of accounts and reports the name and address of the claimant entitled to the refund and the amount of the refund. A refund may be made upon a claim duly made on behalf of the estate of the deceased or in the absence of any such claim upon a claim by a surviving spouse and if none upon the claim by any heir at law. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the claimant out of the fund provided in subsection (b).

(e) Interest shall be allowed and paid at the rate of 12% per annum upon any overpayment of the income tax imposed upon individuals, corporations, estates or trusts pursuant to the Kansas income tax act for any period prior to January 1, 1995, 6% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and at the rate prescribed and determined pursuant to K.S.A. 79-2968, and amendments thereto, for any period thereafter.

For the purposes of this subsection:

(1) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer;

(2) any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(3) if any overpayment of tax results from a carryback of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss or net capital loss arises. For purposes of this paragraph, the return for the loss year shall not be deemed to be filed before claim for such overpayment is filed;

(4) in the case of a credit, interest shall be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken, except that if any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year, and no interest shall be allowed or paid in such overpayment for the taxable year in which the overpayment arises;

(5) in the case of a tax return which is filed after the last date prescribed for filing such return, determined with regard to extensions, no interest shall be allowed or paid for any period before the date on which the return is filed;

(6) in the case of a refund, interest shall be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, as determined by the director, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer, but acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon; and

(7) if any overpayment is refunded within two months after the last date prescribed, or permitted by extension of time, for filing the return of such tax, or within two months after



the return was filed, whichever is later, no interest shall be allowed or paid. For the purposes of this section, an overpayment shall be deemed to have been refunded at the time the refund check in the amount of the overpayment, plus any interest due thereon, is deposited in the United States mail.

New Sec. 42. Any entity required to file an annual report with the secretary of state for a tax year commencing prior to January 1, 2004, shall be subject to the statutes in effect prior to the effective date of this act, with respect to such annual report.

New Sec. 43. (a) Notwithstanding the provisions of any law to the contrary, commencing on the effective date of this act and ending December 31, 2004, for purposes of facilitating the transition by retailers to the destination-based sourcing provisions set forth in K.S.A. 2003 Supp. 79-3670 *et seq.*, and amendments thereto, for taxable sales occurring during such time period, retailers may elect to apply the origin-based sourcing provisions in effect as of June 30, 2003. On and after January 1, 2005, all retailers must be in full compliance with the destination-based sourcing provisions set forth in K.S.A. 2003 Supp. 79-3670 *et seq.*, and amendments thereto.

(b) Notwithstanding the provisions of any law to the contrary, the secretary or the secretary's designee, upon making a record of the reasons therefor, may waive penalties and interest that would otherwise be imposed on the unpaid balance of tax due pursuant to the provisions of K.S.A. 79-3615, and amendments thereto, and 79-3706, and amendments thereto, to the extent the unpaid balance of such tax, or any portion thereof, is attributable to reasonable causes in attempting to implement and apply the destination-based sourcing provisions set forth in K.S.A. 2003 Supp. 79-3670 *et seq.*, and amendments thereto.

Sec. 44. K.S.A. 17-1513, 17-1618, 17-7510, 17-7511, 17-7512, 56-1a608, 79-201f, 79-201k and 79-4508 and K.S.A. 2003 Supp. 17-2036, 17-2718, 17-4634, 17-4677, 17-7503, 17-7504, 17-7505, 17-7507, 17-7508, 17-7509, 17-76.125, 17-76.139, 45-221, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 56a-1203 79-5a01, 79-2017, 79-32.101, 79-32.105, 79-32.206, 79-3603, as amended by section 2 of 2004 Senate Bill No. 384, 79-3607 and 82a-2101 are hereby repealed.

Sec. 45. On and after January 1, 2005, K.S.A. 2003 Supp. 79-3606, as amended by section 18 of 2004 House Bill No. 2713 is hereby repealed.”;

And by renumbering sections accordingly;

On page 1, in line 10, by striking all after the first semicolon; by striking all in lines 11 and 12 and inserting “amending K.S.A. 17-1513, 17-1618, 17-7510, 17-7511, 17-7512, 56-1a608, 79-201f, 79-201k and 79-4508 and K.S.A. 2003 Supp. 17-2036, 17-2718, 17-4634, 17-4677, 17-7503, 17-7504, 17-7505, 17-7507, 17-7509, 17-76.125, 17-76.139, 45-221, 56-1a606, 56-1a607, 56a-1201, 56a-1202, 56a-1203, 79-5a01, 79-2017, 79-32.101, 79-32.105, 79-32.206, 79-3603, as amended by section 2 of 2004 Senate Bill No. 384, 79-3606, as amended by section 18 of 2004 House Bill No. 2713, 79-3607 and 82a-2101”; in line 13, after “sections” by inserting “; also repealing K.S.A. 2003 Supp. 17-7508”

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

JOHN EDMONDS  
LEE E. TAFANELLI  
BRUCE LARKIN  
*Conferees on part of House*

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

On motion of Rep. Edmonds, the conference committee report on **H. Sub. for SB 147** was adopted.

On roll call, the vote was: Yeas 109; Nays 11; Present but not voting: 0; Absent or not voting: 5.

Yeas: Aurand, Ballard, Barbieri-Lightner, Boyer, Brunk, Burgess, Burroughs, Carlin, Carter, Compton, Cox, Craft, Crow, Dahl, Davis, DeCastro, Decker, Dillmore, Dreher, Edmonds, Faber, Faust-Goudeau, Feuerborn, Flaharty, Flora, Freeborn, Gatewood, Goering,

Goico, Grant, Hill, Holland, Holmes, Horst, Huebert, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Kirk, Klein, Krehbiel, Kuether, Landwehr, Larkin, Light, Loganbill, M. Long, Long-Mast, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Mimor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Phelps, Pottorff, Powell, Powers, Reardon, Rehorn, Reitz, Ruff, Sawyer, Schwab, Schwartz, Scoggins-Waite, B. Sharp, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Storm, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, Wilk, D. Williams, J. Williams, Wilson, Yoder, Yonally.

Nays: Ballou, Bethell, Campbell, Gordon, Hayzlett, Henderson, Howell, Lane, Loyd, Pauls, Winn.

Present but not voting: None.

Absent or not voting: Beggs, Gilbert, Henry, Huff, Mason.

#### EXPLANATION OF VOTE

MR. SPEAKER: I vote yes on **H. Sub. for SB 147** because this legislation contains a number of provisions that help both small and big businesses in Kansas. It does not go far enough to effectively deal with the streamlined sales tax. However, we will continue the fight to repeal the streamlined sales tax on another day.—MIKE BURGESS, MARIO GOICO, ARLEN H. SIEGFREID, LARRY POWELL, DAN WILLIAMS, RAY MERRICK, JEFF GOERING, STEVE HUEBERT, PEGGY LONG-MAST, BONNIE HUY, DON HILL, WILLA DECASTRO, DOUG PATTERSON, SHARON SCHWARTZ, RALPH OSTMEYER, C. FRANK MILLER, ROB BOYER, CINDY NEIGHBOR, TODD NOVASCONE, KEVIN YODER, JENE VICKREY, BILL MCCREARY, ERIC CARTER, JOE MCLELAND, JOE HUMERICKHOUSE, BECKY HUTCHINS, DON MYERS, CLARK SHULTZ, MELVIN J. NEUFELD, SCOTT SCHWAB

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **HOUSE Substitute for SB 2**, submits the following report:

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

On page 1, by striking all in lines 17 through 43;

By striking all on pages 2 through 11 and inserting:

“Section 1. K.S.A. 2003 Supp. 19-101a is hereby amended to read as follows: 19-101a.

(a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 27174th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2005.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2005.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d; ~~or 65-1,178 through 65-1,199 or K.S.A. 2003 Supp. 17-5909;~~ and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2003 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) (A) *Counties may not exempt from or effect changes in the Kansas liquor control act, except as provided by paragraph (B).*

(B) *Counties may adopt resolutions which are not conflicting with or contrary to the Kansas liquor control act.*

(34) (A) *Counties may not exempt from or effect changes in the Kansas cereal malt beverage act, except as provided by paragraph (B).*

(B) *Counties may adopt resolutions which do not conflict with or are more restrictive than or supplemental to the Kansas cereal malt beverage act.*

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 2. K.S.A. 41-208 is hereby amended to read as follows: 41-208. *(a) Except as specifically provided in the Kansas liquor control act, the power to regulate all phases of the control of the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor and the manufacture of beer regardless of its alcoholic content, except as specifically delegated in this act, is hereby vested exclusively in the state and shall be exercised as provided in this act. No city shall enact any ordinance in conflict with or contrary to the provisions of this act and any ordinance of any city in effect at the time this act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this the Kansas liquor control act. Any ordinance or resolution enacted by a city or county which is in conflict with or contrary to the provisions of the Kansas liquor control act shall be null and void.*

*(b) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance shall not exceed be less than the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed by this act for the same violation.*

*(c) The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.*

Sec. 3. K.S.A. 41-301 is hereby amended to read as follows: 41-301. *(a) Except as provided by subsection (b), the director shall issue to qualified applicants, who have filed the bond and paid the registration and license fees required by this act, licenses to sell at retail alcoholic liquor at retail in the original package at premises within the corporate limits of cities and outside the corporate limits of cities in certain townships as provided in this act.*

*Provided, That no such retailer's license shall be issued for any premises within any city of the first or second class wherein a majority of the qualified electors of such city who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election held in November, 1948, shall have voted against the adoption of such proposition or in cities of the third class located in a township, or townships, wherein a majority of the qualified electors of such township, or townships, who voted on said proposition to amend the constitution at said election shall have voted against its adoption; until a majority of the qualified electors of such city voting at an election held as provided by K.S.A. 41-302, and amendments thereto, shall have declared by their votes to be in favor of the licensing of the sale of alcoholic liquor by the package in such city any city.*

*(b) No retailer's license shall be issued for premises within a city if the governing body of such city, within 90 days after the effective date of this act, adopts an ordinance prohibiting the licensing of the sale at retail of alcoholic liquor in the original package within such city. Upon adoption of such ordinance, the city clerk promptly shall transmit a copy of such ordinance to the director and the director shall refuse to issue licenses to sell at retail alcoholic liquor in the original package in such city. If the governing body adopts such an ordinance, the holder of any valid existing retailer's license for premises in such city shall have the right to continue to operate under such license for a period of 90 days after the effective date of the ordinance or until the expiration of such license, whichever period of time is shorter. If such period of time expires before the expiration of the term for which the retailer's license was issued, the licensee shall be entitled to a refund of the license fee for the unexpired portion of the license period which remains, in accordance with rules and regulations adopted by the secretary.*

*(c) No retailer's license shall be issued for premises within a city if, after the effective date of this act, a majority of the qualified voters of such city voting at an election held as provided by K.S.A. 41-302, and amendments thereto, votes against the licensing of the sale at retail of alcoholic liquor in the original package within such city unless, at a subsequent election, a majority of the qualified voters of such city voting at such election votes in favor of the licensing of the sale at retail of alcoholic liquor in the original package within such city.*

Sec. 4. K.S.A. 41-302 is hereby amended to read as follows: 41-302. (a) The question of licensing the ~~retail~~ sale at retail of alcoholic liquors by the liquor in the original package shall be submitted by the governing body of ~~any~~ a city at any regular general city election occurring in such city whenever a sufficient petition requesting such submission has been filed with the city clerk of ~~any~~ such city as hereinafter provided in this section. ~~In cities of the first and second class, any~~ Such petition shall be signed by ~~such number of electors qualified voters of such city which equals equal in number to not less than 30% or more of the total vote cast in such city at the last general election for the office of secretary of state. In cities of the third class, any such petition shall be signed by such number of electors of such city which equals 40% or more of the total vote cast at the last general city election held in such city of the third class for candidates for the city office for which the greatest number of total votes were cast. Each sheet of each petition shall comply with the provisions of K.S.A. 25-3601 through 25-3607, and amendments thereto. No signature on such petition shall be valid unless appended to the petition within the last 90 days prior to the date of filing the petition with the city clerk. Such petition shall be filed not less than 40 nor more than 60 days prior to the date of the election. After any such petition has been filed, no signature shall be withdrawn and no signature shall be added. The governing body of the city shall have the power to determine the sufficiency of any such petition.~~

Any person who signs a ~~proposal or~~ petition authorized by this section and who knowingly is not a qualified elector in the place where such ~~proposal or~~ petition is made ~~voter of the city where submission of the question is sought, or who aids or abets any other persons in doing any of the acts mentioned another in so doing, or any person who bribes, gives or pays any money or thing of value to any person directly or indirectly to induce such person to sign such proposal or~~ petition shall be guilty of a misdemeanor ~~and~~. Upon conviction thereof, ~~such person~~ shall be punished by a fine of not more than \$300 or by imprisonment of not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

~~(b) Upon the ballot the proposition shall be stated as follows:~~

“Shall the sale of alcoholic liquors by the package

YES

be licensed in (here insert the name of the city)?” NO

—Voters desiring to vote in favor of the sale of alcoholic liquors by the package shall place a cross or check mark in the square opposite the word “Yes” and those desiring to vote against the sale of alcoholic liquor by the package shall place a cross or check mark in the square opposite the word “No.”

—(c) (b) Upon the filing of a sufficient petition, the governing body shall call ~~any~~ an election required by this section and notice of such election shall be given in the manner provided by the general bond law. The provisions of the laws of this state relating to election officers, voting places, election places and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on the proposition under the provisions of this act. *Such election shall be called and held in the manner provided by law for question submitted elections.*

(d) The majority of those voting on the proposition shall be mandatory upon the director insofar as licensing the sale of such liquors therein by the package is concerned. In the absence of any vote on the question of licensing the sale of such liquors in cities of the first and second class wherein a majority of the qualified electors of such city who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election held in November, 1948, shall have voted in favor of the adoption of such proposition and in cities of the third class located in townships wherein a majority of the qualified electors voted in favor of such constitutional amendment and in the absence of any further vote in cities of the first, second or third class in which a majority of the qualified electors of such city shall have voted at any special or general city election in favor of the licensing of the sale of alcoholic liquor by the package, the director shall continue to issue licenses to sell the same by the package therein for periods of one year, subject to all the terms and conditions of this act

*The governing body of the city shall transmit to the director a copy of the results of any election held pursuant to this section. The director shall issue or refuse to issue licenses to sell at retail alcoholic liquor in the original package in such city in accordance with the results of such election.*

(e) (c) If a majority of the ~~electors~~ voters voting at any ~~such~~ election shall vote pursuant to this section votes against licensing the sale at retail of alcoholic liquors by the in the original package, the holder of any valid existing retailer’s license for premises in such city shall have the right to continue to operate under such license for a period ~~not to exceed~~ of 90 days after the result of such election is canvassed or until the expiration of such license, whichever period of time is ~~the~~ shorter. If such period of time expires before the expiration of the term for which the retailer’s license was issued, ~~such~~ the licensee shall be entitled to a refund of ~~that~~ the license fee for the unexpired portion of the license period which is unavailable to such licensee remains, in accordance with rules and regulations established adopted by the secretary of revenue.

(f) For the purpose of determining as provided in K.S.A. 41-301, and amendments thereto, and in this section whether a majority of the qualified electors of a township in which a city of the third class is located voted against the adoption of the liquor amendment at the general election held in November, 1948, if any city of the third class is located in two or more townships, the total vote for and against the amendment in all the townships in which such city is located shall be used to determine whether such city is located in a township in which a majority of the qualified electors voted against the amendment.

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

of more than 5,000, and thereafter such township population decreases or has decreased to 5,000 or less, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at the appropriate time if they are otherwise qualified.

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

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

(c) Any retail license issued prior to July 1, 2004, for premises not located in an incorporated city or in a township having a population of more than 5,000 shall continue to be valid and such premises shall continue to be eligible for licensure if the board of county commissioners of the county in which the premises are located has adopted a resolution approving the issuance of such license. A certified copy of such resolution shall accompany the application for a license authorized by this subsection.

Sec. 6. K.S.A. 2003 Supp. 41-347 is hereby amended to read as follows: 41-347. (a) The director may issue, in accordance with rules and regulations of the secretary: (1) To one or more charitable organizations a temporary permit authorizing the sale of alcoholic liquor at an auction; or (2) to an individual a temporary permit authorizing the sale of one or more limited issue porcelain containers containing alcoholic liquor. The permit shall be issued in the names of the charitable organizations or individual to which it is issued.

(b) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application for a permit authorizing an auction shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued, ~~which~~. Such fee shall be paid *in full* by a certified or cashier's check of a bank within this state, United States post office money order or cash ~~in the full amount thereof~~. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises ~~where the city, county or township zoning code allows use for which the permit is issued~~ which comply with all applicable zoning regulations.

(d) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than one temporary permit may be issued to any one applicant in a calendar year.

(e) All proceeds from an auction for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(f) A temporary permit shall not be transferable or assignable.

(g) The director may refuse to issue a temporary permit to any charitable organization or individual which has violated any provision of the Kansas liquor control act.

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

Sec. 7. K.S.A. 2003 Supp. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a, and amendments thereto:

(1) "Gallon" means wine gallon.

(2) "Federal area" means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(3) "Malt product" means malt syrup, malt extract, liquid malt or wort.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic liquor, cereal malt beverage or malt products in this state or a federal area at a rate of \$.18 per gallon on beer and cereal malt beverage; \$.20 per gallon on all wort or liquid malt; \$.10 per pound on all malt syrup or malt extract; \$.30 per gallon on wine containing 14% or less alcohol by volume; \$.75 per gallon on wine containing more than 14% alcohol by volume; and \$2.50 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquor or cereal malt beverage. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor or cereal malt beverage is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor or cereal malt beverage is imported into this state by a distributor for the purpose of sale at wholesale in this state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor or cereal malt beverage is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private citizen outside the borders of the United States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

(c) Manufacturers, microbreweries, farm wineries or distributors at wholesale of alcoholic liquor or cereal malt beverage shall be exempt from the payment of the gallonage tax imposed on alcoholic liquor and cereal malt beverage, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires, that the liquor or cereal malt beverage was manufactured in this state but was shipped out of the state for sale and consumption outside the state.

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

(e) The tax provided for by this section is not imposed upon:

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

(2) the privilege of engaging in any business of interstate commerce or otherwise, which business may not be made the subject of taxation by this state under the constitution and statutes of the United States.

(f) The tax imposed by this section shall be in addition to all other taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof.

(g) ~~Retail~~ Sales at retail of alcoholic liquor in the original package, sales of beer to consumers by microbreweries and sales of wine to consumers by farm wineries shall not be subject to the tax imposed by the Kansas retailers' sales tax act but shall be subject to the enforcement tax as provided for in this act in K.S.A. 79-4101 et seq., and amendments thereto.

(h) ~~Notwithstanding any ordinance to the contrary, Except as authorized by K.S.A. 41-310, and amendments thereto, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, microbrewery, farm winery, retailer or nonbeverage user under this act and doing business within the boundaries of the city except as specifically authorized by K.S.A. 41-310, and amendments thereto.~~

(i) The director shall collect the taxes imposed by this section and shall account for and remit all moneys collected from the tax to the state treasurer in accordance with the pro-



visions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 1/10 of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126, and amendments thereto, and shall credit the balance of the moneys collected to the state general fund.

(j) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon the manufacturer or distributor shall be reduced by the amount of the taxes which have been paid under this section as to the alcoholic liquor so used.

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanatoria or other institutions caring for the sick. Any school, college, hospital, sanatorium or other institution caring for the sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of \$2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine, the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to have any other license to purchase alcohol or wine from a microbrewery, farm winery, manufacturer or distributor.

Sec. 8. K.S.A. 41-710 is hereby amended to read as follows: 41-710. (a) No retailer's license shall be issued for premises ~~which are located in areas not zoned for general commercial or business purposes, if the city or township in which the premises are located is zoned or are not approved by the director, if the premises sought to be licensed are located outside an incorporated city in a township which is not zoned~~ *unless such premises comply with all applicable zoning regulations.*

(b) No microbrewery license or farm winery license shall be issued for premises which are zoned for any purpose except agricultural, commercial or business purposes.

(c) No retailer's, microbrewery or farm winery license shall be issued for premises which:

(1) Are located within 200 feet of any public or parochial school or college or church, except that if any such school, college or church is established within 200 feet of any licensed premises after the premises have been licensed, the premises shall be an eligible location for retail licensing; ~~and or~~

(2) do not conform to ~~the building ordinances or laws of the state or city or, in the absence of such ordinances or laws, are not structurally in good condition or are in a dilapidated condition~~ *all applicable building regulations.*

Sec. 9. K.S.A. 41-712 is hereby amended to read as follows: 41-712. (a) No person shall sell at retail any alcoholic liquor *in the original package*: (1) *Except as provided by subsection (b),* on Sunday; (2) on Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day; or (3) before 9 a.m. or after 11 p.m. on any day when the sale is permitted; ~~except that~~. The governing body of any city, by ordinance, may require *the closing of premises* prior to 11 p.m., but such ordinance shall not require closing prior to 8 p.m.

(b) *A retailer may sell at retail alcoholic liquor in the original package on Sunday between the hours of 12 noon and 8 p.m. within: (1) The corporate limits of a city where the sale at retail of alcoholic liquor in the original package on Sunday has been approved as provided*

*by section 10, and amendments thereto; and (2) the unincorporated area of any county where the sale at retail of alcoholic liquor in the original package on Sunday has been approved as provided by section 15, and amendments thereto.*

New Sec. 10. (a) The governing body of any city may adopt an ordinance permitting the sale at retail of alcoholic liquor or cereal malt beverage, or both, in the original package on Sunday between the hours of 12 noon and 8 p.m. Such ordinance shall be published at least once each week for two consecutive weeks in the official city newspaper. Such ordinance shall not become effective until at least 30 days following the date of the last publication thereof. If within 30 days following the last publication of the ordinance a petition requesting that the proposition be submitted for approval by the voters is filed in accordance with subsection (b), such ordinance shall not become effective until the proposition is submitted to and approved at an election as provided by this section.

(b) A petition to submit a proposition to the qualified voters of a city pursuant to this section shall be filed with the city clerk. The petition shall be signed by qualified voters of the city equal in number to not less than 10% of the voters of the city who voted for the office of secretary of state at the last preceding general election of such office.

(c) Upon the filing of a sufficient petition pursuant to this section, the governing body shall cause the proposition to be placed on the ballot at the next succeeding primary or general election which occurs after the petition is filed with the city clerk or at a special election called and held thereon. Such election shall be called and held in the manner provided by law for question submitted elections.

(d) If a majority of the voters voting at any election pursuant to this section votes in favor of the proposition, the governing body shall transmit a copy of the results to the director.

(e) Nothing in this section shall be construed as authorizing a retailer as defined by K.S.A. 41-102, and amendments thereto, to sell cereal malt beverages.

Nothing in this section shall be construed to authorize a retailer as defined by K.S.A. 41-2701, and amendments thereto, to sell alcoholic liquor.

Sec. 11. K.S.A. 41-714 is hereby amended to read as follows: 41-714. (a) It shall be unlawful for:

(1) Any person to advertise any alcoholic liquor by means of handbills; or

(2) any retailer of alcoholic liquor to advertise any alcoholic liquor by means of billboards along public highways, roads and streets or to have on the retailer's licensed premises any billboard advertising alcoholic liquor; or

~~(3) any licensee to display alcoholic liquor in any window of the licensed premises.~~

(b) The provisions of this section shall not be interpreted to prohibit the advertising of a microbrewery or farm winery. Any advertising of a farm winery or microbrewery shall be subject to approval by the director prior to its dissemination.

(c) The provisions of this section shall not be interpreted to:

(1) Preempt any city ordinance or county resolution restricting or prohibiting signs or outdoor advertising; or

(2) prohibit advertising of the price of any alcoholic liquor or advertising of any alcoholic liquor by brand name, other than by means declared unlawful by subsection (a), and no rule and regulation adopted hereunder shall prohibit such advertising.

(d) The secretary of revenue may adopt, in accordance with K.S.A. 41-210, and amendments thereto, rules and regulations necessary to regulate and control the advertising, in any form, and display of alcoholic liquor and nothing contained in this section shall be construed as limiting the secretary's power to adopt such rules and regulations not in conflict with this act.

(e) As used in this section, "billboard" means any board or panel erected, constructed or maintained for the purpose of displaying outdoor advertising by means of painted letters, posters, pictures or pictorial or reading matter, either illuminated or nonilluminated, when such sign is supported by uprights or braces placed upon the ground or upon a structure affixed thereto. Billboard does not include a sign containing statements pertaining to a business conducted within or on the premises on which the sign is maintained.

Sec. 12. K.S.A. 2003 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) No person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

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

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

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

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

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

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

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

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

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

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated or established by a city ~~having a population of more than 200,000~~.

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

(5) On the state fairgrounds, if such liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A. 41-308a, and amendments thereto, and is consumed only for purposes of judging competitions. The state fair board, in its discretion, may authorize the consumption of such alcoholic liquor on nonfair days in conjunction with bona fide scheduled events involving not less than 75 invited guests and subject to any conditions or restrictions as the board may require.

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

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

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

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

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

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

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

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

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

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

~~(h) Any city may exempt, by ordinance, from the provisions of subsection (c) any national guard armory in which such city has a leasehold interest, if the Kansas military board consents to the exemption.~~

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

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

New Sec. 13. (a) K.S.A. 41-2701 through 41-2727, and amendments thereto, shall be known and may be cited as the Kansas cereal malt beverage act.

(b) Except as specifically provided in the Kansas cereal malt beverage act, the power to regulate all phases of the manufacture, distribution, sale, possession, transportation and traffic in cereal malt beverages is vested exclusively in the state and shall be exercised as provided in the Kansas cereal malt beverage act. Any ordinance or resolution enacted by a city or county which is in conflict with or contrary to the provisions of the Kansas cereal malt beverage act shall be null and void.

(c) Nothing in this section shall be construed as prohibiting cities and counties from enacting ordinances and resolutions which are not in conflict with or more restrictive than or supplemental to the Kansas cereal malt beverage act.

(d) The provisions of this act are severable. If any provision of this act is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

Sec. 14. K.S.A. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of ~~this act~~ *the cereal malt beverage act*, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Except as provided by ~~subsection (g)~~ *subsections (g) and (h)*, no cereal malt beverages may be sold:

(1) Between the hours of 12 midnight and 6 a.m.; or

(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city.

(c) No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply if the licensed premises ~~are also currently~~ *also are* licensed as a club pursuant to the club and drinking establishment act.

(d) Each place of business shall be open to the public and to law enforcement officers at all times during business hours, except that a premises licensed as a club pursuant to the club and drinking establishment act shall be open to law enforcement officers and not to the public.

(e) *Except as provided by this subsection*, no licensee shall permit a person under the legal age for consumption of cereal malt beverage to *possess, consume or purchase any*

cereal malt beverage in or about a place of business, and no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess cereal malt beverage in or about a place of business, except that. A licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, if:

(1) The licensee's place of business is licensed only to sell *at retail* cereal malt beverage ~~at retail in the original and unopened containers package~~ and not for consumption on the premises; or

(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(f) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(g) Cereal malt beverages may be sold on premises which are licensed pursuant to both the acts contained in article 27 of chapter 41 of the Kansas Statutes Annotated *Kansas cereal malt beverage act* and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.

(h) *A retailer may sell at retail cereal malt beverage in the original package on Sunday between the hours of 12 noon and 8 p.m. in a city or unincorporated area of a county where such sales have been approved as provided by section 10 or 15, and amendments thereto.*

New Sec. 15. (a) The board of county commissioners of any county may adopt a resolution permitting the sale at retail of alcoholic liquor or cereal malt beverage, or both, in the original package on Sunday between the hours of 12 noon and 8 p.m. within the unincorporated area of the county. Such resolution shall be published at least once each week for two consecutive weeks in the official county newspaper. Such resolution shall not become effective until at least 30 days following the date of the last publication thereof. If within 30 days following the last publication of the resolution a petition requesting that the proposition be submitted for approval by the voters is filed in accordance with subsection (b), such resolution shall not become effective until the proposition is submitted to and approved at an election as provided by this section.

(b) A petition to submit a proposition pursuant to this section to the qualified voters residing in the unincorporated area of the county shall be filed with the county election officer. The petition shall be signed by qualified voters who reside in the unincorporated area of the county equal in number to not less than 10% of such voters who voted for the office of secretary of state at the last preceding general election of such office.

(c) Upon the filing of a sufficient petition pursuant to this section, the board of county commissioners shall cause the proposition to be placed on the ballot at the next succeeding primary or general election which occurs after the petition is filed with the county election officer or at a special election called and held thereon. Such election shall be called and held in the manner provided by law for question submitted elections.

(d) If a majority of the voters voting at any election pursuant to this section votes in favor of the proposition, the board of county commissioners shall transmit a copy of the results to the director.

(e) Nothing in this section shall be construed as authorizing a retailer as defined by K.S.A. 41-102, and amendments thereto, to sell cereal malt beverages.

Nothing in this section shall be construed to authorize a retailer as defined by K.S.A. 41-2701, and amendments thereto, to sell alcoholic liquor.

Sec. 16. K.S.A. 41-208, 41-301, 41-302, 41-303, 41-710, 41-712, 41-714, 41-1111, 41-1112, 41-1114 through 41-1121 and 41-2704, K.S.A. 2003 Supp. 19-101a, 41-347, 41-501 and 41-719 and K.S.A. 2003 Supp. 41-303, as amended by section 2 of 2004 Senate Bill No. 197, are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.”;

In the title, in line 11, by striking all after the first semicolon; by striking all in lines 12 and 13; in line 14, by striking all before the period and inserting “relating to the regulation thereof; amending K.S.A. 41-208, 41-301, 41-302, 41-303, 41-710, 41-712, 41-714 and 41-

2704 and K.S.A. 2003 Supp. 19-101a, 41-347, 41-501 and 41-719 and repealing the existing sections; also repealing K.S.A. 41-1111, 41-1112, 41-1114 through 41-1121 and K.S.A. 2003 Supp. 41-303, as amended by section 2 of 2004 Senate Bill No. 197”;

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

RAY MERRICK  
RICK REHORN  
*Conferees on part of House*

PETE BRUNGARDT  
MARK S. GILSTRAP  
*Conferees on part of Senate*

On motion of Rep. Merrick, the conference committee report on **H. Sub. for SB 2** was adopted.

Call of the House was demanded.

On roll call, the vote was: Yeas 71; Nays 50; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Boyer, Burgess, Burroughs, Carlin, Carter, Cox, Craft, Crow, Davis, DeCastro, Dillmore, Dreher, Faust-Goudeau, Flaharty, Flora, Gordon, Grant, Henderson, Henry, Holland, Horst, Humerickhouse, Huntington, Jack, Kassebaum, Kirk, Klein, Kuether, Lane, Larkin, Loganbill, M. Long, Loyd, Merrick, Minor, Jim Morrison, Judy Morrison, Neighbor, Novascone, O'Malley, O'Neal, Owens, Patterson, Phelps, Reardon, Rehorn, Ruff, Sawyer, Schwab, Schwartz, Scoggins-Waite, B. Sharp, S. Sharp, Showalter, Sloan, Storm, Svaty, Swenson, Thull, Toelkes, Vickrey, Ward, Wilk, Wilson, Winn, Yoder, Yonally.

Nays: Bethell, Brunk, Campbell, Compton, Dahl, Decker, Edmonds, Faber, Feuerborn, Freeborn, Gatewood, Goering, Goico, Hayzlett, Hill, Holmes, Howell, Huebert, Hutchins, Huy, D. Johnson, E. Johnson, Kauffman, Krehbiel, Landwehr, Light, Long-Mast, Mays, McCreary, McKinney, McLeland, F. Miller, J. Miller, Myers, Neufeld, Newton, Osborne, Ostmeyer, Pauls, Pottorff, Powell, Powers, Reitz, Shriver, Shultz, Siegfried, Tafanelli, Thimesch, D. Williams, J. Williams.

Present but not voting: None.

Absent or not voting: Beggs, Gilbert, Huff, Mason.

#### CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 317**, submits the following report:

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

On page 9, by striking all in lines 10 through 38 and inserting the following:

“Sec. 5. K.S.A. 2003 Supp. 61-2703 is hereby amended to read as follows: 61-2703. As used in this act:

(a) “Small claim” means a claim for the recovery of money or personal property, where the amount claimed or the value of the property sought does not exceed ~~\$1,500~~ \$4,000, exclusive of interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto. In actions of replevin, the verified petition fixing the value of the property shall be determinative of the value of the property for jurisdictional purposes. A small claim shall not include:

(1) An assigned claim;

(2) a claim based on an obligation or indebtedness allegedly owed to a person other than the person filing the claim, where the person filing the claim is not a full-time employee or officer of the person to whom the obligation or indebtedness is allegedly owed; or

(3) a claim obtained through subrogation.

(b) “Person” means an individual, partnership, limited liability company, corporation, fiduciary, joint venture, society, organization or other association of persons.

Sec. 6. K.S.A. 61-2706 is hereby amended to read as follows: 61-2706. (a) Whenever a plaintiff demands judgment beyond the scope of the small claims jurisdiction of the court,

the court shall either: (1) Dismiss the action without prejudice at the cost of the plaintiff; (2) allow the plaintiff to amend the plaintiff's pleadings and service of process to bring the demand for judgment within the scope of the court's small claims jurisdiction and thereby waive the right to recover any excess, assessing the costs accrued to the plaintiff; or (3) if the plaintiff's demand for judgment is within the scope of the court's general jurisdiction, allow the plaintiff to amend the plaintiff's pleadings and service of process so as to commence an action in such court in compliance with K.S.A. 61-1703 and amendments thereto, assessing the costs accrued to the plaintiff.

(b) Whenever a defendant asserts a claim beyond the scope of the court's small claims jurisdiction, but within the scope of the court's general jurisdiction, the court may determine the validity of defendant's entire claim. If the court refuses to determine the entirety of any such claim, the court must allow the defendant to: (1) Make no demand for judgment and reserve the right to pursue the defendant's entire claim in a court of competent jurisdiction; (2) make demand for judgment of that portion of the claim not exceeding ~~\$1,600~~ \$4,000, plus interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and reserve the right to bring an action in a court of competent jurisdiction for any amount in excess thereof; or (3) make demand for judgment of that portion of the claim not exceeding ~~\$1,600~~ \$4,000, plus interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and waive the right to recover any excess.

Sec. 7. K.S.A. 2003 Supp. 61-2713 is hereby amended to read as follows: 61-2713. (a) The petition shall be in substantially the following form:

In the District Court of \_\_\_\_\_ County, Kansas.

\_\_\_\_\_  
Plaintiff  
vs.

No. \_\_\_\_\_  
\_\_\_\_\_  
Defendant

PETITION PURSUANT TO CHAPTER 61 OF THE  
KANSAS STATUTES ANNOTATED

*Statement of claim:*

I, \_\_\_\_\_, having read the instruction below, hereby assert the following claim against \_\_\_\_\_, defendant:

*Demand for judgment:*

Based on the claim stated above, judgment is demanded against defendant as follows:

1. Payment of \$\_\_\_\_\_, plus interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto.
2. Recovery of the following described personal property, plus costs: \_\_\_\_\_. This property has an estimated value of \$\_\_\_\_\_.

*Instructions to plaintiff:*

1. State the claim you have against the defendant in the space provided. Be clear and concise.
2. Your total claim against defendant may not exceed ~~\$1,600~~ \$4,000, not including interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto. If you are seeking the recovery of personal property, the value of that property shall be based on your estimate of its value under oath.
3. You must be present in person at the hearing in order to avoid default judgment against you on any claim defendant may have which arises out of the transaction or occurrence which is the subject to your claim against the defendant.
4. You must make demand for judgment in one or both of the spaces provided above.
5. Except as provided by law, neither you nor the defendant is permitted to appear with an attorney at the hearing.
6. You may not file more than 10 small claims under the small claims procedure act in this court during any calendar year.
7. After completing this form, you must subscribe to the following oath:

I, \_\_\_\_\_, hereby swear that, to the best of my knowledge and belief, the foregoing claim asserted against the defendant (including the estimate of value of any property sought

to be recovered) is a just and true statement, exclusive of any valid claim or defense which defendant may have.

[Signature] \_\_\_\_\_  
Plaintiff

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_.  
[Signature] \_\_\_\_\_  
Judge (clerk or notary)

(b) The summons shall be in substantially the following form:  
In the District Court of \_\_\_\_\_ County, Kansas.

\_\_\_\_\_  
Plaintiff

vs.

No. \_\_\_\_\_

\_\_\_\_\_  
Defendant

SUMMONS  
(Small Claims Procedure)

To the above-named defendant:

You are hereby notified that the above-named plaintiff has filed a claim against you under the small claims procedure of this court. The statement of plaintiff's claim and demand for judgment against you are set forth in the petition which is served upon you with this summons.

A trial will be held on this matter at \_\_\_\_\_ o'clock \_\_\_\_\_ m. on the \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ (year), at \_\_\_\_\_  
(Place of hearing and address)

You must be present in person at the trial or a judgment by default will be entered against you. Except as otherwise provided by law, neither you nor the plaintiff is permitted to appear with an attorney.

If your defense is supported by witnesses, books, receipts or other papers, you should bring them with you at the time of the hearing. If you wish to have witnesses summoned, see the judge or clerk of the court at once for assistance.

If you admit the claim, but desire additional time to satisfy plaintiff's demands, you must be present at the trial and explain the circumstances to the court.

If you have a claim against the plaintiff, which arises out of the transaction or occurrence which is the subject of plaintiff's claim and your claim does not exceed ~~\$1,500~~ \$4,000, you must complete the form for "Defendant's Claim," which accompanies this summons, and return it to the judge or clerk of the court on or before the time set for the trial. If your claim against plaintiff exceeds ~~\$1,500~~ \$4,000, you may complete and return the form for "Defendant's Claim" on or before the time set for trial.

RETURN ON SERVICE OF SUMMONS

I hereby certify that I have served this summons:

(1) *Personal service.* By delivering a copy of the summons and a copy of the petition to each of the following defendants on the dates indicated:  
\_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_  
\_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_

(2) *Residence service.* By leaving a copy of the summons and a copy of the petition at the usual place of residence of each of the following defendants on the dates indicated:  
\_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_  
\_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_

(3) *No service.* The following defendants were not found in this county:  
Dated: \_\_\_\_\_



\_\_\_\_\_  
(Signature and Title of Officer)

(c) The defendant's claim shall be in substantially the following form:  
In the District Court of \_\_\_\_\_ County, Kansas.

\_\_\_\_\_  
Plaintiff  
vs.  
Defendant

No. \_\_\_\_\_  
\_\_\_\_\_

DEFENDANT'S CLAIM

*Instructions:*

1. As stated in the summons, if you have a claim against the plaintiff which arises out of the transaction or occurrence which is the subject of plaintiff's claim and your claim does not exceed ~~\$1,500~~ \$4,000, you must state your claim in the space provided below. If your claim against the plaintiff exceeds ~~\$1,500~~ \$4,000, you may state your claim in the space provided below. In determining whether or not your claim against the plaintiff exceeds ~~\$1,500~~ \$4,000, do not include interest, costs and any damages under K.S.A. 60-2610 and amendments thereto, but do include the value of any personal property sought to be recovered as determined by your estimate of its value under oath.

2. Be clear and concise in stating your claim.

3. If the value of your claim exceeds ~~\$1,500~~ \$4,000 (not including interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto, but including the value of any personal property sought to be recovered, as determined by your estimate of its value under oath), the court must decide whether you may pursue your entire claim or only that portion not exceeding ~~\$1,500~~ \$4,000.

4. If your claim exceeds ~~\$1,500~~ \$4,000 and the court determines that you may not pursue the entire claim at the hearing, you have three alternatives: (1) Make no demand for judgment and reserve the right to pursue your entire claim in a court of competent jurisdiction; (2) make demand for judgment of that portion of your claim which does not exceed ~~\$1,500~~ \$4,000 and reserve the right to bring an action in a court of competent jurisdiction for any amount in excess thereof; or (3) make demand for judgment of that portion of your claim which does not exceed ~~\$1,500~~ \$4,000 and waive your right to recover any excess.

5. When completed, this form must be filed with the judge or the clerk of the court on or before the time stated in the summons for the trial.

*Statement of claim:*

I, \_\_\_\_\_ having read the instructions above, assert the following claim against \_\_\_\_\_, plaintiff:

*Demand for judgment:*

Based on the claim stated above, judgment is demanded against plaintiff as follows:

1. Payment of \$\_\_\_\_\_, plus interest, costs and any damages awarded under K.S.A. 60-2610 and amendments thereto.

2. Recovery of the following described personal property, plus costs:  
This property has an estimated value of \$\_\_\_\_\_.

I, \_\_\_\_\_, hereby swear that, to the best of my knowledge and belief, the above claim asserted against the plaintiff (including the estimate of value of any property sought to be recovered) is a just and true statement.

[Signature] \_\_\_\_\_

Plaintiff

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ (year) \_\_\_\_\_.

[Signature] \_\_\_\_\_

Judge (clerk or notary)";

And by renumbering the remaining sections accordingly;

Also on page 9, in line 39, by striking "45-222" and inserting "61-2706"; in line 40, before "and" by inserting ", 61-2703, 61-2713";

On page 1, in the title, in line 16, by striking "attor-"; in line 17, by striking "ney fees" and inserting "concerning small claims;"; also in line 17, by striking "45-222" and inserting

“61-2706”; in line 18, before “and” where it appears the first time by inserting “, 61-2703, 61-2713”;

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

MICHAEL R. O'NEAL  
DOUG PATTERSON  
JANICE L. PAULS  
*Conferees on part of House*

JOHN VRATIL  
DEREK SCHMIDT  
GRETA GOODWIN  
*Conferees on part of Senate*

On motion of Rep. O'Neal, the conference committee report on **SB 317** was adopted.

On roll call, the vote was: Yeas 107; Nays 14; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aurand, Ballard, Ballou, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Burroughs, Campbell, Carlin, Carter, Compton, Cox, Dahl, Davis, DeCastro, Decker, Dillmore, Dreher, Edmonds, Faber, Faust-Goudeau, Flaharty, Flora, Freeborn, Gatewood, Goering, Goico, Gordon, Grant, Hayzlett, Henry, Hill, Holland, Holmes, Horst, Howell, Huebert, Humerickhouse, Huntington, Hutchins, Huy, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Kirk, Krehbiel, Kuether, Landwehr, Light, Loganbill, M. Long, Long-Mast, Loyd, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Minor, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Phelps, Pottorff, Powell, Powers, Reardon, Rehorn, Reitz, Sawyer, Schwab, Schwartz, Scoggins-Waite, B. Sharp, S. Sharp, Showalter, Shriver, Shultz, Siegfried, Sloan, Svaty, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Wilk, D. Williams, J. Williams, Yonally.

Nays: Craft, Crow, Feuerborn, Henderson, Klein, Lane, Larkin, Ruff, Storm, Swenson, Ward, Wilson, Winn, Yoder.

Present but not voting: None.

Absent or not voting: Beggs, Gilbert, Huff, Mason.

The House stood at ease until the sound of the gavel.

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Speaker pro tem Ballou called the House to order.

#### REPORT ON ENGROSSED BILLS

**HB 2271** reported correctly re-engrossed May 4, 2004.

Also, **HB 2703**; **S. Sub. for HB 2899**; **HB 2948**, **HB 2949** reported correctly engrossed May 5, 2004.

**HB 2067**, **HB 2418**, **HB 2758**, **HB 2774** reported correctly re-engrossed May 5, 2004.

On motion of Rep. Aurand, the House adjourned until 2:00 p.m., Thursday, May 6, 2004.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

