

Journal of the Senate

FORTY-SEVENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 19, 2009—2:30 p.m.

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

Heavenly Father,

One of Your faithful ministers
Named John Witherspoon
Entered our fight for freedom
Not a day too soon.

President of Princeton,
He signed our Declaration
And in the Continental Congress
Helped to save our nation.

To be a statesman and a patriot,
He encouraged three elements.
They were extremely effective,
And have remained so ever since

“True and undefiled religion”
Has to be maintained;
Profanity and immorality
Must not become ingrained.

If anyone opposes
That for which God stands,
He must be considered
Not a statesmanlike man.

We thank You, Lord, for molding
Men like Witherspoon;
You brought him to America.
Certainly not too soon.

I pray in the Name of Jesus Christ,

AMEN

The Pledge of Allegiance was led by President Stephen Morris.

POINT OF PERSONAL PRIVILEGE

Senator Barnett rose on a point of personal privilege to introduce Rod Bremby, Bill Bruning, Helen Connors, Jeff Ellis, Mellissa Hungerford, Ron Liebman, Julie Roth, Gary Caruthers, Christina Stephan, Victoria Wangia, Marcia Nielsen and Barbara Langner, a delegation of health professionals.

Senator Haley rose on a point of personal privilege to introduce his daughter, Mariah Danielle Haley (13), and son, Daniel Jordan Haley (12), who are serving as Senate Pages while on Spring Break from school.

Senator Haley noted that he began his own Legislative service to Kansas as a Page serving under his father, Senator George W. Haley, (Wyandotte) during the 1960's and that now his own children, Mariah and Daniel, become a third generation of Haleys to serve in the same capacity in the Kansas Senate.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 329, An act repealing K.S.A. 2008 Supp. 58-4501, 58-4502, 58-4503, 58-4504, 58-4505, 58-4506, 58-4507, 58-4508, 58-4509, 58-4510, 58-4511, 58-4512, 58-4513 and 58-4514; concerning the Kansas home inspectors professional competence and financial responsibility act, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **HB 2325**.

Education: **Sub HB 2008**.

Ways and Means: **SB 326, SB 327, SB 328; HB 2072**.

MESSAGE FROM THE GOVERNOR

SB 82 approved on March 18, 2009.

MESSAGE FROM THE HOUSE

Announcing passage of **SB 11**, as amended; **SB 64**, as amended; **SB 70**, as amended; **SB 80**, as amended; **SB 132**, as amended; **SB 145**, as amended by **House Substitute for SB 145**; **SB 171**, as amended.

The House nonconcur in Senate amendments to **HB 2052**, requests a conference and appoints Representatives Shultz, Peck and Dillmore as conferees on the part of the House.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

On motion of Senator Schodorf the Senate nonconcurred in the House amendments to **SB 161** and requested a conference committee be appointed.

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

FINAL ACTION ON CONSENT CALENDAR

SB 306; HB 2270 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, were considered on final action.

SB 306, An act concerning the Kansas fireworks act; creating the fireworks and explosives fund; amending K.S.A. 2008 Supp. 31-505 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

HB 2270, An act concerning income taxation; relating to apportionment of business income; amending K.S.A. 2008 Supp. 79-3279 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala,

Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 22, An act concerning school districts; relating to the issuance of no-fund warrants, was considered on final action.

On roll call, the vote was: Yeas 23, Nays 17, Present and Passing 0, Absent or Not Voting 0.

Yeas: Apple, Barnett, Bruce, Brungardt, Colyer, Donovan, Emler, Kelsey, Marshall, Masterson, McGinn, Morris, Owens, Petersen, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Abrams, Brownlee, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kultala, Lee, Lynn, Ostmeyer, Pilcher-Cook, Pyle, Steineger, Wagle.

The bill passed, as amended.

SB 93, An act concerning the joint committee on special claims against the state; relating to membership thereof; amending K.S.A. 46-912 and repealing the existing section, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed, as amended.

SB 247, An act concerning alcoholic beverages; relating to licensure of a club or drinking establishment; amending K.S.A.41-2651 and repealing the existing section, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

SB 293, An act concerning traffic regulation; relating to all-terrain vehicles; definitions; amending K.S.A. 2008 Supp. 8-126 and 8-1402a and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed, as amended.

SB 297, An act concerning governmental ethics; eliminating the filing requirement for certain faculty of state education institutions; pertaining to reporting of certain expenditures by lobbyists; requiring certain members of the judicial branch to file disclosure statements; amending K.S.A. 46-269 and K.S.A. 2008 Supp. 46-247 and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Present and Passing: Francisco.

The bill passed, as amended.

SB 313, An act concerning school districts; relating to the contingency reserve fund; amending K.S.A. 2008 Supp. 72-6426 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 32, Nays 7, Present and Passing 1, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Haley, Huelskamp, Kelsey, Lynn, Marshall, Masterson, McGinn, Morris, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Hensley, Holland, Kelly, Kultala, Lee, Ostmeyer, Steineger.

Present and Passing: Francisco.

The bill passed.

HB 2002, An act concerning school districts; relating to school finance; amending K.S.A. 2008 Supp. 72-6448 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 35, Nays 4, Present and Passing 1, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Bruce, Brungardt, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Brownlee, Colyer, Lynn, Pilcher-Cook.

Present and Passing: Wysong.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "no" on **HB 2002**. It seems to have become legislative sport to treat Johnson County schools differently from others. On special education reimbursement, all six Johnson County school districts receive less than 70% of excess costs even though by law they should receive 92%. Some districts receive about 200%. In this bill we are not allowed the opportunity to have a second count date for our fast growing school districts. This again carves out our schools to be treated differently, perhaps unfairly.—KARIN BROWNLEE

Senators Lynn and Colyer requested the record to show they concur with the "Explanation of Vote" offered by Senator Brownlee on **HB 2002**.

HB 2010, An act concerning state board of healing arts; relating to storage, maintenance and transfer of medical records and delegation of practice; creating medical records maintenance trust fund; amending K.S.A. 2008 Supp. 65-28,127 and 65-28,128 and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed, as amended.

HB 2060, An act concerning crimes, punishment and criminal procedure; relating to dog fighting and cockfighting; asset forfeiture; battery against a law enforcement officer; drug offenses; possession of a firearm; sentencing; amending K.S.A. 21-4315, 21-4316 and 21-

4319 and K.S.A. 2008 Supp. 21-4704, 21-4705 and 60-4104 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 2, Present and Passing 1, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Faust-Goudeau, Haley.

Present and Passing: Francisco.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "NO" on **HB 2060**. As I indicated during yesterday's General Orders debate, I continue to find it absurd that this Senate is writing a "blank check," and/or imposing an unfunded mandate on our County jails, especially during these times of economic uncertainty. We don't even have a firm fiscal estimate on bedspace.

This bill does nothing to increase public safety. It just creates a bunch of so called "feel-good = get-touch-on-crime" provisions for somebody's future campaign literature fodder.

As a true fiscal conservative, I'm not going to fall for the costs of this charade.—DAVID HALEY.

S Sub for HB 2096, An act concerning driving; creating the Kansas DUI commission; creating the correctional services special revenue fund; relating to driver improvement clinics; providing for disposition of certain moneys; relating to penalties for driving under the influence of alcohol or drugs; information sent to the Kansas bureau of investigation central repository; amending K.S.A. 12-4517 and K.S.A. 2008 Supp. 8-255, 8-267, 8-1567, 8-1567, as amended by section 5 of this act, and 12-4106 and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The substitute bill passed, as amended.

HB 2131, An act relating to motor vehicles; concerning license plates for disabled veterans; relating to personalized license plates; amending K.S.A. 8-160 and K.S.A. 2008 Supp. 8-132 and repealing the existing sections, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed, as amended.

HB 2134, An act relating to motor vehicles; concerning distinctive license plates; amending K.S.A. 2008 Supp. 8-1,141 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 37, Nays 3, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Emler, Kelly, Owens.

The bill passed, as amended.

Sub HB 2143, An act relating to driver's licenses; providing for certain restrictions; amending K.S.A. 8-235d, 8-239, 8-291, 8-296 and 8-297 and K.S.A. 2008 Supp. 8-234a and 8-237 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 35, Nays 5, Present and Passing 0, Absent or Not Voting 0.

Yeas: Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Abrams, Holland, Huelskamp, Pilcher-Cook, Pyle.

The substitute bill passed.

HB 2321, An act concerning sales taxation; relating to Kansas retailers' sales tax act; political subdivisions thereunder; horsethief reservoir benefit district; amending K.S.A. 2008 Supp. 79-3602 and repealing the existing section, was considered on final action.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

REPORT ON ENGROSSED BILLS

SB 22, SB 93, SB 293, SB 297 reported correctly engrossed March 19, 2009.

REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **Sub HB 2008**, as amended by House Committee of the Whole, be passed.

Committee on **Federal and State Affairs** recommends **SB 169** be passed.

Also, **HB 2130**, be amended by adoption of the amendments recommended by the Senate Committee on Transportation as reported in the Journal of the Senate on March 16, 2009, and the bill, as printed with amendments by Senate Committee, be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **HB 2214** be amended on page 1, following the enacting clause by inserting the following:

"New Section 1. This act shall be known and may be cited as the public adjusters licensing act, and it shall govern the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims.

New Sec. 2. As used in this act: (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(b) "Catastrophic disaster" means, according to the federal response plan, an event:

(1) Declared by the president of the United States or governor of Kansas;

(2) results in large numbers of deaths and injuries;

(3) causes extensive damage or destruction of facilities that provide and sustain human needs;

(4) produces an overwhelming demand on state and local response resources and mechanisms;

(5) causes a severe long-term effect on general economic activity; and

(6) severely affects state, local and private sector capabilities to begin and sustain response activities.

(c) "Commissioner" means the state commissioner of insurance.

(d) "FBI" means the federal bureau of investigation.

(e) "Fingerprint" means an impression of the lines on a finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

(f) "Home state" means the District of Columbia and any state or territory of the United States in which a public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a law governing public adjusters substantially similar to this act, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the home state.

(g) "KBI" means the Kansas bureau of investigation.

(h) "Licensed public adjuster" means a public adjuster licensed in accordance with this act.

(i) "NAIC" means the national association of insurance commissioners and its affiliates and subsidiaries.

(j) "Person" means an individual or a business entity.

(k) "Public adjuster" means any individual who:

(1) For compensation or any other thing of value, and solely in relation to first party claims arising under insurance claims or contracts that insure the real or personal property of the insured, aids or acts on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by and limited to commercial lines insurance contracts;

(2) advertises for employment as a public adjuster of insurance claims or directly or indirectly solicits business or represents to the public that such person is a public adjuster of first party insurance claims for losses or damages to real or personal property covered by and limited to commercial lines insurance contracts; or

(3) for compensation or any other thing of value, investigates or adjusts losses or advises an insured about first party claims for losses or damages to real or personal property of the insured covered by and limited to commercial lines insurance contracts, for another person engaged in the business of adjusting losses or damages covered by and limited to commercial lines insurance contracts.

(l) "Uniform individual application" means the current version of the NAIC uniform individual application for resident and nonresident individuals.

(m) "Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

New Sec. 3. (a) A person shall not act as or represent that such person is a public adjuster in this state unless the person is an individual licensed as a public adjuster in accordance with this act.

(b) A licensed public adjuster shall not misrepresent to a claimant that the individual is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster, unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the licensed public adjuster.

(c) Notwithstanding the provisions of this section, a license as a public adjuster shall not be required of the following:

(1) An attorney-at-law admitted to practice in this state, when acting in such person's professional capacity as an attorney;

(2) a person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(3) a person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers and handwriting experts;

(4) a licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(5) a person who settles subrogation claims between insurers.

New Sec. 4. (a) An individual applying for a public adjuster license shall make application to the commissioner on the appropriate uniform application or other application prescribed by the commissioner.

(b) The applicant shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license, that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief.

(c) In order to make a determination of license eligibility, the commissioner shall require a criminal history record check on each applicant who is not exempt from pre-licensing examination pursuant to section 7, and amendments thereto.

New Sec. 5. (a) Before issuing a public adjuster license to an applicant under this act, the commissioner shall find that the applicant:

(1) Is eligible to designate this state as the applicant's home state or is a nonresident who is not eligible for a license under section 8, and amendments thereto;

(2) has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in section 10, and amendments thereto;

(3) is trustworthy, reliable and of good reputation, evidence of which may be determined by the commissioner;

(4) is financially responsible to exercise the rights and privileges under the license and has provided proof of financial responsibility as required in section 11, and amendments thereto;

(5) has paid an application fee of \$100; and

(6) maintains an office in the home state with public access during regular business hours or by reasonable appointment.

(b) In addition to satisfying the requirements of subsection (a), an applicant shall

(1) Be at least 18 years of age; and

(2) have successfully passed the public adjuster examination.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in the application.

New Sec. 6. (a) An applicant for a public adjuster license under this act shall pass a written examination, unless exempt from this requirement pursuant to section 7, and amendments thereto. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(c) An applicant who fails to appear for the examination as scheduled or fails to pass the examination may retake the examination following a waiting period of not less than seven days following the date of the first examination. If the applicant again fails to satisfactorily complete the examination, the applicant may retake the examination following a waiting period of not less than seven days following the date of the second examination. If the applicant again fails to satisfactorily complete the examination, the applicant may retake the examination following a waiting period of not less than six months following the date of the third examination, except that following a waiting period of not less than two years following the date of the third examination, the applicant will be treated as a new applicant and new examination and waiting periods shall apply.

New Sec. 7. (a) An applicant who applies for a public adjuster license in this state, who is currently licensed as a public adjuster in another state based on the individual's passage of a public adjuster examination, shall not be required to complete any pre-licensing examination.

(b) An individual licensed as a public adjuster in another state, based on the individual's passage of a public adjuster examination, who moves to this state shall make application within 90 days of establishing legal residence in this state to become a resident licensee pursuant to section 5, and amendments thereto. No pre-licensing examination shall be required of that individual to obtain a public adjuster license.

(c) An individual who applies for a public adjuster license in this state and who was previously licensed as a public adjuster in this state, shall not be required to complete any pre-licensing examination, if the individual's application for licensure as a public adjuster is received within 12 months of the cancellation of the applicant's previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

New Sec. 8. (a) Unless denied licensure pursuant to section 10, and amendments thereto, a nonresident individual shall receive a nonresident public adjuster license, if:

(1) The individual is currently licensed and in good standing as a resident public adjuster in that individual's home state;

(2) the individual has submitted the proper request for licensure, has paid the appropriate fee required by section 5, and amendments thereto, and, if required by the commissioner to do so, has provided proof of financial responsibility in accordance with section 11, and amendments thereto;

(3) the individual has submitted to the commissioner the appropriate completed application for licensure; and

(4) the individual's home state awards nonresident public adjuster licenses to residents of this state on the same basis.

(b) The commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC.

(c) As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in the licensee's home state. The nonresident public adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner, if the home state public adjuster license terminates for any reason, unless the public adjuster has a new home state and has been issued a license as a resident public adjuster in the new home state. Notification to the state or states where the nonresident license is issued must be made as soon as practicable, but no later than 30 days of a change in the new home state resident license. The licensee shall include in such notification the licensee's new and old addresses. A new home state resident license is required for a nonresident license to remain valid, and the new home state must have reciprocity with this state, in order for the nonresident license to remain valid.

New Sec. 9. (a) An individual who has met the requirements for licensure under this act shall be issued a public adjuster license. A public adjuster license shall remain in effect, unless revoked, terminated or suspended, as long as the request for renewal is timely submitted and a license renewal fee of \$100 is paid and any other requirements for license renewal are met by the due date. The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name or change of information submitted on the application within 30 days of the change.

(b) A public adjuster shall be subject to the provisions of subsection (9) of K.S.A. 40-2404, and amendments thereto.

(c) A public adjuster who allows such person's license to lapse may, within 12 months from the due date of the renewal, be issued a new public adjuster license upon the commissioner's receipt of proof that the licensee has satisfactorily completed the renewal process and the licensee's payment of a reinstatement fee of \$100. The new public adjuster license shall be effective the date the commissioner receives such proof and the reinstatement fee.

(d) A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability or some other extenuating circumstance, may request an extension of time to comply with those procedures.

(e) The public adjuster license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date and any other information the commissioner deems necessary.

(f) In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC, to perform any ministerial functions, including the collection of fees and data related to licensing that the commissioner may deem appropriate.

New Sec. 10. (a) The commissioner may suspend, revoke or refuse to issue or renew a public adjuster's license for any of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) violating:

(A) Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder;

(B) any subpoena or order of the commissioner;

- (C) any insurance law or regulation of another state; or
- (D) any subpoena or order issued by the regulatory official for insurance in another state;
- (3) obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) misappropriating, converting or improperly withholding any monies or properties received in the course of doing insurance business;
- (5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) having been convicted of a misdemeanor or felony;
- (7) having admitted or committed any insurance unfair trade practice or insurance fraud;
- (8) using fraudulent, coercive or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) having an insurance license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
- (10) forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;
- (12) knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner;
- (13) failing to comply with an administrative or court order imposing a child support obligation upon the applicant or license holder; or
- (14) failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) In addition, the commissioner may deny, suspend, revoke or refuse renewal of a public adjuster's license if the commissioner finds that the interests of the public are not properly served under such license. Any action taken under this section which affects any license or imposes any administrative penalty shall be taken only after notice and an opportunity for a hearing conducted in accordance with the Kansas administrative procedure act.

(c) In lieu of any action under subsection (a), the commissioner may:

- (1) Censure the individual; or
- (2) issue an order imposing an administrative penalty up to a maximum of \$500 for each violation, but not to exceed \$2,500 for the same violation occurring within any six consecutive calendar months from the date of the original violation, unless such person knew or should have known that the violative act could give rise to disciplinary action under subsection (a). If such person knew or reasonably should have known the violative act could give rise to any disciplinary proceeding authorized by subsection (a), the commissioner may impose a penalty up to a maximum of \$1,000 for each violation, but not to exceed \$5,000 for the same violation occurring within any six consecutive calendar months from the date of the original violation.

(d) The commissioner shall remit all such fines collected under subsection (c) 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.

(e) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this act against any individual who is under investigation for or charged with a violation of this act, even if the individual's license or registration has been surrendered or has lapsed by operation of law.

New Sec. 11. (a) Prior to issuance of a public adjuster license and for the duration of the license, the commissioner may require the applicant to furnish evidence of financial responsibility, in a format prescribed by the commissioner, by means of:

(1) A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

- (A) Shall be in such reasonable amount as the commissioner may require;
- (B) shall be in favor of the commissioner and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustains damages as the result of

erroneous acts, failure to act, conviction of fraud or conviction of unfair practices in the applicant's capacity as a public adjuster; and

(C) shall not be terminated unless at least 30-days prior written notice has been filed by the insurer with the commissioner and given to the licensee.

(2) An irrevocable letter of credit issued by a qualified financial institution, which letter of credit:

(A) Shall be in such reasonable amount as the commissioner may require;

(B) shall be to an account of the commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts or unfair practices in the applicant's capacity as a public adjuster; and

(C) shall not be terminated unless at least 30-days prior written notice has been filed by the issuer with the commissioner and given to the licensee.

(b) Where the commissioner has required an applicant to furnish evidence of financial responsibility pursuant to subsection (a):

(1) The issuer of the evidence of financial responsibility shall notify the commissioner upon termination of the bond or letter of credit, unless otherwise directed by the commissioner;

(2) the commissioner may ask for the evidence of the public adjuster's financial responsibility at any time the commissioner deems relevant; and

(3) the authority to act as a public adjuster shall terminate automatically if the evidence of financial responsibility terminates or becomes impaired.

New Sec. 12. (a) As used in this section:

(1) "Biennial due date" means the date of birth of any public adjuster who is required to complete continuing education credits and report the completion of the continuing education credits to the commissioner, except that such due date shall not be earlier than two years from the date of the public adjuster's initial licensure under this act.

(2) "Biennium" means, for any public adjuster who was born in an odd-numbered year, the two-year period starting with the public adjuster's biennial due date in 2011 and each two-year period thereafter. For any public adjuster who was born in an even-numbered year, such term means the two-year period starting with the public adjuster's biennial due date in 2012 and each two-year period thereafter.

(b) An individual, who holds a public adjuster license and who is not exempt under subsection (d), shall satisfactorily complete a minimum of 12 hours of continuing education courses, which shall include 11 hours of property/casualty or general continuing education courses and one hour of ethics, reported on a biennial basis in conjunction with the license renewal cycle. Only continuing education courses approved by the commissioner shall be used to satisfy the requirements of this subsection.

(c) Unless suspended, revoked or refused renewal pursuant to section 10, and amendments thereto, a public adjuster's license shall remain in effect as long as the education requirements for a resident public adjuster are met by such public adjuster's biennial due date.

(d) The continuing education requirements of this section shall not apply to licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.

New Sec. 13. (a) No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee or other thing of value equal to more than 10% of any insurance settlement or proceeds.

(b) A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling first party claims in this state, if that person is a business entity or is an individual required to be licensed under this act and is not so licensed.

(c) A person shall not accept a commission, service fee or other valuable consideration for investigating or settling first party claims in this state, if that person is a business entity or is an individual required to be licensed under this act and is not so licensed.

(d) No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit or other thing of value, prior to settlement of a claim.

New Sec. 14. (a) Public adjusters shall ensure that all contracts for their services are in writing and contain the following:

- (1) Legible full name of the public adjuster signing the contract;
- (2) permanent home state business address and phone number of the public adjuster;
- (3) the public adjuster's license number;
- (4) title of "public adjuster contract";
- (5) the insured's full name, street address, insurance company name and policy number, if known or upon notification;
- (6) a description of the loss and its location, if applicable;
- (7) description of services to be provided to the insured;
- (8) signatures of the public adjuster and the insured;
- (9) the date the contract was signed by the public adjuster and the date the contract was signed by the insured;
- (10) attestation language stating that the public adjuster is fully bonded pursuant to this act; and
- (11) full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services to be rendered by the public adjuster for or on behalf of the insured.

(b) The public adjuster contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified. Compensation provisions in a public adjuster contract shall not be redacted in any copy of the contract provided to the commissioner.

(c) If the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

- (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
- (2) inform the insured that the loss recovery amount might not be increased by the insurer; and
- (3) be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(d) A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including, but not limited to, any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. As used in this subsection, the word "firm" shall include any individual or business entity.

(e) A public adjuster contract may not contain any contract term that:

- (1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;
- (2) requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;
- (3) imposes collection costs or late fees; or
- (4) precludes a public adjuster from pursuing civil remedies.

(f) Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

- (1) Property insurance policies obligate the insured to present a claim to the insured's insurance company for consideration;

(2) there are three types of adjusters that could be involved in that process, and they are as follows:

(A) A company adjuster who is an employee of an insurance company, represents the interest of the insurance company, is paid by the insurance company and will not charge the insured a fee;

(B) an independent adjuster who is hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claim, who is paid by the insured's insurance company and will not charge the insured a fee; or

(C) a public adjuster who does not work for any insurance company but works for an insured to assist in the preparation, presentation and settlement of a claim. An insured engages a public adjuster by signing a contract agreeing to pay the public adjuster a fee or commission based on a percentage of the settlement, or other method of compensation;

(3) the insured is not required to hire a public adjuster to help the insured meet the insured's obligations under the policy, but has the right to do so;

(4) the insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster and the insurer's attorney, or any other person regarding the settlement of the insured's claim;

(5) the public adjuster is not a representative or employee of the insurer;

(6) the salary, fee, commission or other consideration is the obligation of the insured, not the insurer.

(g) The contracts shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the commissioner.

(h) The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

(i) The insured has the right to rescind the public adjuster contract within three business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three business day period.

(j) If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within 15 business days following the receipt by the public adjuster of the rescission notice.

New Sec. 15. (a) A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:

(1) Name of the insured;

(2) date, location and amount of the loss;

(3) copy of the contract between the public adjuster and insured;

(4) name of the insurer and the amount, expiration date and number of each policy carried by the insured with respect to the loss;

(5) itemized statement of the insured's recoveries;

(6) itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

(7) a register of all moneys received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including fees, transfers and disbursements from a trust account and all transactions concerning all interest-bearing accounts;

(8) name of public adjuster who executed the contract;

(9) name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company; and

(10) evidence of financial responsibility in the format prescribed by the commissioner.

(b) Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the commissioner at all times.

(c) Records submitted to the commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the commissioner and shall not be open for inspection under the Kansas open records act.

(d) The provisions of subsection (c) shall expire on July 1, 2014, unless the legislature acts to reenact such provisions. The provisions of subsection (c) shall be reviewed by the legislature prior to July 1, 2014.

New Sec. 16. (a) A public adjuster is obligated, under the public adjuster's license, to serve with objectivity and complete loyalty, the interest of the insured only and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the public adjuster, as will best serve the insured's insurance claim needs and interest.

(b) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.

(c) A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this act.

(d) A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in section 14, and amendments thereto.

(e) A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured, unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in section 14, and amendments thereto.

(f) The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person, unless disclosed to the insured:

- (1) With whom the public adjuster has a financial interest; or
- (2) from whom the public adjuster may receive direct or indirect compensation for the referral.

(g) The public adjuster shall disclose to an insured if the public adjuster has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. As used in this subsection "firm" shall include any business entity or individual.

(h) Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing, including the source and amount of any such compensation.

(i) Public adjusters shall adhere to the following general ethical requirements:

(1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise;

(2) a public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client;

(3) no licensed public adjuster may represent or act as a company adjuster or independent adjuster on the same claim;

(4) the public adjuster contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;

(5) a public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work; and

(6) a public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

(j) A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

New Sec. 17. (a) The public adjuster shall report to the commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(b) Within 30 days of the initial pretrial hearing date, the public adjuster shall report to the commissioner any criminal prosecution of the public adjuster taken in any jurisdiction.

The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

New Sec. 18. The commissioner shall promulgate such reasonable rules and regulations as are necessary to carry out the provisions of this act. The commissioner shall adopt such rules and regulations by July 1, 2010.

New Sec. 19. If any provisions of this act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.”;

On page 2, in line 17, by striking “1” and inserting “20”; following line 41, by inserting the following:

“Sec. 22. K.S.A. 2008 Supp. 40-2,105a is hereby amended to read as follows: 40-2,105a. (a) (1) Any group health insurance policy, *certificate of coverage*, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization which provides coverage for mental health benefits and which is delivered, issued for delivery, amended or renewed on or after January 1, 2002, shall include coverage for diagnosis and treatment of mental illnesses. Except as provided in paragraph (2), such coverage shall be subject to the same deductibles, *copayments*, coinsurance, *out-of-pocket expenses* and other limitations as apply to other covered services.

(2) The coverage required by paragraph (1) shall include annual coverage for *not less than* both 45 days of in-patient care for mental illness and for 45 visits for out-patient care for mental illness.

(b) Notwithstanding the provisions of K.S.A. 40-2249a, and amendments thereto, the state insurance department shall deliver to the president of the senate and to the speaker of the house of representatives on or before January 1, 2003, a report indicating the impact of providing mental illness benefits required by this act. Such report shall include information regarding access to and usage of such services and the cost of such services.

(c) For the purposes of this section, “mental illness” means the following: Schizophrenia, schizoaffective disorder, schizophreniform disorder, brief reactive psychosis, paranoid or delusional disorder, atypical psychosis, major affective disorders (bipolar and major depression), cyclothymic and dysthymic disorders, obsessive compulsive disorder, panic disorder, pervasive developmental disorder, including autism, attention deficit disorder and attention deficit hyperactive disorder as such terms are defined in the diagnostic and statistical manual of mental disorders, fourth edition, (DSM-IV, 1994) of the American psychiatric association but shall not include conditions not attributable to a mental disorder that are a focus of attention or treatment.

(d) The provisions of this section shall be applicable to health maintenance organizations organized under article 32 of chapter 40 of the Kansas Statutes Annotated.

(e) The provisions of this section shall not apply to any medicare supplement policy of insurance, as defined by the commissioner of insurance by rule and regulation.

(f) The provisions of this section shall be applicable to the Kansas state employees health care benefits program and municipal funded pools.

(g) The provisions of this section shall not apply to any policy or certificate which provides coverage for any specified disease, specified accident or accident only coverage, credit, dental, disability income, hospital indemnity, long-term care insurance as defined by K.S.A. 40-2227, and amendments thereto, vision care or any other limited supplemental benefit nor to any medicare supplement policy of insurance as defined by the commissioner of insurance by rule and regulation, any coverage issued as a supplement to liability insurance, workers compensation or similar insurance, automobile medical-payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group, blanket or individual basis.

(h) From and after January 1, 2002, the provisions of K.S.A. 40-2,105, and amendments thereto, shall not apply to mental illnesses as defined in this act.

(i) There shall be no coverage under this section for evaluations and diagnostic tests ordered or requested in connection with criminal actions, divorce, child custody or child visitation proceedings.

Sec. 23. On and after November 1, 2009, K.S.A. 2008 Supp. 40-2258 is hereby amended to read as follows: 40-2258. (a) An accident and sickness insurer which offers coverage through a group policy or *certificate of coverage* providing hospital, medical or surgical expense benefits pursuant to K.S.A. 40-2209, and amendments thereto, which includes mental health or *alcoholism, drug abuse or other substance use disorder* benefits shall be subject to the following requirements:

(1) If the policy does not include an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits, the policy may not impose any aggregate lifetime limit on mental health or *alcoholism, drug abuse or other substance use disorder* benefits;

(2) if the policy includes an aggregate lifetime limit on substantially all hospital, medical and surgical expense benefits the plan shall either: (A) Apply the applicable lifetime limit both to the hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health or *alcoholism, drug abuse or other substance use disorder* benefits and not distinguished in the application of such limit between such hospital, medical and surgical expense benefits and mental health or *alcoholism, drug abuse or other substance use disorder* benefits; or (B) not include any aggregate lifetime limit on mental health or *alcoholism, drug abuse or other substance use disorder* benefits that is less than the applicable lifetime limit on hospital, medical and surgical expense benefits;

(3) if the policy does not include an annual limit on substantially all hospital, medical and surgical expense benefits, the plan or coverage may not impose any annual limit on mental health or *alcoholism, drug abuse or other substance use disorder* benefits; and

(4) if the policy includes an annual limit on substantially all hospital, medical and surgical expense benefits the policy shall either: (A) Apply the applicable annual limit both to hospital, medical and surgical expense benefits to which it otherwise would apply and to mental health or *alcoholism, drug abuse or other substance use disorder* benefits and not distinguish in the application of such limit between such hospital, medical and surgical expense benefits and mental health or *alcoholism, drug abuse or other substance use disorder* benefits; or (B) not include any annual limit on mental health or *alcoholism, drug abuse or other substance use disorder* benefits that is less than the applicable annual limit.

(b) If the group policy providing hospital, medical or surgical expense benefits is not otherwise covered by subsection (a) and either does not apply a lifetime or annual benefit or applies different lifetime or annual benefits to different categories of hospital, medical and surgical expense benefits, the commissioner may adopt rules and regulations under which subsections (a)(2) and (a)(4) are applied to such policies with respect to mental health or *alcoholism, drug abuse or other substance use disorder* benefits by substituting for the applicable lifetime or annual limits an average limit that is computed taking into account the weighted average of the lifetime or annual limits applicable to such categories.

(c) Nothing in this section shall be construed as either:

(1) Requiring an accident and sickness policy to offer mental health or *alcoholism, drug abuse or other substance use disorder* benefits except as otherwise required by K.S.A. 40-2,105 and amendments thereto; or

(2) affecting any terms and conditions of a policy which does include mental health or *alcoholism, drug abuse or other substance use disorder* benefits including provisions regarding cost sharing, limits on the number of visits or days of coverage, requirements relating to medical necessity, requirements relating to the amount, duration or scope of mental health or *alcoholism, drug abuse or other substance use disorder* benefits under the plan or coverage, except as specifically provided in subsection (a).

(d) This section shall not apply to any group accident and health insurance policy which is sold to a small employer as defined in K.S.A. 40-2209, and amendments thereto.

(e) This section shall not apply with respect to a group policy providing hospital, medical or surgical expense benefits if the application of this section will result in an increase in the cost under the plan of at least ~~4%~~ 2% in the case of the first plan year in which this section is applied and 1% in the case of each subsequent plan year.

(f) In the case of a group policy providing hospital, medical or surgical expense benefits that offers an eligible employee, member or dependent two or more benefit package options under the policy, subsections (a) and (b) shall be applied separately with respect to each such option.

(g) As used in this section:

(1) "Aggregate lifetime limit" means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount that may be paid with respect to such benefits under the policy with respect to an eligible employee, member or dependent;

(2) "annual limit" means, with respect to benefits under a group policy providing hospital, medical or surgical expense benefits, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the policy with respect to an eligible employee, member or dependent;

(3) "hospital, medical or surgical expense benefits" means benefits with respect to hospital, medical or surgical services, as defined under the terms of the policy, but does not include mental health benefits;

(4) "mental health benefits" means benefits with respect to mental health services, as defined under the terms of the policy; ~~but does not include benefits with respect to treatment of substance abuse or chemical dependency;~~

(5) "*alcoholism, drug abuse or substance use disorder benefits*" means *benefits with respect to services for the treatment of alcoholism, drug abuse or other substance use disorders, as defined under the terms of the policy.*

(h) This section shall be effective for group policies providing hospital, medical or surgical expense benefits which are entered into or renewed after January 1, 1998. ~~This section shall not apply to benefits for services furnished on or after December 31, 2008.~~

(i) The commissioner is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this section.

Sec. 24. K.S.A. 2008 Supp. 40-433 is hereby amended to read as follows: 40-433. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued by an insurance company organized under the laws of the state of Kansas on its employees and agents, which agents for the purpose of this act only shall be deemed employees, the beneficiaries under such policies to be persons designated by each insured, or a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, both subject to the following requirements: (a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless the proprietor or partner is actively engaged in and devotes a substantial part of their time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials. (b) The premium for the policy ~~shall~~ *may* be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. ~~No policy shall be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution or entirely by the employees at their option. A policy on which no part of the premium~~

is to be derived from funds contributed by the insured employees shall insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer *or except those who reject the coverage in writing.* (c) ~~The policy shall cover at least two employees at date of issue.~~ (d) The amounts of insurance under the policy shall be based upon some plan, precluding individual selection either by the employees or by the employer or trustees.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements: (a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. (b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges shall insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. (d) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by that debtor which is repayable in installments to the creditor. (e) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements: (a) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(b) The premium for the policy ~~shall~~ *may* be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance *or entirely by the insured members at their option.* ~~No policy shall be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.~~ A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance shall insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer *or except those who reject coverage in writing.*

(c) ~~The policy shall cover at least 25 members at date of issue.~~
~~(d) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the members or by the union.~~

(4) A policy issued to the trustees of a fund established in this state by two or more employers if a majority of the employees to be insured of each employer are located within the state, or to the trustees of a fund established by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements: (a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions

pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if any employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless the proprietor or partner is actively engaged in and devotes a substantial part of their time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. (b) The premium for the policy ~~shall~~ *may* be paid by the trustees either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured employees ~~or wholly from funds contributed by the employees or members at their option. No policy shall be issued on which the entire premium is to be derived from funds contributed by the insured persons.~~ The policy shall insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer *or except those who reject coverage in writing.* (c) ~~The policy shall cover at date of issue at least 100 persons and not less than an average of five persons per employer unit.~~ (d) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or union.

~~(e)~~ (d) The requirements of paragraphs (b) and (d) of this subsection governing employer contributions and amounts of insurance shall not apply to a voluntary term life insurance policy issued on a group basis.

(5) A policy issued to an association which has been organized and is maintained for purposes other than that of obtaining insurance, insuring at least 25 members, employees, or employees of members of the association for the benefit of persons other than the association or its officers. The term "employees" as used herein shall be deemed to include retired employees. The premiums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees of such members or any combination thereof. The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured person or by the association or by the member.

(6) Any policy issued pursuant to this section may be extended to insure the employees against loss due to the death of their spouses, their children, their grandchildren, their spouse's children, their spouse's grandchildren, their parents, their spouse's parents, or any class or classes thereof, subject to the following requirements:

(a) The premium for the insurance ~~shall~~ *may* be paid by the policyholder, either from the employer's funds or from funds contributed by the insured employees, or from both. ~~If any part of the premium is to be derived from funds contributed by the insured employees, the insurance with respect to spouses, their children, their grandchildren, their spouse's children, their spouse's grandchildren, their parents and their spouse's parents may be placed in force only if at least 75% of the then eligible employees, excluding any as to whose family members' evidence of insurability is not satisfactory to the insurer, elect to make the required contribution.~~ If no part of the premium is to be derived from funds contributed by the employees, all eligible employees, excluding any as to whose family members' evidence of insurability is not satisfactory to the insurer, shall be insured with respect to their spouses, their children, their grandchildren, their spouse's children, their spouse's grandchildren, their parents, their spouse's parents.

(b) The amounts of insurance ~~shall be based upon some plan precluding individual selection either by the employees or by the policyholder, or employer and shall not exceed with respect to any spouse, child or parent 50% of the insurance on the life of such insured employee covering an employee's spouse, their children, their grandchildren, their spouse's children, their spouse's grandchildren or their spouse's parents shall not exceed 100% of the amount of insurance on the life of the insured employee.~~

(c) Upon termination of the insurance with respect to the spouse of an employee by reason of the employee's termination of employment or death, the spouse insured pursuant

to this section shall have the same conversion rights as to the insurance on such spouse's life as is provided for the employee under K.S.A. 40-434 and amendments thereto.

(d) Notwithstanding the provisions of K.S.A. 40-434 and amendments thereto only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

(e) The requirements of paragraphs (a) and (b) of this subsection governing participation, contribution by an employer and amounts of insurance for dependents shall not apply to a voluntary term life insurance policy issued on a group basis.

(7) A policy may be issued to any other group which the commissioner of insurance finds is the proper subject of a group life insurance policy or contract. Any such group shall be subject to any appropriate conditions or provisions relating thereto which the commissioner may establish or require, consistent with the provisions of this act, and such conditions and provisions shall be included in the policy or contract.

New Sec. 25. (a) Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain personal injury protection benefits coverage mandated by the Kansas automobile injury reparations act, article 31 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, shall have no cause of action for recovery of noneconomic loss sustained as a result of an accident while operating an uninsured automobile. The provisions of this subsection shall not apply to any person who at the time of an automobile accident has failed to maintain coverage for a period of 30 days or less and who had maintained continuous coverage for at least one year immediately prior to such failure to maintain coverage.

(b) Any person who is convicted of, or pleads guilty to, a violation of K.S.A. 8-1014 or 8-1567, and amendments thereto, or a similar violation of law in another state or an ordinance of any city, or resolution of any county, in connection with an accident, shall have no cause of action for recovery of noneconomic loss sustained as a result of the accident.

(c) The provisions of this section shall apply to a cause of action arising on and after the effective date of this act.;

Also on page 2, in line 42, by striking "40-2c01 and 40-2c01a" and inserting "40-2,105a, 40-2c01, 40-2c01a and 40-433"; following line 43, by inserting the following:

"Sec. 27. On and after November 1, 2009, K.S.A. 2008 Supp. 40-2258 is hereby repealed.;"

And by renumbering sections accordingly;

In the title, in line 9, by striking all following the semicolon; in line 10, by striking "ments"; also in line 10, by striking "40-2c01" and inserting "40-2,105a, 40-2c01, 40-433 and 40-2258"; in line 11, by striking "section" and inserting "sections"; and the bill be passed as amended.

Also, **HB 2292**, as amended by House Committee, be amended on page 2, in line 40, preceding the period by inserting "relating to the extension of credit";

On page 4, in line 14, by striking "and" where it appears for the second time"; by striking all in line 15; in line 16, by striking all preceding the period;

On page 8, following line 1, by inserting the following:

"New Sec. 3. (a) No person shall engage in distressed property consulting services with a resident of this state unless:

(1) The registrant provided the consumer with the disclosures required under K.S.A. 58-2342, and amendments thereto;

(2) the registrant and the consumer have entered into a written distressed property consulting services agreement and a copy of the signed agreement has been provided to the consumer by the registrant. Such agreement shall be in at least 12 point type, signed and dated by the consumer and registrant, and shall include:

(A) The name, address and phone number of the consumer and the registrant;

(B) a complete description of the distressed property consulting service to be provided to the consumer and an itemization of any fees to be charged to the consumer;

(C) a notice of the consumer's right to rescind the distressed property consulting services agreement at any time by giving written notice to the registrant;

(D) a notice that the registrant is licensed with the Kansas office of the state bank commissioner under the Kansas credit services organization act;

(E) a notice that the distressed property consultant service can not receive from the consumer any fee, compensation or gain until the registrant has completed everything described in the agreement;

(F) a notice that the consumer should not be asked by the registrant to sign any lien, mortgage, deed or real estate contract or to transfer all or any portion of their property interest into a trust.

(3) The registrant provides the consumer a disclosure that the registrant may not, as a condition of entering into a distressed property consulting services agreement, require a consumer to purchase any other product or service, nor solicit or offer to sell any other product or service to the consumer during the term of the distressed property consulting services agreement.

(b) This section shall be part of and supplemental to the Kansas credit service organization act.

Sec. 4. K.S.A. 50-1001 is hereby amended to read as follows: 50-1001. As used in this act:

(a) "Commissioner" refers to the ~~securities state bank~~ commissioner appointed under K.S.A. ~~75-6301~~ 75-1304, and amendments thereto.

(b) "Loan" means any agreement to advance money or property in return for the promise to make payments for the money or property.

(c) "Loan broker" means any person who, in return for a fee from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. Loan broker does not include:

(1) Any bank, savings bank, trust company, savings and loan association, credit union or any other financial institution regulated by any agency of the United States or any state;

(2) any person ~~authorized to sell and service loans for the federal national mortgage association or the federal home loan mortgage corporation, issue securities backed by the government national mortgage association, make loans insured by the department of housing and urban development, make loans guaranteed by the veterans administration, or act as a correspondent of loans insured by the department of housing and urban development or guaranteed by the veterans administration whose activities constitute mortgage business, as defined in the Kansas mortgage business act, K.S.A. 9-2201 et seq., and amendments thereto;~~

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product.

(d) "Creditor" means any person to whom a loan is initially payable on the face of the note or contract evidencing the loan.

(e) "Person" means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

Sec. 5. K.S.A. 50-1002 is hereby amended to read as follows: 50-1002. It shall be unlawful for any person to engage in *or hold out to the public as willing to engage in* the business of loan brokering *with a person located in this state* unless registered under this act.

Sec. 6. K.S.A. 50-1003 is hereby amended to read as follows: 50-1003. (a) In order to be registered under this act a loan broker shall file an application for registration with the commissioner. The application for registration shall contain:

(1) The disclosure document required under subsection (b) of K.S.A. 50-1006, and amendments thereto, and the form of the disclosure statement proposed to be used under subsection (b)(1) of K.S.A. 50-1006, and amendments thereto;

(2) consent to service of process under subsection (e);

(3) evidence of the bond required in subsection (b); ~~and~~

(4) a *nonrefundable* fee of \$250, *which may be increased by rules and regulations adopted by the commissioner; and*

(5) *financial statements for the loan broker's last fiscal year presented in accordance with generally accepted accounting principles and reviewed by an independent accountant, in accordance with standards established by the American institute of certified public accountants.*

~~(b) A loan broker must maintain a bond satisfactory to the commissioner in the amount of \$25,000, which shall be in favor of the state.~~

~~(c) Whenever the provisions of this act have been complied with, the commissioner shall issue a certificate of registration to the applicant, authorizing the applicant to engage in the business of loan brokering;~~

~~(b) Each applicant or registrant shall file with the commissioner a surety bond in a form acceptable to the commissioner. The surety bond shall be issued by a surety or insurance company authorized to conduct business in this state, securing the applicant's or registrant's faithful performance of all duties and obligations of a registrant. The surety bond shall:~~

~~(1) Be payable to the office of the state bank commissioner;~~

~~(2) provide that the bond may not be terminated without 30 days prior written notice to the commissioner;~~

~~(3) provide that the bond shall not expire for two years after the date of surrender, revocation or expiration of the applicant's or registrant's registration, whichever shall first occur;~~

~~(4) be available for:~~

~~(A) The recovery of expenses, fines and fees levied by the commissioner under this act; and~~

~~(B) payment of losses or damages which are determined by the commissioner to have been incurred by any consumer as a result of the applicant's or registrant's failure to comply with the requirements of this act; and~~

~~(5) be in the amount of \$50,000. The amount of the bond may be increased up to \$1,000,000, as further defined by rules and regulations adopted by the commissioner.~~

~~(c) The application shall be approved and a nontransferable and nonassignable registration shall be issued to the applicant provided:~~

~~(1) The commissioner has received the complete application and fee required by this section; and~~

~~(2) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.~~

~~(d) If the commissioner fails to issue a registration within 60 days after a filed application is deemed complete by the commissioner, the applicant may make written request for hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.~~

~~(e) An application for registration becomes effective as of the date specified on the certificate of registration. Every registration is effective until January 1 of the year after it goes into effect.~~

~~(f) Every applicant for registration shall file with the commissioner, in such form as the commissioner prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the applicant arising from the violation of any provision of this act. Service shall be made in accordance with article 3 of chapter 60 of the Kansas Statutes Annotated.~~

Sec. 7. K.S.A. 50-1004 is hereby amended to read as follows: 50-1004. (a) A loan broker may not continue engaging in the business of loan brokering unless the broker's registration is renewed annually. A loan broker shall renew the registration by filing with the commissioner, at least 30 days before the expiration of the registration, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.

(b) An application for renewal must be accompanied by a fee of ~~\$100~~ \$250, which may be increased by rules and regulations adopted by the commissioner.

Sec. 8. K.S.A. 50-1005 is hereby amended to read as follows: 50-1005. All fees ~~and funds~~ accruing from the administration of this act shall be accounted for by the commissioner and 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 collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308, and amendments thereto.

Sec. 9. K.S.A. 50-1006 is hereby amended to read as follows: 50-1006. (a) At least seven days before the time any person signs a contract for the services of a loan broker, or seven days before the loan broker receives any consideration upon the contract, whichever occurs first, the loan broker must provide to the contracting person a written disclosure document that meets the requirements set forth in subsection (b).

(b) A written disclosure document shall contain the following information:

(1) A disclosure statement which shall be the cover sheet and shall be entitled in at least 10 point boldface capital letters "DISCLOSURES REQUIRED BY KANSAS LAW." Under this title shall appear the statement in at least 10 point type that "The Kansas ~~securities~~ *office of the state bank* commissioner has not reviewed and does not approve, recommend, endorse or sponsor any loan brokerage contract. The information contained in this disclosure has not been verified by the commissioner. If you have any questions see an attorney before you sign a contract or agreement. *As a consumer, you may submit a complaint or inquiry about this loan broker by delivering a written statement to the Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka, Kansas 66603.*" Nothing except the title and the required statement shall appear on the cover sheet;

(2) the name *of the individual doing business with the consumer* and form of organization of the broker, the names under which the broker has done, is doing, or intends to do business, and the name of any parent organization or affiliate of the broker *and the license number of the loan broker;*

~~(3) the names, addresses and titles of the broker's officers, directors, trustees, general partners, general managers, principal executives and any other person performing similar duties;~~

~~(4)~~ (3) the length of time the broker has conducted business as a loan broker;

~~(5)~~ (4) a full and detailed description of the actual services that the loan broker undertakes to perform for the prospective borrower;

~~(6)~~ (5) the number of loan brokerage contracts the broker has entered into within the past 12 months;

~~(7)~~ (6) the number of loan brokerage contracts in which the broker has successfully obtained a loan for the prospective borrower within the last 12 months and the dollar amount of the loans;

~~(8) financial statements for the loan broker's last fiscal year presented in accordance with generally accepted accounting principles, and reviewed by an independent accountant in accordance with standards established by the American institute of certified public accountants, except that for initial applications for registration, the financial statements shall include a balance sheet dated within four months of filing for registration;~~

~~(9)~~ (7) a specific statement of the circumstances under which the broker will be entitled to obtain or retain consideration from the party with whom the broker contracts; and

~~(10)~~ (8) any other information the commissioner may require.

(c) A loan broker shall amend the disclosure document required by subsection (b) whenever necessary to prevent it from containing any false or misleading statement of a material fact and shall deliver a copy of the amended disclosure document to the commissioner on or before the date of the amendment.

(d) A loan broker shall deliver to any person who proposes to become obligated for a loan an estimated disclosure document if the creditor would be required to deliver to the person a disclosure document under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) for the transaction. The estimated disclosure document shall:

(1) Be delivered to the person before the person becomes contractually obligated on the loan; or

(2) be delivered or placed in the mail to the person not later than three business days after the person enters into an agreement with the loan broker whichever occurs first. The estimated disclosure document must contain all of the information and be in the form required by the Truth-in-Lending Act (15 U.S.C. 1601-1667e) and regulations under the act. However, the annual percentage rate, finance charge, total of payments and other matters required under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) shall be adjusted to reflect the amount of all fees and charges of the loan broker that the creditor could exclude from an estimated disclosure document. The estimated disclosure document must

state at the top in at least 10 point type: "The following is an estimated disclosure document showing your loan transaction as if the fees and charges you are scheduled to pay us were charged to you directly by the creditor." After the estimated disclosure document is delivered to any person, the loan broker shall deliver to the person an additional statement redisclosing all items if the actual annual percentage rate will vary from the annual percentage rate contained in the original estimated disclosure by more than 0.125%. Any required additional disclosure document shall be delivered or placed in the mail before consummation of the loan or after three days from when the information that requires redisclosure becomes available, whichever occurs first.

Sec. 10. K.S.A. 50-1008 is hereby amended to read as follows: 50-1008. ~~(a)~~ The commissioner may deny, suspend ~~or~~, revoke ~~or refuse to renew~~ the registration of a loan broker if the commissioner finds, ~~after notice and opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the~~ loan broker:

~~(1) Fails~~ (a) Has failed to maintain the bond required under K.S.A. 50-1003, ~~and amendments thereto;~~

~~(2)~~ (b) is insolvent;

~~(3)~~ (c) has violated any provision of this act, ~~any rule and regulation or order lawfully made pursuant to this act;~~

~~(4)~~ (d) has filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact; ~~or~~

~~(5)~~ (e) has been convicted, ~~within 10 years before the date of the application, renewal or review,~~ of any crime involving fraud or deceit;

(f) has been the subject of any disciplinary action by the commissioner or any other state or federal regulatory agency;

(g) has a final judgment entered against such person in a civil action and the commissioner finds, based upon the conduct on which the judgment is based, that granting a registration to such person would be contrary to the public interest;

(h) has engaged in deceptive business practices; or

(i) has refused to furnish information required by the commissioner within a reasonable time as established by the commissioner.

(b) The commissioner may not enter a final order denying, suspending or revoking the registration of a loan broker without prior notice to all interested parties, opportunity for a hearing and written findings of fact and conclusions of law. The commissioner may by summary order deny, suspend or revoke a registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the summary order and, that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

Sec. 11. K.S.A. 50-1009 is hereby amended to read as follows: 50-1009. (a) The commissioner may do the following:

(1) Adopt rules and regulations to implement this act;

(2) make investigations and examinations:

(A) In connection with any application for registration of any loan broker or any registration already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public;

~~(3) appoint special investigators to aid in investigations conducted pursuant to this act. Such special investigators shall have the same authority with respect to enforcement of this act as specified for special investigators appointed under subsection (a) of K.S.A. 2005 Supp. 17-12a602, and amendments thereto, in enforcing the Kansas uniform securities act;~~

~~(4)~~ (3) charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination;

~~(5)~~ (4) issue notices and orders, including cease and desist notices and orders, after making an investigation or examination under paragraph (2). The commissioner may also bring an action on behalf of the state to enjoin a person from violating this act. The commissioner shall notify the person that an order or notice has been issued, the reasons for it and that a hearing will be set in accordance with the provisions of the Kansas administrative procedures act after the commissioner receives a written request from the person requesting a hearing;

~~(6)~~ (5) sign all orders, official certifications, documents or papers issued under this act or delegate the authority to sign any of those items to a deputy;

~~(7)~~ (6) hold and conduct hearings;

~~(8)~~ (7) hear evidence;

~~(9)~~ (8) conduct inquiries with or without hearings;

~~(10)~~ (9) receive reports of investigators or other officers or employees of the state of Kansas or of any municipal corporation or governmental subdivision within the state;

~~(11)~~ (10) administer oaths or cause them to be administered;

~~(12)~~ (11) subpoena witnesses and compel them to attend and testify;

~~(13)~~ (12) compel the production of books, records and other documents; and

~~(14)~~ (13) order depositions to be taken of any witness residing within or without the state.

The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(b) If any person refuses to obey a subpoena issued under this act, the commissioner may make application to any court of competent jurisdiction to order the person to appear before the commissioner and produce documentary evidence or give evidence as directed in the subpoena. The failure to obey the order of the court shall be subject to punishment by the court as contempt of court.

~~(c) No person shall be excused from complying with a subpoena on the ground that the testimony or evidence required may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing which the individual is compelled to testify or produce evidence, after claiming the privilege against self-incrimination. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. An individual is not excused from attending, testifying, filing a statement, producing a document or other evidence or obeying a subpoena of the commissioner under this act or in an action or proceeding instituted by the commissioner under this act on the ground that the required testimony, statement, document or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty or forfeiture. If the individual refuses to testify, file a statement or produce a document or other evidence on the basis of the individual's privilege against self-incrimination, the commissioner may compel the testimony, the filing of the statement, the production of the document or the giving of other evidence. The testimony, document or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.~~

(d) In any prosecution, action, suit or proceeding based upon or arising out of this act, the commissioner may sign a certificate showing compliance or noncompliance with this act by any loan broker. This shall constitute prima facie evidence of compliance or noncompliance with this act and shall be admissible in evidence in any action at law or in equity to enforce this act.

(e) The state bank commissioner has authority to investigate conduct that occurred before the state bank commissioner became administrator of this act, and to bring actions or proceedings involving such conduct.

Sec. 12. K.S.A. 50-1011 is hereby amended to read as follows: 50-1011. (a) If the commissioner determines, after notice and opportunity for a hearing, that a person has violated

this act, the commissioner may, in addition to all other remedies, impose a civil penalty upon the person in an amount not to exceed ~~\$5,000~~ \$10,000 for each violation.

(b) The commissioner may bring an action in the district court of Shawnee county to enforce payment of any penalty imposed under this section.

Sec. 13. K.S.A. 50-1016 is hereby amended to read as follows: 50-1016. (a) The following persons are exempt from the requirements of K.S.A. 50-1002, 50-1003, 50-1004, 50-1006, 50-1007, 50-1008, 50-1014 and 50-1015, and amendments thereto:

- (1) Any attorney while engaging in the practice of law;
 - (2) any certified public accountant with a permit to practice under K.S.A. 1-310, and amendments thereto, while engaged in practice as a certified public accountant or any independent public accountant engaged in the practice of public accounting whose service in relation to procurement of a loan is incidental to their practice;
 - (3) any person licensed as a real estate broker or salesperson under K.S.A. 58-3039, and amendments thereto, while rendering services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required;
 - (4) any broker-dealer, agent, investment adviser or investment adviser representative registered under K.S.A. ~~2005-Supp.~~ 17-12a401, 17-12a402, 17-12a403 or 17-12a404, and amendments thereto;
 - (5) any person whose fee is wholly contingent on the successful procurement of a loan from a third party and to whom no fee, other than a bona fide third party fee, is paid before the procurement;
 - (6) any person who is a creditor, or proposed to be a creditor, for any loan; and
 - (7) any feedlot operator licensed under K.S.A. 47-1503, and amendments thereto.
- (b) As used in this section, "bona fide third party fee" includes fees for:
- (1) Credit reports, appraisals and investigations; and
 - (2) if the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey and similar purposes.
- (c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this act shall be on the party claiming the exemption or classification.

Sec. 14. K.S.A. 50-1117 is hereby amended to read as follows: 50-1117. Definitions as used in this act: (a) "Commissioner" means the state bank commissioner.

- (b) "Consumer" means an individual who is a resident of this state.
- (c) "Credit services organization" means a person who engages in, or holds out to the public as willing to engage in, the business of debt management services for a fee, compensation or gain, or in the expectation of a fee, compensation or gain.
- (d) "Debt management service" means:
- (1) Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among such consumer's creditors in full or partial payment of such consumer's debts;
 - (2) improving or offering to improve a consumer's credit record, history or rating; or
 - (3) negotiating or offering to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others.
- (e) "*Distressed property*" means a residential real property consisting of one to four family dwelling units that is in foreclosure or at a risk of loss or whose owner is more than 60 days delinquent on any loan that is secured by the property.
- (f) "*Distressed property consultant*" means a person who engages in or holds out to the public as willing to engage in the business of distressed property consulting for a fee, compensation or gain, or in the expectation of a fee, compensation or gain.

(g) (1) "*Distressed property consulting*" includes soliciting, representing or offering to any owner to perform any service which the person represents will do the following:

- (A) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or a foreclosure sale;
- (B) stop or postpone the foreclosure sale of a residence in foreclosure;
- (C) obtain any forbearance from any beneficiary or mortgagee;

- (D) assist the owner to exercise any right of redemption;
- (E) obtain any extension of the period within which the owner may reinstate such owner's obligation;
- (F) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a distressed property or contained in any such deed of trust or mortgage;
- (G) assist the owner in obtaining a loan or advance of funds; or
- (H) save the owner's residence from foreclosure.
- (2) "Distressed property consulting" does not include any of the following:
- (A) Services performed by a person who held a lien prior to the property becoming a distressed property when the person performs the services in connection with the obligation or lien;
- (B) any service performed by a bank, trust company, savings and loan association or credit union authorized or chartered under the laws of this state or the United States; or
- (C) services performed by an individual licensed as a real estate broker or salesperson pursuant to K.S.A. 58-3034 *et seq.*, and amendments thereto, while providing any real estate brokerage services as defined under subsection (f) of K.S.A. 58-3035, and amendments thereto.
- (h) "Insolvent" means a person whose debts exceed their assets.
- (i) "Owner" means the record owner of any distressed property.
- (j) "Person" means any individual, corporation, partnership, association, unincorporated organization or other form of entity, however organized, including a nonprofit entity.
- (k) "Related interest" means a person:
- (1) With respect to an individual who is:
- (A) The spouse of the individual;
- (B) a brother, brother-in-law, sister, sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; and
- (D) any other relative, by blood, adoption or marriage, of the individual or such individual's spouse who shares the same residence with the individual.
- (2) With respect to a corporation, partnership, association, unincorporated organization or other form of entity, however organized, including a nonprofit entity, which is:
- (A) Directly or indirectly controlling, controlled by or under common control by a person; or
- (B) an officer or director of a person or a person performing similar functions.
- (l) "Registrant" means a person who is registered by the commissioner as a credit services organization or distressed property consultant.
- (m) "Trust account" means an account established by the applicant or registrant in a federally insured financial institution used to hold funds paid by consumers to a credit services organization for disbursement to creditors of consumers that is designated as a trust account or other appropriate designation indicating the funds in the account are:
- (1) Not funds of the applicant or registrant or its owners, officers or employees; and
- (2) unavailable to creditors of the applicant or registrant.
- Sec. 15. K.S.A. 50-1118 is hereby amended to read as follows: 50-1118. (a) No person shall engage in, or hold such person out as willing to engage in any credit services organization business or distressed property consulting with a resident of this state without first obtaining registration from the commissioner. Any person required to be registered as a credit services organization or distressed property consultant shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. The application for registration shall include:
- (1) The applicant's name, business address, telephone number and website address, if any;
- (2) the name and address of each owner, officer, director, member or partner of the applicant;
- (3) a description of the ownership interest of any officer, director, member, partner, agent or employee of the applicant in any affiliate or subsidiary of the applicant or in any other entity that provides any service to the applicant or any consumer relating to the applicant's credit services organization business;

(4) a description of the applicant's consumer education program; and
 (5) any other information the commissioner may deem necessary to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant.

(b) Each application for registration shall be accompanied by a nonrefundable fee of \$100. The amount of the registration fee may be increased by rules and regulations adopted by the commissioner.

(c) The application shall be approved and a nontransferable and non-assignable registration shall be issued to the applicant provided:

(1) The commissioner has received the complete application and fee required by this section; and

(2) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

(d) Each ~~credit services organization~~ registration issued under this section shall expire on June 30 of each year. A registration shall be renewed by filing with the commissioner, at least 30 days prior to the expiration of the registration, a complete renewal application, containing information the commissioner requires to determine the existence and effect of any material changes from the information contained in the applicant's original application, annual reports or prior renewal applications. Each renewal shall be accompanied by a non-refundable renewal fee which shall be established by rules and regulations of the commissioner.

(e) If the commissioner fails to issue a registration within 60 days after a filed application is deemed complete by the commissioner, the applicant may make written request for hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

Sec. 16. K.S.A. 50-1119 is hereby amended to read as follows: 50-1119. Each applicant or registrant shall file with the commissioner a surety bond in a form acceptable to the commissioner. The surety bond shall be issued by a surety or insurance company authorized to conduct business in this state, securing the applicant's or registrant's faithful performance of all duties and obligations of a registrant. The surety bond shall:

(a) Be payable to the office of the state bank commissioner;
 (b) provide that the bond may not be terminated without 30 days prior written notice to the commissioner;

(c) provide that the bond shall not expire for two years after the date of surrender, revocation or expiration of the applicant's or registrant's registration, whichever shall first occur;

(d) be available for:
 (1) The recovery of expenses, fines and fees levied by the commissioner under this act; and

(2) payment of losses or damages which are determined by the commissioner to have been incurred by any consumer as a result of the applicant's or registrant's failure to comply with the requirements of this act; and

(e) the amount of the bond shall be *not less than* \$25,000. The amount of the bond may be increased up to \$1,000,000, as further defined by rules and regulations adopted by the commissioner.

Sec. 17. K.S.A. 50-1121 is hereby amended to read as follows: 50-1121. No person required to be registered under this act shall: (a) Delay payment of a consumer's debt for the purpose of increasing interest, costs, fees or charges payable by the consumer.

(b) Make any misrepresentation of any material fact or false promise intended to:
 (1) Influence, persuade or induce a consumer to enter into a debt management services agreement *or distressed property consulting agreement*; or

(2) cause or contribute to any misrepresentation by any other person acting on such person's behalf.

(c) Make or use any false or misleading representation in the offer or sale of the services of a debt management services agreement ~~or~~ credit services organization business *or distressed property consultant*, including, but not limited to, guaranteeing to "erase bad credit"

or words to that effect unless the representation clearly discloses that guaranteed action can be done only if the consumer's credit history is inaccurate or obsolete.

(d) Engage, directly or indirectly, in any fraudulent or deceptive act, practice or course of business in connection with the offer or sale of the services of a credit services organization *or distressed property consulting*.

(e) Make, or advise a consumer to make, any statement with respect to a consumer's credit worthiness, credit standing or credit capacity that is false or misleading, or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit.

(f) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization *or distressed property consultant* to Kansas consumers without first obtaining proper registration from the commissioner.

(g) Receive compensation for rendering debt management services *or distressed property consulting* where the person has otherwise acted as a creditor for the consumer.

(h) Transfer, assign or attempt to transfer or assign, a registration to any other person.

(i) Conduct credit services organization activities *or distressed property consulting* using any name other than the name or names approved by the commissioner.

(j) Operate as a collection agency.

(k) Receive or charge any fee in the form of a promissory note or other promise to pay.

(l) Accept or receive any reward, bonus, premium, commission or any other consideration for referring a consumer to any person or related interest.

(m) Give a reward, bonus, premium, commission or any other consideration for the referral of a consumer to the registrant's credit services organization business *or distressed property consultant*.

(n) Lend money or provide credit to a consumer.

(o) Obtain a mortgage or other security interest in real or personal property owned by a consumer.

(p) Structure a debt management services agreement in any manner that would result in a negative amortization of any of the consumer's debts.

(q) Charge for or provide credit insurance.

(r) Purchase any debt or obligation of a consumer.

(s) Use any communication which simulates in any manner a legal or judicial process, or which gives the false appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law.

(t) While operating as a registrant, or a director, manager or officer of such registrant or any related interest of such registrant, be a director, manager, officer, owner or related interest of any creditor or a subsidiary of any such creditor, that is receiving or will receive payments from the registrant on behalf of a consumer with whom the registrant has entered into a debt management services agreement *or distressed property consulting agreement*.

(u) Attempt to cause a consumer to waive or agree to forego rights or benefits under this act.

(v) *Request that a consumer transfer any portion of such consumer's ownership interest in a distressed property to a trust.*

(w) *Take any form of ownership interest in a distressed property pursuant to a distressed property consulting agreement or request or require that any form of ownership interest be transferred to a related interest of the registrant.*

(x) *Make any inference to a consumer that entering into a distressed property consulting services agreement will result in the consumer being allowed to remain in such consumer's home.*

(y) *Make any inference to a consumer that entering into a distressed property consulting agreement will result in an improved credit rating.*

(z) *Receive any compensation prior to the completion of all activities described in a distressed property consulting agreement.*

Sec. 18. K.S.A. 50-1122 is hereby amended to read as follows: 50-1122. (a) Within four calendar days after receipt of any funds paid to the registrant by or on behalf of a consumer

for disbursement to such consumer's creditors, a registrant shall deposit such funds in a trust account established for the benefit of consumers.

(b) A registrant shall:

(1) Maintain separate records of account for each consumer to whom the registrant provides debt management services *or distressed property consulting services*;

(2) disburse any funds paid by or on behalf of a consumer to such consumer's creditors within 10 calendar days after receipt of such funds;

(3) correct any misdirected payments resulting from an error by the registrant;

(4) reimburse the consumer for any actual fees or other charges imposed by a creditor as a result of the misdirection; and

(5) disburse a consumer's funds from the trust account only to such consumer's creditors or back to the consumer.

(c) If a consumer rescinds the debt management services agreement, all funds held in the trust account on behalf of such consumer shall be refunded to the consumer within 10 calendar days from receipt of rescission by the registrant.

(d) A registrant shall not commingle any trust account established for the benefit of consumers with any operating accounts of the registrant or its related interests.

Sec. 19. K.S.A. 50-1124 is hereby amended to read as follows: 50-1124. (a) On or before March 1, of each year, each registrant shall file with the commissioner an annual report relating to credit services organization business *or distressed property consulting* conducted by the registrant during the preceding calendar year. The annual report shall be on a form prescribed by the commissioner.

(b) Within 15 calendar days after the occurrence of any of the following events, a registrant shall file a written report with the commissioner describing the event and its expected impact on the registrant's business:

(1) The filing for bankruptcy or reorganization by the registrant;

(2) the institution of a revocation, suspension or other proceeding against the registrant by a governmental authority that is related to the registrant's credit services organization business *or distressed property consulting business* in any state; and

(3) a felony conviction of the registrant or any of its owners, officers, principals, directors, partners, members or debt management counselors.

(c) If a registrant fails to make any report required by this section to the commissioner, the commissioner may require the registrant to pay a late penalty of \$100 for each day the report is overdue.

Sec. 20. K.S.A. 50-1125 is hereby amended to read as follows: 50-1125. (a) Each registrant shall maintain and preserve complete and adequate business records including a general ledger containing all assets, liabilities, capital, income and expense accounts for a period of five years.

(b) Each registrant shall maintain and preserve complete and adequate records of each debt management services agreement *or distressed property consulting agreement* during the term of the agreement and for a period of five years from the date of cancellation or completion of the agreement with each consumer. Such records shall contain all consumer information including, but not limited to, the debt management services agreement *or distressed property consulting agreement* and any extensions thereto, payments, disbursements, charges and correspondence.

(c) If the registrant's records are located outside this state, the registrant shall provide the records to the commissioner within three calendar days or, at the commissioner's discretion, pay reasonable and necessary expenses for the commissioner or commissioner's designee to examine them at the place where they are maintained.

Sec. 21. K.S.A. 50-1126 is hereby amended to read as follows: 50-1126. (a) No registrant shall impose any fees or other charges on a consumer, or receive any funds or other payments from a consumer or another person on behalf of a consumer:

(1) Except as provided in paragraph (5) of subsection (b), until after the registrant and consumer have executed a debt management services agreement; and

(2) except as allowed under this section, or as permitted by rule and regulation adopted by the commissioner.

(b) A registrant may:

(1) Charge a one-time consultation fee not exceeding \$50. The cost of a credit report on a consumer shall be paid from the consultation fee paid by the consumer;

(2) charge and collect monthly the lesser of a total maintenance fee of ~~\$20~~ \$35 per month, or \$5 per month for each creditor of a consumer that is listed in the debt management services agreement between the registrant and the consumer;

(3) collect from or on behalf of a consumer the funds for disbursement to creditors that the consumer has agreed to pay to the registrant under the debt management services agreement;

(4) accept a voluntary contribution from a consumer for a debt management service provided by the registrant to the consumer if the aggregate amount of the voluntary contribution and any other fees received by the registrant from the consumer does not exceed the total amount the registrant is authorized to charge the consumer under paragraphs (1) and (2) of this subsection;

(5) charge the consumer, if provided to the consumer, a fee, not to exceed \$50, for a counseling session, an educational program, or materials and supplies if the consumer does not enter into a debt management services agreement with the registrant; and

(6) accept fee payments from a consumer's creditors for debt management services rendered to a consumer, provided the consumer's creditor does not assess the fee to the consumer.

(c) No registrant shall:

(1) Charge a fee to a consumer, if the consumer enters into a debt management services agreement with the registrant, to:

(A) Prepare a financial analysis or an initial budget plan for the consumer;

(B) counsel a consumer about debt management;

(C) provide a consumer with the consumer education program described in the registrant's application to engage in business as a credit services organization; or

(D) rescind a debt management services agreement.

(2) Require a voluntary contribution from a consumer for any service provided by the registrant to the consumer.

(3) As a condition of entering into a debt management services agreement, require a consumer to purchase for a fee a counseling session, an educational program or materials and supplies.

(d) If a registrant imposes any fee or other charge or receives any funds or other payments not authorized under this section, except as a result of an accidental and bona fide error:

(1) The debt management services agreement shall be void; and

(2) the registrant shall return the amount of the unauthorized fees, charges, funds or payments to the consumer.

Sec. 22. K.S.A. 50-1128 is hereby amended to read as follows: 50-1128. This act shall be administered by the commissioner. In addition to other powers granted by this act, the commissioner, within the limitations provided by law, may exercise the following powers:

(a) Adopt, amend and revoke rules and regulations as necessary to carry out the intent and purpose of this act.

(b) Make any investigation and examination of the registrant's operations, books and records as the commissioner deems necessary:

(1) For the protection of the public;

(2) to determine whether any registration should be granted, denied or revoked;

(3) to determine whether any person has violated or is about to violate any provision of this act, any rule and regulation promulgated thereunder or any order issued thereunder; or

(4) to aid in the enforcement of this act.

(c) For examination purposes the commissioner, or the commissioner's designee, shall have free and reasonable access to the offices, places of business and all records of the registrant and the registrant's related interests that relate to the debt management or credit services organization business. The commissioner may designate persons, including comparable officials of the state in which the records are located, to inspect the records on the commissioner's behalf.

(d) ~~Charge reasonable costs, including a per diem and actual travel and lodging expenses, of investigation, administration or examination to be paid by the applicant or registrant under investigation, examination or requiring administrative action, and maintain an action in any court to recover such costs~~ *Charge reasonable costs of investigation, examination and administration of this act, to be paid by the applicant or registrant. The commissioner shall establish such fees in such amounts as the commissioner may determine to be sufficient to meet the budget requirements of the commissioner for each fiscal year. Charges for administration of this act shall be based on the volume of consumer accounts.*

(e) To order any registrant or person to cease any activity or practice which the commissioner deems to be deceptive, dishonest, or a violation of this act, or of other state or federal law, or unduly harmful to the interests of the public.

(f) Exchange any information regarding the administration of this act with any agency of the United States or any state which regulates the applicant or registrant or administers statutes, rules and regulations or programs related to debt management or credit services organization laws. The commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding conducted by the commissioner, a liquidation proceeding or a criminal investigation or proceeding. Additionally, the commissioner may furnish to federal or other state regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports and correspondence regarding the reports made by the commissioner or the commissioner's designees.

(g) Disclose to any person or entity that an applicant's or registrant's application or registration has been denied, suspended, revoked or refused renewal.

(h) Require or permit any person to file a written statement, under oath or otherwise as the commissioner may direct, setting forth all the facts and circumstances concerning any apparent violation of this act, any rule and regulation promulgated hereunder, or any order issued pursuant to this act.

(i) Receive, as a condition in settlement of any investigation or examination, a payment designated for consumer education to be expended for such purpose as directed by the commissioner.

(j) Delegate the authority to sign any orders, official documents or papers issued under or related to this act to the deputy of consumer and mortgage lending in the office of the state bank commissioner.

(k) Require fingerprinting of any registrant, agent acting on behalf of a registrant or other person as deemed appropriate by the commissioner, or the commissioner's designee. The commissioner, or commissioner's designee, may submit such fingerprints to the Kansas bureau of investigation, federal bureau of investigation or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions.

(l) Charge, establish and collect from registrants such fees as are necessary and in such amounts as the commissioner may determine to be sufficient to meet the expense requirements of the commissioner in administering this act.

(m) Seize and distribute a registrant's trust account funds to protect consumers and the public interest.

(n) For the purpose of any examination, investigation or proceeding under this act, the commissioner or the commissioner's designee may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter which is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.

Sec. 23. K.S.A. 50-1133 is hereby amended to read as follows: 50-1133. (a) Any consumer injured by a violation of this act or any rule and regulation promulgated thereunder may bring an action for recovery of damages. The damages awarded may not be less than the amount paid by the consumer to the credit services organization or *distressed property consultant* plus reasonable attorney fees and court costs.

(b) The consumer may also be awarded punitive damages.”;

And by renumbering sections accordingly;

Also on page 8, in line 2, preceding "K.S.A." by inserting "K.S.A. 50-1001, 50-1002, 50-1003, 50-1004, 50-1005, 50-1006, 50-1008, 50-1009, 50-1011, 50-1016, 50-1117, 50-1118, 50-1119, 50-1121, 50-1122, 50-1124, 50-1125, 50-1126, 50-1128 and 50-1133 and";

In the title, in line 11, preceding "amending" by inserting "concerning certain consumer loan services."; also in line 11, preceding "K.S.A." by inserting "K.S.A. 50-1001, 50-1002, 50-1003, 50-1004, 50-1005, 50-1006, 50-1008, 50-1009, 50-1011, 50-1016, 50-1117, 50-1118, 50-1119, 50-1121, 50-1122, 50-1124, 50-1125, 50-1126, 50-1128 and 50-1133 and"; and the bill be passed as amended.

Committee on **Judiciary** recommends **HB 2165**, **HB 2201**, both as amended by House Committee, be passed.

Also, **HB 2097** be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2097," as follows:

"SENATE Substitute for HOUSE BILL No. 2097

By Committee on Judiciary

"AN ACT concerning crimes, punishment and criminal procedure; relating to sentencing for certain felony drug crimes; community corrections; amending K.S.A. 21-4611 and K.S.A. 2008 Supp. 75-5291 and repealing the existing sections."; and the substitute bill be passed.

Committee on **Natural Resources** recommends **Substitute for HB 2050** be passed.

Committee on **Public Health and Welfare** recommends **SB 305** be amended on page 2, in line 19, after "means" by inserting: "(1) Officers, directors, employees, agents of domestic not-for-profit corporations accredited by the joint commission, inc. and licensed by the department of health and environment to provide child placing, case management, psychiatric residential treatment and psychiatric hospital services reimbursed through contracts with the state of Kansas; and (2)"; in line 27, by striking "(1)" and inserting "(A)"; in line 33, by striking all after "the" where it appears for the last time; in line 34, by striking "rehabilitation services" and inserting "Kansas health policy authority"; in line 36, by striking "(2)" and inserting "(B)"; in line 39, by striking "(3)" and inserting "(C)"; in line 41, by striking "depart-"; in line 42, by striking all before "gratuitously" and inserting "Kansas health policy authority";

On page 3, in line 8, by striking "(4)" and inserting "(D)"; and the bill be passed as amended.

Also, **HB 2221**, as amended by House Committee, be amended on page 1, by striking all in lines 14 through 43;

On page 2, by striking all in lines 1 through 22 and inserting the following:

"Section 1. On and after January 2, 2010, K.S.A. 21-3105 is hereby amended to read as follows: 21-3105. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

(1) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(2) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

(3) A cigarette or tobacco infraction is a violation of K.S.A. 21-4009 through 21-4014 and subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto.

(4) All other crimes are misdemeanors.

Sec. 2. On and after January 2, 2010, K.S.A. 21-4009 is hereby amended to read as follows: 21-4009. As used in ~~this act~~ K.S.A. 21-4009 through 21-4014, and amendments thereto:

(a) "Access point" means the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of K.S.A. 21-4010, and amendments thereto.

(~~a~~) (b) "Bar" means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amend-

ments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.

(c) "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.

(d) "Employer" means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.

(e) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.

(f) "Food service establishment" means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(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.

(h) "Medical care facility" means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.

(i) "Place of employment" means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a "place of employment" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

(j) "Public building" means any building owned or operated by: (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state or any municipality.

(k) "Public meeting" means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.

(l) "Public place" means any enclosed ~~indoor~~ areas open to the public or used by the general public including, but not limited to: ~~Restaurants~~ Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, ~~state, county or municipal~~ public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a

private residence shall not be considered a "public place" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

~~(b) "Public meeting" includes all meetings open to the public.~~

~~(c) (m) "Smoking" means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment burning tobacco in any other form or device designed for the use of tobacco.~~

~~(n) "Tobacco shop" means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of tobacco.~~

Sec. 3. On and after January 2, 2010, K.S.A. 21-4010 is hereby amended to read as follows: 21-4010. (a) No person shall smoke in ~~a public place~~ an enclosed area or at a public meeting except in designated smoking areas, including, but not limited to:

- (1) Public places;
 - (2) taxicabs and limousines;
 - (3) restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
 - (4) restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;
 - (5) access points of all buildings and facilities not exempted pursuant to subsection (d);
- and
- (6) any place of employment.

~~(b) Smoking areas may be designated by proprietors or other persons in charge of public places, except in passenger elevators, school buses, public means of mass transportation and any other place in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.~~

~~(c) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.~~

~~(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.~~

~~(c) Notwithstanding any other provision of this section, K.S.A. 21-4011 or 21-4012, and amendments thereto, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.~~

~~(d) The provisions of this section shall not apply to:~~

- (1) The outdoor areas of any building or facility beyond the access points of such building or facility;
- (2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;
- (3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
- (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;
- (5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;
- (6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

(7) tobacco shops; 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.

Sec. 4. On and after January 2, 2010, K.S.A. 21-4011 is hereby amended to read as follows: 21-4011. The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall post or cause to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking is prohibited by state law. The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.

Sec. 5. On and after January 2, 2010, K.S.A. 21-4012 is hereby amended to read as follows: 21-4012. Any person found guilty of smoking in violation of this act is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act: (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.

(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person: (1) Has knowledge that smoking is occurring; and (2) acquiesces to the smoking under the totality of the circumstances.

(c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of K.S.A. 21-4010, and amendments thereto.

(d) Any person who violates any provision of K.S.A. 21-4009 through 21-4014, and amendments thereto, shall be guilty of a cigarette or tobacco infraction punishable by a fine:

(1) Not exceeding \$100 for the first violation;

(2) not exceeding \$200 for a second violation within a one year period after the first violation; or

(3) not exceeding \$500 for a third or subsequent violation within a one year period after the first violation.

For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

(e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).

(f) No employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer reports or attempts to prosecute a violation of any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.

Sec. 6. On and after January 2, 2010, K.S.A. 65-530 is hereby amended to read as follows: 65-530. (a) As used in this section:

(1) "Day care home" means a day care home as defined under Kansas administrative regulation 28-4-113, a group day care home as defined under Kansas administrative regulation 28-4-113 and a family day care home as defined under K.S.A. 65-517 and amendments thereto.

(2) "Smoking" means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco.

(b) Smoking within any room, enclosed area or other enclosed space of a facility or facilities of a day care home during a time when children who are not related by blood, marriage or legal adoption to the person who maintains the home are being cared for, as part of the operation of the day care home, within the facility or facilities is hereby prohibited. Nothing in this subsection shall be construed to prohibit smoking on the premises of the day care home outside the facility or facilities of a day care home, including but not limited to porches, yards or garages.

(c) Each day care home registration certificate or license shall contain a statement in bold print that smoking is prohibited within a room, enclosed area or other enclosed space of the facility or facilities of the day care home under the conditions specified in subsection (b). The statement shall be phrased in substantially the same language as subsection (b). The registration certificate or license shall be posted in a conspicuous place in the facility or facilities.

(d) The secretary of health and environment may levy a civil fine under K.S.A. 65-526 and amendments thereto against any day care home for a first or second violation of this section. A third or subsequent violation shall be subject to the provisions of K.S.A. 65-523 and amendments thereto.

(e) *In addition to any civil fine which may be levied pursuant to subsection (d), any day care home that violates any provision of this section may also be subject to criminal punishment pursuant to K.S.A. 21-4012, and amendments thereto.*

New Sec. 7. On and after January 2, 2010, the amendments made to K.S.A. 21-4009 through 21-4012, and amendments thereto, and K.S.A. 21-4013 and 21-4014, and amendments thereto, shall constitute the Kansas indoor clean air act.

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.

~~(dd)~~ (dd) "Importer" ~~shall have the same meaning ascribed thereto~~ *means the same as provided in 26 U.S.C. §5702(1).*

~~(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.

~~(v)~~ (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.

~~(w)~~ (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.

Sec. 11. On January 2, 2010, K.S.A. 21-3105, 21-4009, 21-4010, 21-4011, 21-4012, 21-4016, 21-4017 and 65-530 are hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, by striking all in lines 10 through 11 and inserting the following:

AN ACT concerning crimes and punishments; relating to smoking and cigarette sales; amending K.S.A. 21-3105, 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and K.S.A. 2008 Supp. 79-3301 and 79-3321 and repealing the existing sections; also repealing K.S.A. 21-4016 and 21-4017.”;

And the bill be passed as amended.

COMMITTEE OF THE WHOLE

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

On motion of Senator Teichman the following report was adopted:

Recommended: **SB 255, SB 269, SB 274, SB 299, SB 302, SB 307; HB 2236, HB 2297, HB 2311** be passed.

SB 205, SB 285, SB 310 be amended by adoption of the committee amendments, and the bills be passed as amended.

SR 1851 be adopted.

SB 75 be amended by adoption of the committee amendments, be further amended by motion of Senator Hensley, on page 2, line 7, by striking the period, and inserting in lieu thereof, "unless a greater representation of residents of the unincorporated area is specified by the resolution.", and **SB 75** be passed as further amended.

HB 2001 be passed over and retain a place on the calendar.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a 2/3 constitutional majority, and **SB 75, SB 205, SB 255, SB 269, SB 274, SB 285, SB 299, SB 302, SB 307, SB 310; SR 1851; HB 2236, HB 2297, HB 2311** were advanced to Final Action and roll call.

SB 75, An act concerning governmental consolidation and reorganization; amending K.S.A. 12-3901, 12-3902, 12-3903, 12-3904, 12-3909 and 19-205 and repealing the existing sections.

On roll call, the vote was: Yeas 27, Nays 11, Present and Passing 2, Absent or Not Voting 0.

Yeas: Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Hensley, Kelly, Kelsey, Kultala, Lynn, Marshall, Masterson, Morris, Owens, Petersen, Reitz, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Abrams, Apple, Barnett, Holland, Huelskamp, Lee, Ostmeyer, Pilcher-Cook, Pyle, Schmidt D, Taddiken.

Present and Passing: Haley, McGinn.

The bill passed, as amended.

SB 205, An act concerning the development finance authority; relating to the refunding of bonds; amending K.S.A.2008 Supp. 74-8905 and repealing the existing section.

On roll call, the vote was: Yeas 31, Nays 9, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Huelskamp, Kelsey, Lynn, Marshall, Masterson, McGinn, Morris, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Francisco, Haley, Hensley, Holland, Kelly, Kultala, Lee, Ostmeyer, Steineger.

The bill passed, as amended.

SB 255, An act concerning property taxation; relating to statewide levy for public schools; exemption therefrom, residential property; amending K.S.A. 2008 Supp. 72-6431 and 79-201x and repealing the existing sections.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

SB 269, An act concerning civil procedure; relating to covered offenses and conduct giving rise to forfeiture; amending K.S.A. 2008 Supp. 60-4104 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

SB 274, An act establishing the Kansas scenic and heritage backroads act.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

SB 285, An act concerning the Kansas universal service fund; relating to KAN-ED funding; amending K.S.A. 2008Supp. 66-2010 and repealing the existing section.

On roll call, the vote was: Yeas 37, Nays 3, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Pilcher-Cook, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Huelskamp, Petersen, Pyle.

The bill passed, as amended.

SB 299, An act concerning the department of health and environment; relating to rules and regulations for underground hydrocarbon storage wells; amending K.S.A. 55-1,117 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

SB 302, An act concerning transportation; relating to intermodal transportation projects, and providing for the financing thereof.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 1, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Haley, Hensley, Holland, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

Nays: Huelskamp, Pilcher-Cook, Pyle.

Present and Passing: Francisco.

The bill passed.

SB 307, An act concerning aboveground storage tanks; duties of the state fire marshal; amending K.S.A. 2008 Supp. 65-34,136 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

SB 310, An act concerning sexually violent predators; relating to placement into the community; amending K.S.A. 2008 Supp. 59-29a11 and repealing the existing section.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed, as amended.

SR 1851, A RESOLUTION urging review, modification and reorganization of laws pertaining to the maintenance and availability of health information.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The resolution was adopted

HB 2236, An act relating to crimes, criminal procedure and punishments; concerning drug crimes; recodification of certain statutes; amending K.S.A. 12-4419, 12-4509, 21-2501, 21-3436, 21-3608a, 21-3718, 21-3826, 21-4203, 21-4204, 21-4226, 21-4502, 21-4603d, 21-4708, 21-4713, 21-4717, 21-4729, 22-2512, 22-2515, 22-2909, 22-3901, 36-601, 36-604, 60-427, 65-4102, 65-4127c, 65-4139 and 79-5201 and K.S.A. 2008 Supp. 8-2,128, 8-1567, 12-4104, 21-4704, 21-4705, 21-4714, 22-4902, 38-2255, 44-706, 59-2132, 59-29b46, 60-4104, 65-516, 72-1397, 72-5445, 72-89c01, 75-7c04, 75-52,144 and 76-11a13 and repealing the existing sections; also repealing K.S.A. 21-4214, 21-4215, 65-4105a, 65-4127d, 65-4141, 65-4142, 65-4155, 65-4158, 65-4164 and 65-4165 and K.S.A. 2008 Supp. 65-4150, 65-4151, 65-4152, 65-4153, 65-4159, 65-4159a, 65-4160, 65-4161, 65-4162, 65-4163, 65-4166, 65-4168, 65-4168a and 65-7006.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

HB 2297, An act concerning geriatric medicine; relating to approved postgraduate residency training program for the university of Kansas school of medicine and the doctor of osteopathy medical student loan programs; amending K.S.A. 2008 Supp. 74-3266 and 76-381 and repealing the existing sections.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

HB 2311, An act concerning service of process; relating to private detectives; amending K.S.A. 60-303 and 61-3003 and repealing the existing sections; also repealing K.S.A. 61-3003a.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wysong.

The bill passed.

On motion of Senator D. Schmidt the Senate adjourned until 8:00 a.m., Friday, March 20, 2009.

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

