

Journal of the Senate

TWENTY-FIFTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Monday, February 16, 2009—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-nine senators present.

Senator Wagle was excused.

President Morris introduced as guest chaplain, Rev. Shirley D. Heermance, Senior Pastor, Christ Our Redeemer African Methodist Episcopal Church, Kansas City, Missouri, who delivered the invocation:

Eternal Father of our souls
Creator of all things
Giver of every good and perfect gift
To You
Who one day we will all have to give an account

On this President's Day, I come asking that you will bless the Members of this body as they think together and work together in this Chamber, in their committee rooms, and in their offices. Help them to continue under the strains and the tensions of problems and decisions, of meetings and conferences, and the endless demands made on them.

Bless these men and women chosen by the people of this State, you know them, their needs, their motives, their hopes, and their fears. Lord, put your arms around them to give them strength, and speak to them to give them wisdom to meet the challenges yet before them. May they hear your voice and seek your guidance now and for the rest of the day.

May they remember that you are concerned about what is said and done in this place of deliberation. And, may this holy interlude flow through each of them with a sense of joy and power, to remain with them until night shall bring your quiet utterance in their ears, "Well done, good and faithful servant."

Also, please bless and empower our new President and all those, along with these, who have been called to serve our great Nation.

In the Precious name of Jesus and for His sake we pray. Amen.

The Pledge of Allegiance was led by President Stephen Morris.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 276. An act relating to motor vehicles; providing for United States army, navy, air force, marine corps and coast guard or merchant marine license plates, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:

Financial Institutions & Insurance: **SB 275.**

CHANGE OF REFERENCE

The President withdrew **SB 231** from the Committee on **Ways and Means**, and referred the bill to the Committee on **Agriculture**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2091, HB 2092, HB 2096, HB 2097, HB 2185**.
Announcing adoption of **SCR 1604**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2091, HB 2092, HB 2096, HB 2097, HB 2185 were thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

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

SENATE RESOLUTION No. 1822—

A RESOLUTION in memory of Norma Daniels.

WHEREAS, Norma Daniels was born July 6, 1930, in Yates Center to Leo and Ruth Staab, and raised in Kansas City, MO. She graduated from Bishop Hogan High School in 1948 and earned her Registered Nurse Diploma from St. Mary's School of Nursing in Kansas City; and

WHEREAS, While working as an obstetrics RN at St. Mary's Hospital, she met Dr. Robert M. Daniels, whom she married Nov. 27, 1954 before moving to Valley Center where they raised their seven children; and

WHEREAS, Norma Daniels devoted immeasurable time, energy and enthusiasm to serving her family, her community and her church. In 1974, she was elected to the Valley Center City Council, where she served as a councilwoman for six years, leading Valley Center's 1976 Bicentennial Celebration; and

WHEREAS, In 1980, Norma Daniels was elected to the Kansas Senate, 31st District, as the first female Senator from Sedgwick County. During her three consecutive terms serving the people of Kansas as a senator, she served on numerous boards and commissions, including the Presidential appointment to the Kansas Rural Development Council; and

WHEREAS, Norma Daniels generously gave her time and talents to serving others including her 54-year membership of St. Jude Catholic Church, where she volunteered as a CCD teacher; her participation as a charter member of the Valley Center Swim Club and the Valley Center Historical Society and through her avid support of Valley Center Schools, particular fine arts programs; and

WHEREAS, Norma Daniels touched many lives with her positive energy, her gentle spirit and her immeasurable faith in God. She will be dearly missed by her family, friends and all who knew her. She is survived by her husband Dr. Robert M. Daniels; her sister Angela Kohl; her son Robert M. II and his wife Deborah Daniels; six daughters, Mary Porter, Kathryn Daniels, Jeanne Daniels, Dr. Patricia Petrakis and Peggy Marisa Daniels and Susanne Daniels; 10 grandchildren and five great-grandchildren: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we honor Norma Daniels for her lifetime of service to her community and the state of Kansas and extend our deepest sympathy to her family and friends.

On emergency motion of Senator McGinn **SR 1822** was adopted unanimously.

Guests introduced were Senator Daniels' husband, Dr. Robert M. Daniels, and other family members: Kathy Daniels, Sister Susanne, Jeanne Daniels, Dr. Patricia Petrakis, Jo Jo Petrakis, Chris Porter, Bob Daniels, Debbie Daniels and Nikki Daniels.

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

SENATE RESOLUTION No. 1823—

A RESOLUTION recognizing and thanking Best Buy Inc. and the employees of its Manhattan location, store #1101, for their volunteer efforts to rebuild Chapman, Kansas, schools damaged by a tornado on June 11, 2008.

WHEREAS, Chapman, Kansas, about 30 miles southwest of Manhattan, was hit by a tornado June 11, 2008, causing minor to extensive damage throughout the town and severe damage to all three of the school district buildings; and

WHEREAS, Best Buy Inc., in acknowledging an immediate need to get these schools back into condition to provide education to children, selflessly donated the time and labor of numerous store volunteers from its Manhattan, Kansas store to help clean up and get the schools back up and running; and

WHEREAS, Best Buy donated over 446 total hours to the Chapman School District through the volunteer work of its dedicated employees in Manhattan and other locations; and

WHEREAS, Kyle Mills, community ambassador at the Manhattan Best Buy, organized the volunteer effort pulling together volunteers from eleven Best Buy stores throughout eastern Kansas; and

WHEREAS, The selfless dedication and hard work contributed by Best Buy and its employees was instrumental in quickly cleaning up the Chapman School District so that it could resume providing education to its students: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we recognize and thank Best Buy for volunteering so much time to help in the clean up efforts associated with the tornado that devastated the Chapman School District; and

Be it further resolved: That seven copies of this resolution be furnished to Best Buy and an additional copy to the members of the Capitol Press Corps.

On emergency motion of Senator V. Schmidt **SR 1823** was adopted unanimously.

Guests recognized were Cheryl Lupton, Tom Leopold, Tony Frieze, Bruce Huford, Alison Scott Pugh, Kyle Mills, Ron James and Joshua Caver.

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

SENATE RESOLUTION No. 1824—

A RESOLUTION recognizing and congratulating the renewal of Wolf Creek Nuclear Operating Corporation's license.

WHEREAS, On November 20, 2008, the Nuclear Regulatory Commission approved Wolf Creek's application for a renewed license for the Wolf Creek Generating Station; and

WHEREAS, Wolf Creek Generating Station has been providing Kansas with energy since June 4, 1985; and

WHEREAS, Wolf Creek's original 40-year license was scheduled to expire in 2025 and the renewed operating license allows the station to operate an additional 20 years until 2045; and

WHEREAS, Wolf Creek is the 50th nuclear power unit among the nation's 104 licensed plants to receive a license renewal; and

WHEREAS, Wolf Creek has been, and continues to be, a reliable, safe source of electricity for all of its customers; and

WHEREAS, According to a 2006 study conducted by the Nuclear Energy Institute, Wolf Creek has had a positive impact on the economy for both Coffey County and the state of Kansas, contributing \$165 million annually to the local and state economy in the form of payroll, purchases and taxes; and

WHEREAS, This renewed operating license ensures that Wolf Creek will continue to be an important part of Kansas' energy portfolio: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we do hereby recognize and congratulate the Wolf Creek Nuclear Operating Corporation for receiving a renewal of its operating license, enabling it to continue to serve the energy needs of Kansas for years to come.

Be it further resolved: That the Secretary of the Senate be directed to provide five enrolled copies of this resolution to Senator Derek Schmidt.

On emergency motion of Senator D. Schmidt **SR 1824** was adopted unanimously.

Guests introduced were Rick Muench, President and CEO of Wolf Nuclear Operating Corporation; Warren Wood, General Counsel; Bill Moore, President and CEO of Westar and Stephen Parr, Executive Vice President and CEO of Kansas Electric Power Cooperative.

REPORT ON ENGROSSED BILLS

H Sub for Sub SB 23; SB 95; SCR 1601 reported correctly engrossed February 13, 2009.

SB 55, SB 56, SB 62, SB 68, SB 71 reported correctly engrossed February 16, 2009.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **SB 159** be passed.

Also, **SB 148** be amended on page 1, in line 18, by striking “shall” and inserting “may”; in line 19, by striking “shall” and inserting “may”; and the bill be passed as amended.

SB 158 be amended on page 1, in line 43, after “submit” by inserting “to the division of vehicles”;

On page 2, in line 3, by striking “pursuant to K.S.A. 8-292, and amendments”; in line 4, by striking “thereto,” and inserting “by the division of vehicles”; in line 8, after “suspended” by inserting “by the division of vehicles”; in line 12, after the period by inserting “When restricted driving privileges are approved pursuant to this section, the person’s driving privileges shall be restricted to driving only under the following circumstances: (1) In going to or returning from the person’s place of employment or schooling; (2) in the course of the person’s employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go by a court.”; in line 19, before the period by inserting “and regardless of any application for restricted driving privileges”; in line 20, after the comma by inserting “restricted license fee.”; and the bill be passed as amended.

Committee on **Natural Resources** recommends **SB 183** be passed.

Also, **SB 64** be amended on page 2, in line 29, after “same” by inserting “date of”;

On page 3, after line 16, by inserting the following:

“Sec. 4. K.S.A. 82a-709 is hereby amended to read as follows: 82a-709. No person may acquire ~~an~~ *a new* appropriation right to the use of waters of the state for other than domestic purposes without making an application to the chief engineer for a permit to make such appropriation. However, any person using water for domestic purposes subsequent to June 28, 1945, and any person intending to use water hereafter for domestic purposes may make application to the chief engineer for a permit the same as any other person. The application shall set forth (a) the name and post-office address of the applicant;

(b) the source from which said appropriation shall be made;

(c) the maximum rate at which water is to be diverted or used and the total annual quantity of water sought;

(d) the location of the works or proposed works for the diversion and use of the water;

(e) the estimated time for the completion of any proposed works;

(f) the time of the first actual application of the water to the beneficial use involved, if there was such, and the estimated time for the first actual application of the water for the beneficial use proposed;

(g) *evidence of legal access to or control of the point of diversion and place of use from the landowner, or the landowner’s authorized representative;*

~~(g)~~ (h) if for irrigation use, a description of the land to be irrigated by designating the number of irrigable acres in each forty (40) acre tract or fractional portion thereof;

~~(h)~~ (i) if for municipal water supply, it shall give the present population to be served and estimated future requirements of the city;

~~(i)~~ (j) any additional factors which may be required by the chief engineer.

Such application shall be filed and approved before the commencement of any work in connection with the construction, enlargement or extension of any works for the diversion, storage, and use of water.”;

And by renumbering the remaining sections accordingly;

Also on page 3, in line 17, by striking “and 82a-707” and inserting “, 82a-707 and 82a-709”;

In the title, in line 11, by striking “and 82a-707” and inserting “, 82a-707 and 82a-709”; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 173** be amended on page 3, in line 1, following “health” by inserting “care”; preceding line 11, by inserting the following:

“(3) The provisions of this subsection (g) shall apply to all retired public officers and employees who took retirement on or after January 1, 2006.”;

Also on page 3, in line 13, by striking “statute book” and inserting “Kansas register”; and the bill be passed as amended.

Also, **SB 200** be amended on page 2, in line 33, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”;

On page 7, in line 4, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”;

On page 9, in line 42, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”;

On page 14, in line 33, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”;

On page 17, in line 36, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”;

On page 20, in line 39, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”;

On page 23, in line 4, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”;

On page 26, in line 39, following the period by inserting “The board of healing arts shall remit all moneys received by or for it from fees, charges or penalties 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 healing arts fee fund.”; and the bill be passed as amended.

Committee on **Transportation** recommends **SB 46** be passed.

Committee on **Utilities** recommends **SB 48** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 48,” as follows:

“Substitute for SENATE BILL No. 48
By Committee on Utilities

“AN ACT concerning telecommunications; relating to enhanced wireless 911 service; concerning certain fees and disposition thereof; relating to audits of certain systems; establishing the joint committee on enhanced and next generation 911; definitions; amending

K.S.A. 2008 Supp. 12-5322, 12-5323, 12-5334, 12-5338 and 12-5361 and repealing the existing sections.”; and the substitute bill be passed.

COMMITTEE OF THE WHOLE

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

On motion of Senator Donovan the following report was adopted:

SB 25 be amended by adoption of the committee amendments, and be further amended by Senator Francisco on page 1, in line 36, by striking “operable” and inserting “open”;

On page 2, in line 15, after “walls,” by inserting “fences,”; also in line 15, by striking “an”; in line 16, by striking “opening” and inserting “openings”; also in line 16, by striking “is completely and” and inserting “are”; in line 17, by striking “comprises” and inserting “comprise”; also in line 17, by striking “75%” and inserting “30%”

SB 25 be further amended by Senator Owens on page 4, by striking all in lines 37 and 38;

And by renumbering the remaining paragraphs accordingly

SB 25 be further amended by Senator V. Schmidt on page 1, in line 16, preceding “K.S.A.” by inserting “On and after January 2, 2010,”; in line 32, preceding “K.S.A.” by inserting “On and after January 2, 2010,”;

On page 3, in line 34, preceding “K.S.A.” by inserting “On and after January 2, 2010,”;

On page 5, in lines 6 and 17, preceding “K.S.A.” by inserting “On and after January 2, 2010,”;

On page 6, in line 16, preceding “K.S.A.” by inserting “On and after January 2, 2010,”;

On page 7, in line 6, by striking “The” and inserting “On and after January 2, 2010, the”; following line 9, by inserting the following:

“Sec. 8. K.S.A. 2008 Supp. 79-3301 is hereby amended to read as follows: 79-3301. As used in ~~this act~~ *K.S.A. 79-3301 et seq., and amendments thereto:*

(a) “Carrier” means one who transports cigarettes from a manufacturer to a wholesale dealer or from one wholesale dealer to another.

(b) “Carton” means the container used by the manufacturer of cigarettes in which no more than 10 packages of cigarettes are placed prior to shipment from such manufacturer.

(c) “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.

(d) “Consumer” means the person purchasing or receiving cigarettes or tobacco products for final use.

(e) “Dealer” means any person who engages in the sale or manufacture of cigarettes in the state of Kansas, and who is required to be licensed under the provisions of this act.

(f) “Dealer establishment” means any location or premises, other than vending machine locations, at or from which cigarettes are sold, and where records are kept.

(g) “Director” means the director of taxation.

(h) “Distributor” means: (1) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from ~~without~~ *outside* the state any tobacco products for sale;

(2) any person who makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; or

(3) any person engaged in the business of selling tobacco products ~~without~~ *outside* this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

(i) “Division” means the division of taxation.

(j) “License” means, ~~in addition to~~ the privilege of a licensee to sell cigarettes or tobacco products in the state of Kansas, ~~and the written evidence of such authority or privilege to so operate as evidenced by any license~~ *as issued by the director of taxation.*

(k) “Licensee” means any person holding a current license issued pursuant to this act.

(l) “Manufacturer’s salesperson” means a person employed by a cigarette manufacturer who sells cigarettes, manufactured by such employer and procured from wholesale dealers.

(m) “Meter imprints” means tax indicia applied by means of ink printing machines.

(n) (1) “Package” means a container in which no more than 25 individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer;

(2) for the purposes of subsections (u), (v) and (w) of K.S.A. 79-3321, and amendments thereto, “package” ~~shall have the meaning ascribed thereto~~ means the same as provided in 15 U.S.C. §1332(4).

(o) “Person” means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise and any combination of individuals.

(p) “Received” means the coming to rest of cigarettes for sale by any dealer in the state of Kansas.

(q) “Retail dealer” means a person, other than a vending machine operator, in possession of cigarettes for the purpose of sale to a consumer.

(r) “Sale” means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.

(s) “Sample” means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

(t) “*Self-service display*” means a display that contains cigarettes or tobacco products and is located in an area openly accessible to a retail dealer’s consumers, and from which such consumers can readily access cigarettes or tobacco products without the assistance of a salesperson. A display case that holds cigarettes or tobacco products behind locked doors does not constitute a self-service display.

(u) “Stamps” means tax indicia applied either by means of water applied gummed paper or heat process.

~~(v)~~ (v) “Tax indicia” means visible evidence of tax payment in the form of stamps or meter imprints.

~~(w)~~ (w) “Tobacco products” means cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products ~~does~~ do not include cigarettes.

(x) “*Tobacco speciality store*” means a dealer establishment that derives at least 75% of such dealer establishment’s revenue from cigarettes or tobacco products.

~~(y)~~ (y) “Vending machine” means any coin operated machine, contrivance or device, by means of which merchandise may be sold.

~~(z)~~ (z) “Vending machine distributor” means any person who sells cigarette vending machines to a vending machine operator operating vending machines in the state of Kansas.

~~(aa)~~ (aa) “Vending machine operator” means any person who places a vending machine, owned, leased or operated by such person, at locations where cigarettes are sold from ~~the~~ such vending machine. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, nor shall the owner or lessee, or any employee or agent of the owner or lessee be considered an authorized agent of the vending machine operator, if the owner or lessee does not own or lease the machine and the owner’s or lessee’s sole remuneration from the machine is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, or a combination of both.

~~(bb)~~ (bb) “Wholesale dealer” means any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer’s salespersons for the purpose of resale in the state of Kansas.

~~(cc)~~ (cc) “Wholesale sales price” means the original net invoice price for which a manufacturer sells a tobacco product to a distributor, as shown by the manufacturer’s original invoice.

~~(bb)~~ (dd) "Importer" shall have the same meaning ascribed thereto means the same as provided in 26 U.S.C. §5702(l).

~~(cc)~~ (ee) "Manufacturer" shall have the same meaning ascribed thereto means the same as provided in 26 U.S.C. §5702(d).

Sec. 9. K.S.A. 2008 Supp. 79-3321 is hereby amended to read as follows: 79-3321. It shall be unlawful for any person:

(a) To possess, except as otherwise specifically provided by this act, more than 200 cigarettes without the required tax indicia being affixed as herein provided.

(b) To mutilate or attach to any individual package of cigarettes any stamp that has in any manner been mutilated or that has been heretofore attached to a different individual package of cigarettes or to have in possession any stamps so mutilated.

(c) To prevent the director or any officer or agent authorized by law, to make a full inspection for the purpose of this act, of any place of business and all premises connected thereto where cigarettes are or may be manufactured, sold, distributed, or given away.

(d) To use any artful device or deceptive practice to conceal any violation of this act or to mislead the director or officer or agent authorized by law in the enforcement of this act.

(e) Who is a dealer to fail to produce on demand of the director or any officer or agent authorized by law any records or invoices required to be kept by such person.

(f) Knowingly to make, use, or present to the director or agent thereof any falsified invoice or falsely state the nature or quantity of the goods therein invoiced.

(g) Who is a dealer to fail or refuse to keep and preserve for the time and in the manner required herein by this act all the records required by this act to be kept and preserved.

(h) To wholesale cigarettes to any person, other than a manufacturer's salesperson, retail dealer or wholesaler who is:

(1) Duly licensed by the state where such manufacturer's salesperson, retail dealer or wholesaler is located; or

(2) exempt from state licensing under applicable state or federal laws or court decisions including any such person operating as a retail dealer upon land allotted to or held in trust for an Indian tribe recognized by the United States bureau of Indian affairs.

(i) To have in possession any evidence of tax indicia provided for herein not purchased from the director.

(j) To fail or refuse to permit the director or any officer or agent authorized by law to inspect a carrier transporting cigarettes.

(k) To vend small cigars, or any products so wrapped as to be confused with cigarettes, from a machine vending cigarettes, nor shall a vending machine be so built to vend cigars or products that may be confused with cigarettes, be attached to a cigarette vending machine.

(l) To sell, furnish or distribute cigarettes or tobacco products to any person under 18 years of age.

(m) Who is under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products.

(n) Who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products.

(o) To sell cigarettes to a retailer or at retail that do not bear Kansas tax indicia or upon which the Kansas cigarette tax has not been paid.

(p) To sell cigarettes without having a license for such sale as provided herein.

(q) To sell a vending machine without having a vending machine distributor's license.

(r) Who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "By law, cigarettes and tobacco products may be sold only to persons 18 years of age and older."

(s) To distribute samples within 500 feet of any school when such facility is being used primarily by persons under 18 years of age unless the sampling is: (1) In an area to which persons under 18 years of age are denied access;

(2) in or at a retail location where cigarettes and tobacco products are the primary commodity offered for sale at retail; or

(3) at or adjacent to an outdoor production, repair or construction site or facility.

(t) To sell cigarettes or tobacco products by means of a vending machine in any establishment, or portion of an establishment, which is open to minors, except that this subsection shall not apply to:

(1) The installation and use by the proprietor of the establishment, or by the proprietor's agents or employees, of vending machines behind a counter, or in some place in such establishment, or portion thereof, to which minors are prohibited by law from having access;

(2) the installation and use of a vending machine in a commercial building or industrial plant, or portions thereof, where the public is not customarily admitted and where machines are intended for the sole use of adult employees employed in the building or plant; or

(3) a vending machine which has a lock-out device which is inoperable in the continuous standby mode and which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine.

(u) *To sell cigarettes or tobacco products by means of a self-service display in any establishment, except that the provisions of this subsection shall not apply to:*

(1) *A vending machine that is permitted under subsection (t); or*

(2) *a self-service display that is located in a tobacco specialty store.*

(v) To sell or distribute in this state; to acquire, hold, own, possess or transport for sale or distribution in this state; or to import or cause to be imported, into this state for sale or distribution in this state:

(1) Any cigarettes the package of which (A) bears any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including but not limited to, labels stating "For Export Only", "U.S. Tax-Exempt", "For Use Outside U.S." or similar wording; or (B) does not comply with (i) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including but not limited to the precise warning labels specified in the federal cigarette labeling and advertising act, 15 U.S.C. 1333; and (ii) all federal trademark and copyright laws;

(2) any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law, or federal regulations implementing such laws;

(3) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(4) any cigarettes for which there has not been submitted to the secretary of the U.S. department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal cigarette labeling and advertising act, 15 U.S.C. 1335a.

~~(w)~~ (w) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(1) Any statement, label, stamp, sticker or notice described in subsection ~~(u)~~ of K.S.A. ~~79-3321, and amendments thereto~~ (v); or

(2) any health warning that is not specified in, or does not conform with, the requirements of, the federal cigarette labeling and advertising act, 15 U.S.C. 1333.

~~(x)~~ (x) To affix any stamp required pursuant to K.S.A. 79-3311, and amendments thereto, to the package of any cigarettes described in subsection ~~(u)~~ (v) or altered in violation of subsection ~~(v)~~ (w).

Sec. 10. K.S.A. 2008 Supp. 79-3301 and 79-3321 are hereby repealed.; And by renumbering the remaining sections accordingly;

Also on page 7, in line 10, preceding "K.S.A." by inserting "On January 2, 1010,;" in line 13, by striking all preceding "its";

In the title, in line 10, by striking "creating the Kansas indoor clean air act,;" in line 11, following "smoking" by inserting "and cigarette sales,;" in line 12, preceding "repealing" by inserting "K.S.A. 2008 Supp. 79-3301 and 79-3321 and"

SB 25 be further amended by Senator D. Schmidt on page 5, in line 4, by striking "and"; in line 5, by striking the period and inserting "; and

(8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than

90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises.”

SB 25 be further amended by Senator Kultala on page 2, after line 35, by inserting the following:

“(g) “Gaming floor” means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.”;

And by relettering the remaining subsections accordingly;

On page 4, after line 36, by inserting the following:

“(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;”;

And by renumbering the remaining paragraphs accordingly, and **SB 25** be passed as further amended.

A motion by Senator Taddiken to amend **SB 25** failed and the following amendment was rejected: on page 2, preceding line 40, by inserting the following:

“(h) “physically separated” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows, exclusive of door or passageway, and independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas;”;

And by relettering the remaining subsections accordingly;

On page 5, in line 4, by striking “and” where it appears for the second time; in line 5, by striking the period and inserting “; and

(8) a designated smoking area that is physically separate from the nonsmoking area in restaurants or bars.”

Senator Huelskamp offered an amendment to **SB 25**; a ruling of the chair was requested as to the germaneness of the amendment. The chair ruled the amendment not germane to the bill.

Senator Pyle offered an amendment to **SB 25**; a ruling of the chair was requested as to the germaneness of the amendment. The chair ruled the amendment not germane to the bill.

Senator Wysong withdrew an amendment on **SB 25**.

Senator Masterson withdrew an amendment on **SB 25**.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Tuesday, February 17, 2009.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

