

Journal of the House

FIFTY-NINTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, May 5, 2010, 10:00 a.m.

The House met pursuant to recess with Speaker pro tem Siegfried in the chair.
The roll was called with 123 members present.
Rep. Fund was excused on verified illness.
Rep. Hawk was excused on excused absence by the Speaker.
Present later: Rep. Fund.

Prayer by Chaplain Brubaker:

Our Heavenly Father,
Yesterday was a long day
and many are ready to be on their way.
However, we still have crucial
decisions to make
that will have long-lasting effects.
It is obvious that everyone
wants a piece of the pie.
It is up to these leaders to discern
whether the piece requested
is a "want" or a "need."
Your Word tells us that You
will supply our every need.
We just require Your wisdom
to know the true legitimate needs.
In Christ's name I pray, Amen.

The Pledge of Allegiance was led by Rep. Garcia.

INTRODUCTION OF GUESTS

Reps. Otto and Feuerborn introduced Chase Brown of Richland who is the Kansas Regional Spelling Bee Champion for 2010. Chase was accompanied to the House by his parents.

PERSONAL PRIVILEGE

There being no objection, the following remarks by Rep. Dillmore, on behalf of Rep. Lane, are spread upon the journal:

Thank you, Mr. Speaker, for this opportunity to set the record straight. On May 3, the day before yesterday, this body considered a motion to override the Governor's veto of **S. Sub. for HB 2115**. When the roll was opened for that Final Action vote, Rep. Lane and I pressed the Nay button on the console and verified that our votes appeared on the voting board. However, when the vote was tallied and recorded in the journal, we were recorded as having not voted.

Mr. Speaker, our constituents do not always agree with us, but they should know where we stand on the issues before this institution. We have never ducked a tough vote in the past and we do not want anyone to think we ducked this vote.

Therefore, my point today is to state clearly and for the record that we vote NO on **S. Sub. for HB 2115**.

Again, I thank the Speaker for the opportunity to correct the record.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and resolution were referred to committees as indicated:

Economic Development and Tourism: **SCR 1630**.

Judiciary: **HB 2749**.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill appearing on the calendar as "To be referred" was referred to committee as indicated:

Committee of the Whole: **SB 586**.

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

On motion of Rep. O'Neal, **HR 6044**, A resolution honoring John F. Hayes on his lifelong public and legal service to his community and state, was adopted.

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

On motion of Rep. Craft, **HR 6045**, A resolution designating October as "Agent Orange Recognition Month," was adopted.

There being no objection, the following remarks of Reps. Craft and Meier are spread upon the journal:

Rep Craft: **HR 6045** designates October as "Agent Orange Recognition Month." It was requested by a constituent of mine, Bruce Jasinski, who was exposed to the toxic herbicide, Agent Orange, when he served at the Air Force base in Udorn, Thailand, during the Vietnam War. Herbicides were used to spray along the base perimeter at Udorn. Bruce worked on RF-4-C and F-4-D fighters on the flight line that was located in the perimeter. He remembers seeing tractors towing 55 gallon drums through the area where he worked and spraying during the daytime. Bruce has been diagnosed with Type 2 diabetes and suffers from secondary issues in addition.

Bruce is here with us today, accompanied by his wife Chris, to represent the scores of military veterans who served in Southeast Asia during the Vietnam War era and were exposed to Agent Orange, and who are afflicted today with medical problems they developed many years later, more than likely due to their exposure during the war. There are no doubt others here today who also served in Southeast Asia during this time. I would ask that they stand, too, during the reading of the resolution and be recognized.

Rep. Meier: Agent Orange was one of the weed-killing chemicals, know as a "herbicide," used by the U.S. military in the Vietnam War. It was sprayed to remove leaves from trees that enemy troops hid behind. So much Agent Orange was applied by airplanes, helicopters, trucks and backpack sprayers during the Vietnam War, that all Vietnam Veterans are considered to have been exposed. Certain other veterans who served in other countries of Southeast Asia and the Demilitarized Zone in Korea were also exposed.

In the 1970's some veterans became concerned that exposure to Agent Orange might cause delayed health effects. One of the chemicals in Agent Orange contained small amounts of dioxin, which had been found to cause a variety of illnesses in laboratory animals. More recent studies have suggested that dioxin may be related to several types of cancer and other disorders.

In 1996, President Clinton and VA Secretary Jesse Brown asked Congress to pass legislation providing health care, monthly disability compensation, and vocational rehabilitation to the children of Vietnam veterans suffering from the serious birth defect spina bifida, which has been linked to the veterans' exposure to Agent Orange. Congress passed the legislation, marking the first time our nation had ever compensated the children of veterans for a birth defect associated with their parent's exposure to toxic chemicals during their

military service. The VA is now providing benefits to over 800 children, including minors and adults.

Additionally, effective December 16, 2003, Congress authorized benefits to children with spina bifida of certain veterans who served at or near the demilitarized zone in Korea between September 1, 1967 and August 31, 1971, because Agent Orange is known to have been sprayed in that area.

I had hoped my good friend and Vietnam veteran, Retired Sergeant Major Rick McCall could have been here today. He lost a lung to Agent Orange and therefore is unable to drive the distance to Topeka. Despite his serious health concerns, SGM McCall still serves his country today, working at Fort Leavenworth as a Department of the Army Civilian who writes doctrine.

As we go about our busy lives, worrying about our own routines, it is easy to take our freedoms for granted. It is my hope that as Kansans slow down a bit to observe “Agent Orange Recognition Month” that they are reminded of the sacrifices of our Vietnam veterans, the price they paid for the lives we are able to lead, and be grateful for their service.

Rep. Craft: In sponsoring this resolution, it is the hope of Rep. Meier, Rep. Goyle, and myself that the designation of October as “Agent Orange Recognition Month” will create more awareness about the devastating effects of Agent Orange on Vietnam era veterans in an effort to further the support of these brave individuals. Please help me to show our appreciation to all those who served.

MOTIONS AND RESOLUTIONS OFFERED ON A PREVIOUS DAY

On motion of Rep. Bollier, **HR 6046**, A resolution honoring former Representative Al Lane, was adopted.

There being no objection, the following remarks of Rep. Bollier are spread upon the journal:

I come before you today asking you to join me in honoring former Representative Al Lane with **HR 6046**. Al passed away this past fall. Joining me today is Al’s wife, Peggy, and Senator Terrie Huntington, your former colleague here in the House.

I grew up just down the street from Al and his family, and spent time as a young girl playing in his yard with his children or waving to him as I drove by while he was out mowing his yard. As I grew up, Al began his commitment to public service. He served on the Mission Hills City Council from 1981 to 1985, became Mayor and served from 1985 to 1989. He was elected Representative of the 25th District in 1989. My mother, who served as his Precinct Committee Chairwoman, went door to door, working hard to get Al elected into the House. He retired in 2003.

This past year he became ill and passed away in the fall of 2009. It is a true privilege to be standing here today as a Representative honoring Al for his service.

I would now like to share some words from Senator Huntington as she remembers and honors Al.

“It was an honor to have Al Lane as my mentor and friend. When Rep. Lane decided to retire, I talked to him about filing for his seat in the Kansas House. He not only endorsed me, but he and his wife Peggy offered to serve as my campaign chairmen. And he went the extra mile, literally, by walking door to door with me. It was a primary election, so I was only going to knock on the doors of registered Republicans, but Rep. Lane said no — knock on every door. Your neighbors will want to know who is going to represent them. That’s when I knew what a special man he was — a friend and representative to everyone, not just his fellow Republicans.

“He enjoyed his retirement, finally catching up on the home projects he had postponed for many years, but remained engaged in politics — returning to the annual Shrimp Peel Dinner, and serving on the PAC board of a local organization.

“When he learned he had cancer, his spirits were not dampened. He remained positive and upbeat through his many medical treatments — maintaining the smile and positive attitude that had served him so well during his years of community and state service.

“The resolution said it well — he was a true gentleman. I will miss his wide smile, his words of encouragement and his friendship, and I’m sure those of you who served with him in the Kansas House of Representatives feel the same.”

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Merrick, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **SB 434; S. Sub. for HB 2310**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 434**, submits the following report:

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

On page 1, after line 21, by inserting the following:

“New Section 1. There is hereby created in the state treasury the department of corrections forensic psychologist fund. All moneys credited to the department of corrections forensic psychologist fund shall be used by the department of corrections for the purpose of contracting for the services of forensic psychologists. All expenditures from the department of corrections forensic psychologist fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of corrections or the secretary’s designee.

Sec. 2. K.S.A. 2009 Supp. 12-4117 is hereby amended to read as follows: 12-4117. (a) In each case filed in municipal court charging a crime other than a nonmoving traffic violation, where there is a finding of guilty or a plea of guilty, a plea of no contest, forfeiture of bond or a diversion, a sum in an amount of ~~\$19~~ \$20 shall be assessed and such assessment shall be credited as follows:

One dollar to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620, and amendments thereto, \$11.50 to the law enforcement training center fund established pursuant to K.S.A. 74-5619, and amendments thereto, \$2.50 to the Kansas commission on peace officers’ standards and training fund established by K.S.A. 74-5619, and amendments thereto, \$2 to the juvenile detention facilities fund established pursuant to K.S.A. 79-4803, and amendments thereto, to be expended for operational costs of facilities for the detention of juveniles, \$.50 to the protection from abuse fund established pursuant to K.S.A. 74-7325, and amendments thereto, \$.50 to the crime victims assistance fund established pursuant to K.S.A. 74-7334, and amendments thereto ~~and~~, \$1 to the trauma fund established pursuant to K.S.A. 2009 Supp. 75-5670, and amendments thereto, *and \$1 to the department of corrections forensic psychologist fund established pursuant to section 1, and amendments thereto.*

(b) The judge or clerk of the municipal court shall remit the appropriate assessments received pursuant to this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the local law enforcement training reimbursement fund, the law enforcement training center fund, the Kansas commission on peace officers’ standards and training fund, the juvenile detention facilities fund, the crime victims assistance fund ~~and~~, the trauma fund *and the department of corrections forensic psychologist fund* as provided in this section.

(c) For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed in the municipal court against one individual arising out of the same incident, all such complaints shall be considered as one case.”;

On page 6, by striking all in lines 23 through 26;

By striking all on pages 7 through 12;

On page 13, by striking all in lines 1 through 23 and inserting the following:

“Sec. 5. K.S.A. 2009 Supp. 21-4704, as amended by section 9 of 2010 House Bill No. 2661, is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
6 Months
Presumptive Imprisonment

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

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

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

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

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

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

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

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

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

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

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

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

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

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory

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

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

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

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

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies, felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

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

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

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

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

(n) The sentence for a third or subsequent violation of subsection (b) of K.S.A. 21-3705, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments thereto, shall apply to a defendant sentenced under this subsection.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716 and amendments thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify the sentence by directing that a less severe penalty be imposed in lieu

of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) The sentence for a violation of subsection (a)(2) of K.S.A. 21-3413, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(r) *The sentence for a violation of K.S.A. 21-3520, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(s) (1) *If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months' imprisonment.*

(2) *The sentence imposed pursuant to paragraph (1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.*

(3) *As used in this subsection, "ballistic resistant material" means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and keklar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.*

Sec. 6. On and after July 1, 2011, K.S.A. 2009 Supp. 21-4704, as amended by section 5, is hereby amended to read as follows: 21-4704. (a) For purposes of sentencing, the following sentencing guidelines grid for nondrug crimes shall be applied in felony cases for crimes committed on or after July 1, 1993:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
6 Months
9 Months
Presumptive Imprisonment

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

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

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

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

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

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

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

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

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

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

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

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

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

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory

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

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

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

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

(k) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies, felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a) of K.S.A. 21-3715, and amendments thereto, *or any attempt or conspiracy, as defined in K.S.A. 21-3301 or 21-3302, and amendments thereto, to commit such offense*, when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716, and amendments thereto, *or any attempt or conspiracy to commit such offense*, shall be ~~presumed~~ *presumptive* imprisonment.

(m) The sentence for a violation of K.S.A. 22-4903 or subsection (d) of K.S.A. 21-3812, and amendments thereto, shall be presumptive imprisonment. If an offense under such

sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence upon making the following findings on the record:

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

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

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

(n) The sentence for a third or subsequent violation of subsection (b) of K.S.A. 21-3705, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments thereto, shall apply to a defendant sentenced under this subsection.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716 and amendments thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and

the court may modify the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision.

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) The sentence for a violation of subsection (a)(2) of K.S.A. 21-3413, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(r) The sentence for a violation of K.S.A. 21-3520, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) (1) If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months' imprisonment.

(2) The sentence imposed pursuant to paragraph (1) shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(3) As used in this subsection, "ballistic resistant material" means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.":

On page 20, by striking all in lines 40 through 43 and inserting the following:

"(2) Inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the parole board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the parole board determines that such resources are insufficient. If the parole board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.";

On page 23, by striking all in lines 28 through 43;

By striking all on pages 24 through 26;

On page 27, by striking all in lines 1 through 23 and inserting the following:

"Sec. 8. On and after July 1, 2010, K.S.A. 2009 Supp. 22-4902, as amended by section 11 of 2010 House Bill No. 2661, is hereby amended to read as follows: 22-4902. As used in the Kansas offender registration act, unless the context otherwise requires:

(a) "Offender" means: (1) A sex offender as defined in subsection (b);

(2) a violent offender as defined in subsection (d);

(3) a sexually violent predator as defined in subsection (f);

(4) any person who, on and after May 29, 1997, is convicted of any of the following crimes when the victim is less than 18 years of age:

(A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;

(B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or

(C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;

(5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

(A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;

(C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;

(D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto; or

(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto;

or

(F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;

(6) any person who has been required to register under any federal, military or other state's law or is otherwise required to be registered;

(7) any person who, on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;

(8) any person who has been convicted of an offense in effect at any time prior to May 29, 1997, that is comparable to any crime defined in subsection (4), (5), (7) or (11), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4), (5), (7) or (11);

(9) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4), (5), (7) or (10);

(10) any person who has been convicted of aggravated *human* trafficking as defined in K.S.A. 21-3447, and amendments thereto; or

(11) any person who has been convicted of: (A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog as defined by K.S.A. 65-4159, prior to its repeal or K.S.A. 2009 Supp. 21-36a03, and amendments thereto, unless the court makes a finding on the record that the manufacturing or attempting to manufacture such controlled substance was for such person's personal use;

(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance as defined by subsection (a) of K.S.A. 65-7006, prior to its repeal or subsection (a) of K.S.A. 2009 Supp. 21-36a09, and amendments thereto, unless the court makes a finding on the record that the possession of such product was intended to be used to manufacture a controlled substance for such person's personal use; or

(C) K.S.A. 65-4161, prior to its repeal or subsection (a)(1) of K.S.A. 2009 Supp. 21-36a05, and amendments thereto. The provisions of this paragraph shall not apply to violations of subsections (a)(2) through (a)(6) or (b) of K.S.A. 2009 Supp. 21-36a05, and amendments thereto, which occurred on and after July 1, 2009, through the effective date of this act.

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

(b) "Sex offender" includes any person who, on or after April 14, 1994, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;

(6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;

(7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;

(8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;

(9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;

(10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;

(11) aggravated incest as defined by K.S.A. 21-3603 and amendments thereto;

(12) electronic solicitation as defined by K.S.A. 21-3523, and amendments thereto, committed on ~~and~~ or after April 17, 2008;

(13) *unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto, committed on or after July 1, 2010;*

(14) any conviction for an offense in effect at any time prior to April 29, 1993, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;

~~(14)~~ (15) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; or

~~(15)~~ (16) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, “sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

(d) “Violent offender” includes any person who, *on or after* May 29, 1997, is convicted of any of the following crimes:

- (1) Capital murder as defined by K.S.A. 21-3439 and amendments thereto;
- (2) murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;
- (3) murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;
- (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;
- (5) involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto;
- (6) any conviction for an offense in effect at any time prior to May 29, 1997, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(e) “Law enforcement agency having jurisdiction” means the sheriff of the county in which the offender expects to reside upon the offender’s discharge, parole or release.

(f) “Sexually violent predator” means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.

(g) “Nonresident student or worker” includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) “Aggravated offenses” means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(i) “Institution of higher education” means any post-secondary school under the supervision of the Kansas board of regents.

Sec. 9. K.S.A. 21-3520 and K.S.A. 2009 Supp. 12-4117, 21-3826, 21-4704, as amended by section 9 of 2010 House Bill No. 2661, 21-4704, as amended by section 19 of 2010 House Bill No. 2435, 21-4704, as amended by section 8 of 2010 Senate Bill No. 586, 22-3717, 22-4902, as amended by section 11 of 2010 House Bill No. 2661, 22-4902, as amended by section 4 of 2010 Substitute for Senate Bill No. 353, and 22-4902, as amended by section 9 of 2010 Senate Bill No. 586, are hereby repealed. Sec. 10. On and after July 1, 2011, K.S.A. 2009 Supp. 21-4704, as amended by section 5, is hereby repealed.”;

And by renumbering the sections accordingly;

In the title, in line 15, before “relating” by inserting “creating the department of corrections forensic psychologist fund;”; also in line 15, after “to” by inserting “municipal court

assessments;"; in line 18, after "Supp." by inserting "12-4117;"; also in line 18, after "21-4704" by inserting ";", as amended by section 9 of 2010 House Bill No. 2661, 21-4704, as amended by section 5"; also in line 18, after "22-4902" by inserting ";", as amended by section 11 of 2010 House Bill No. 2661;"; in line 19, after "sections" by inserting ";"; also repealing K.S.A. 2009 Supp. 21-4704, as amended by section 19 of 2010 House Bill No. 2435, 21-4704, as amended by section 8 of 2010 Senate Bill No. 586, 22-4902, as amended by section 4 of 2010 Substitute for Senate Bill No. 353, and 22-4902, as amended by section 9 of 2010 Senate Bill No. 586";

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

PAT COLLOTON
JOE PATTON
MELODY MCCRAY-MILLER
Conferees on part of House

THOMAS C. OWENS
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

On motion of Rep. Colloton, the conference committee report on **SB 434** was adopted.

On roll call, the vote was: Yeas 123; Nays 0; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, DeGraaf, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Johnson, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Merrick, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Ruiz, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley, Yoder.

Nays: None.

Present but not voting: None.

Absent or not voting: Fund, Hawk.

MOTIONS TO CONCUR AND NONCONCUR

On motion of Rep. Bethell, the House concurred in Senate amendments to **S. Sub. for HB 2310**, An act concerning the state board of mortuary arts, relating to crematory operations; licensure; fees; amending K.S.A. 65-1760, 65-1763, 65-1764, 65-1765, 65-1766 and 65-1768 and K.S.A. 2009 Supp. 65-1727 and 65-1762 and repealing the existing sections.

(The House requested the Senate to return the bill, which was in conference).

On roll call, the vote was: Yeas 99; Nays 24; Present but not voting: 0; Absent or not voting: 2.

Yeas: Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, T. Brown, Burgess, Burroughs, Carlin, Colloton, Craft, Crow, Crum, Davis, Dillmore, Donohoe, Feuerborn, Finney, Flaharty, Frownfelter, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grant, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Jack, Johnson, Kerschen, King, Kleeb, Knox, Landwehr, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, McCray-Miller, McLeland, Meier, Menghini, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Pauls, Peterson, Phelps, Pottorff, Prescott, Proehl, Quigley, Rardin, Roth, Ruiz, Schroeder, Schwartz, Seiwert, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Wetta, Williams, Winn, B. Wolf, K. Wolf, Worley.

Nays: Aurand, A. Brown, Brunk, Carlson, DeGraaf, Faber, Grange, Hayzlett, Huebert, Kelley, Kiegerl, Kinzer, Kuether, Mast, Merrick, Patton, Peck, Powell, Rhoades, Schwab, Shultz, Ward, Whitham, Yoder.

Present but not voting: None.

Absent or not voting: Fund, Hawk.

On motion of Rep. Merrick, the House recessed until 3:30 p.m.

AFTERNOON SESSION

The House met pursuant to recess with Speaker O'Neal in the chair.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

HB 2750, An act concerning the state health care benefits program; relating to subrogation rights and coordination of benefits thereunder; amending K.S.A. 75-6504 and repealing the existing section, by Committee on Appropriations.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

The following resolution was introduced and read by title:

HOUSE RESOLUTION No. 6048—

By Representatives Yoder, Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, DeGraaf, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Fund, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hawk, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Johnson, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Merrick, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Ruiz, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf and Worley

A RESOLUTION in memory of Isaac "Kelso" Deer.

WHEREAS, Isaac "Kelso" Deer passed away on December 20, 2009; and

WHEREAS, Kelso was born on January 2, 1916, the son of William and Adah (Clayton) Deer. He was born in Farlington and grew up in Altoona. He attended Kansas State Teacher's College of Pittsburg, where he earned a Bachelor's degree and a Master's degree in Education; and

WHEREAS, For over 43 years, Kelso worked as a school counselor, teacher, coach, principal and superintendent in Augusta and Hoisington; and

WHEREAS, From 1955 to 1959, Kelso served in the Army Reserves, earning the rank of master sergeant. He was a full citizen of the Muscogee Nation in Oklahoma; and

WHEREAS, Kelso was elected to the Kansas Legislature in 1952, representing the Augusta area in Butler County. He served four terms as a Representative before relocating to Hoisington to continue working in education until his retirement. He also served in the Kansas Silver Haired Legislature and was active in politics for over 70 years; and

WHEREAS, Kelso married Wanda Lee Sypolt on March 13, 1960. He is survived by his wife, two sons, Montie Deer and his wife Jan of Topeka and David Deer and his wife Camille of Loch Lloyd, Missouri; one granddaughter, Sarah Deer and her husband Neal of St. Paul, Minnesota; three grandsons, William Deer of Wichita, Matthew Deer of Montrose, Colorado and Brian Deer and wife Anjanette of Gardner; three great-grandchildren, Isaac, Lauren and Jessica Deer, all of Gardner; and one sister, Dorothy Sell of Wichita: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we honor Isaac “Kelso” Deer for his lifetime of service to his community and the state of Kansas and extend our deepest sympathy to his family and friends; and

Be it further resolved: That the Chief Clerk of the House of Representatives be directed to send 12 enrolled copies of this resolution to Representative Yoder.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Merrick, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2454; S. Sub. for HB 2582; SB 368.**

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **Senate Substitute for HB 2582**, submits the following report:

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

On page 1, by striking all in lines 26 through 43;

By striking all on pages 2 through 31;

On page 32, by striking all in lines 1 through 13 and inserting the following:

“Section 1. K.S.A. 12-5301 is hereby amended to read as follows: 12-5301. As used in this act, unless the context otherwise requires:

(a) “Emergency telephone service” means a telephone system utilizing a single three digit number “911” for reporting police, fire, medical or other emergency situations;

(b) “emergency telephone tax” means a tax to finance the operation of emergency telephone service;

(c) “exchange access facilities” means all facilities provided by the service supplier for the facility which provides local telephone exchange access to a service user;

(d) “*local collection point administrator (LCPA)*” means the statewide association of cities established by K.S.A. 12-1610e, and amendments thereto, and the statewide association of counties established by K.S.A. 19-2690, and amendments thereto;

(e) “tariff rate” means the rate or rates billed by a service supplier and as stated in the service supplier’s tariffs, approved by the state corporation commission which represent the service supplier’s recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges whatsoever;

(f) “public agency” means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides or has authority to provide fire fighting, law enforcement, ambulance, emergency medical or other emergency services;

(g) “governing body” means the board of county commissioners of a county or the governing body of a city;

(h) “person” means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other service user;

(i) “service supplier” means any person providing exchange telephone services or wireless service to any service user in this state;

(j) “service user” means any person who is provided exchange telephone service or wireless in this state;

(k) “*subscriber radio equipment*” means mobile and portable radio equipment installed in vehicles or carried by persons for voice communication with a radio system;

(l) “wireless carrier” means any common, private or other radio carrier licensed by the federal communications commission to provide two-way voice or text radio service in this state which provides interconnection to the public switched telephone network and access to a 24-hour answering point;

(*) (m) “wireless service” means a two-way voice or text radio service provided by a wireless carrier; and

(*) (n) “PSAP” means public safety answering point.

Sec. 2. K.S.A. 12-5304 is hereby amended to read as follows: 12-5304. (a) Any governing body imposing the tax authorized by K.S.A. 12-5302, and amendments thereto, may contract directly with the provider of the emergency telephone service or may contract and cooperate with any public agency or with other states or their political subdivisions or with any association or corporation for their political subdivisions or with any association or corporation for the administration of emergency telephone service as provided by law.

(b) Funds collected from tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall be spent solely to pay for any or all of the following: (1) The monthly recurring charges billed by the service supplier for the emergency telephone service; (2) initial installation, service establishment; nonrecurring start-up charges billed by the service supplier for the emergency telephone service; (3) charges for capital improvements and equipment or other physical enhancements to the emergency telephone system, *not to include subscriber radio equipment*; or (4) the acquisition and installation of road signs designed to aid in the delivery of emergency service.

(c) *Prior to January 10, 2011, every PSAP shall provide to the LCPA an accounting of all PSAP's receipts from the governing body during the 2010 calendar year.*

Sec. 3. K.S.A. 2009 Supp. 12-5322 is hereby amended to read as follows: 12-5322. As used in the wireless enhanced 911 act, unless the context otherwise requires:

(a) “Advisory board” means the wireless enhanced 911 advisory board established under K.S.A. 2009 Supp. 12-5326, and amendments thereto.

(b) “Automatic number identification” means a feature by which a person calling a public safety answering point has such person’s 10-digit telephone number simultaneously forwarded to the public safety answering point and to the public safety answering point’s display and transfer.

(c) “Eligible municipality” means: (1) Any county having a population of less than 75,000 or any city located within such a county; or (2) any two or more such counties or cities.

(d) “Emergency telephone service” means a telephone system utilizing a single three digit number “911” for reporting police, fire, medical or other emergency situations.

(e) “Enhanced 911 service” means an emergency telephone service that generally may provide, but is not limited to, selective routing, automatic number identification and automatic location identification features.

(f) “Exchange access facilities” means all facilities provided by the service supplier for the facility which provides local telephone exchange access to a service user.

(g) “Fund” means the wireless enhanced 911 grant fund established by this act.

(h) “Governing body” means the board of county commissioners of a county or the governing body of a city.

(i) “Local collection point administrator” means the statewide association of cities as established by K.S.A. 12-1610e, and amendments thereto, and the statewide association of counties as established by K.S.A. 19-2690, and amendments thereto.

(j) “Mobile telephone number” means the telephone number assigned to a wireless telephone at the time of initial activation.

(k) “Person” means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other legal entity.

(l) “Prepaid wireless telephone service” means wireless telephone service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless additional payments are made.

(m) "Primary place of use" has the meaning provided in the mobile telecommunications act (4 U.S.C. 116, et seq., as in effect on the effective date of this act).

(n) "Project" means the development and acquisition of the necessary improvements in order to facilitate the establishment of wireless enhanced 911 service.

(o) "Project costs" means all costs or expenses which are necessary or incident to a project and which are directly attributable thereto.

(p) "PSAP" means public safety answering point.

(q) "Pseudo-automatic number identification" means a feature by which automatic number identification is provided to a public safety answering point of the 10-digit telephone number of the specific cell site or cell site sector from which a wireless call originated.

(r) "Public agency" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides or has authority to provide fire fighting, law enforcement, ambulance, emergency medical or other emergency services.

(s) "Secretary" means the secretary of administration.

(t) "Service supplier" means any person providing exchange telephone service to any service user in this state.

(u) "Service user" means any person who is provided exchange telephone service or wireless service in this state.

(v) "Subscriber account" means the 10-digit access number assigned to a wireless service customer regardless of whether more than one such number is aggregated for the purpose of billing a service user.

(w) *"Subscriber radio equipment" means mobile and portable radio equipment installed in vehicles or carried by persons for voice communication with a radio system.*

~~(w)~~ (x) "Tariff rate" means the rate or rates billed by a service supplier and as stated in the service supplier's tariffs, approved by the state corporation commission which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges whatsoever.

~~(x)~~ (y) "Valid request" means a request to a wireless carrier for wireless enhanced 911 service, made by a PSAP which is capable of receiving and utilizing the data elements associated with wireless enhanced 911 service as determined in accordance with 47 CFR 20.18 (October 1, 2002).

~~(y)~~ (z) "Wholesaler of prepaid wireless service" means a person who purchases at wholesale wireless service from a wireless carrier for resale as prepaid wireless service.

~~(z)~~ (aa) "Wireless automatic location identification information" means a feature by which information is provided to a public safety answering point identifying the location of a 911 caller within the parameters established by the federal communications commission.

~~(aa)~~ (bb) "Wireless carrier" means any common, private or other radio carrier licensed by the federal communications commission to provide two-way voice service in this state which provides interconnection to the public switched telephone network and access to a 24-hour answering point.

~~(bb)~~ (cc) "Wireless enhanced 911 grant fee" means the fee imposed under K.S.A. 2009 Supp. 12-5324, and amendments thereto.

~~(cc)~~ (dd) "Wireless enhanced 911 local fee" means the fee imposed under K.S.A. 2009 Supp. 12-5330, and amendments thereto.

~~(dd)~~ (ee) "Wireless enhanced 911 service" means a communication service by which wireless carriers can provide automatic number identification, pseudo-automatic number identification and wireless automatic location identification information to a requesting PSAP, as defined in FCC docket 94-102, which is capable of receiving and utilizing the data elements associated with wireless enhanced 911 service.

~~(ee)~~ (ff) "Wireless service" means a two-way voice service provided by a wireless carrier.

Sec. 4. K.S.A. 2009 Supp. 12-5330 is hereby amended to read as follows: 12-5330. (a) Effective July 1, 2004, there is hereby imposed a wireless enhanced 911 local fee. Subject to the provisions of K.S.A. 2009 Supp. 12-5338, and amendments thereto, the amount of such fee shall be \$.25 per month per wireless subscriber with primary place of use in the state of Kansas. Such fee shall not be imposed on prepaid wireless service.

(b) Subject to the provisions of K.S.A. 2009 Supp. 12-5338, and amendments thereto, the proceeds of the wireless enhanced 911 local fee, and any interest earned on revenue derived from such fee, shall be used only for necessary and reasonable costs incurred or to be incurred by PSAP's for: (1) Implementation of wireless enhanced 911 service and VoIP enhanced 911 service; (2) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of wireless enhanced 911 service and VoIP enhanced 911 service; and (3) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay, *subscriber radio equipment*, or other equipment not expressly authorized by this act.

(c) Each PSAP shall submit to the secretary an annual report accounting for the money received by the PSAP from the wireless enhanced 911 local fee. Such report shall be submitted on a form provided by the secretary.

(d) (1) Subject to the provisions of subsection (d)(3), each PSAP shall submit to wireless carriers a valid request for wireless enhanced 911 service by July 1, 2007.

(2) Subject to the provisions of subsection (d)(3), if a PSAP has not submitted to wireless carriers a valid request for wireless enhanced 911 service by July 1, 2007: (A) Such PSAP shall pay to the secretary all moneys from the wireless enhanced 911 local fee which have been or are received by such PSAP; (B) the secretary shall notify the local collection point administrator that the PSAP has not made a valid request when required and that distributions of moneys from the wireless enhanced 911 local fee to the PSAP shall be stopped and that such moneys shall be instead remitted to the secretary until the secretary notifies the local collection point administrator that the PSAP has made a valid request; (C) the PSAP thereafter shall not be eligible to receive moneys from the fund or from distributions by the local collection point administrator until the PSAP has submitted to the secretary evidence satisfactory to the secretary that the PSAP has submitted to wireless carriers a valid request for wireless enhanced 911 service. The secretary shall remit any moneys received from the repayment by the PSAP or from distributions by the local collection point administrator to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the wireless enhanced 911 grant fund.

(3) If a PSAP is unable to make a valid request by July 1, 2007, the advisory board may approve not to exceed two one-year extensions of such date to not later than July 1, 2008, if the advisory board determines that: (A) Equipment necessary to receive and utilize the data elements associated with wireless enhanced 911 service has been ordered by the PSAP but is unavailable; or (B) there is other just cause to extend the date.

Sec. 5. K.S.A. 2009 Supp. 12-5338 is hereby amended to read as follows: 12-5338. (a) On July 1, ~~2010~~ 2011:

(1) The wireless enhanced 911 grant fee shall be discontinued, the advisory board shall be abolished, any unobligated balance of the wireless enhanced 911 grant fund shall be paid to the local collection point administrator for distribution to PSAP's based on the population of the municipality or municipalities served by the respective PSAP and the fund shall be abolished.

(2) Within any county which has a population of 125,000 or more, the amount of the tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.25 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee within such jurisdiction shall be an equal amount per month per wireless subscriber account.

(3) Within any county which has a population of less than 125,000 the amount of the tax imposed to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.50 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee shall be an equal amount per month per wireless subscriber account.

(4) The provisions of K.S.A. 2009 Supp. 12-5323 through 12-5329, and amendments thereto, shall expire.

(b) On and after July 1, ~~2010~~ 2011, the proceeds of the wireless enhanced 911 local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2009 Supp. 12-5330, and amendments thereto.

Sec. 6. K.S.A. 2009 Supp. 12-5361 is hereby amended to read as follows: 12-5361. (a) On July 1, ~~2010~~ 2011:

(1) The VoIP enhanced 911 grant fee shall be discontinued.

(2) The amount of the tax per access line or its equivalent imposed within a jurisdiction pursuant to K.S.A. 12-5302, and amendments thereto, and the amount of the VoIP enhanced 911 local fee per VoIP subscriber whose primary residence is within such jurisdiction shall be an equal amount per month.

(3) The provisions of K.S.A. 2009 Supp. 12-5354 and 12-5355, and amendments thereto, shall expire.

(b) On and after July 1, ~~2010~~ 2011, the proceeds of the VoIP local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2009 Supp. 12-5330, and amendments thereto.

Sec. 7. K.S.A. 12-5301 and 12-5304 and K.S.A. 2009 Supp. 12-5322, 12-5330, 12-5338 and 12-5361 are hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, in line 15, by striking all after “amending”; by striking all in lines 6 through 23 and inserting “K.S.A. 12-5301 and 12-5304 and K.S.A. 2009 Supp. 12-5322, 12-5330, 12-5338 and 12-5361 and repealing the existing sections.”;

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

PAT APPLE
MIKE PETERSEN
JANIS K. LEE
Conferees on part of Senate

CARL DEAN HOLMES
FORREST J. KNOX
ANNIE KUETHER
Conferees on part of House

On motion of Rep. C. Holmes, the conference committee report on **S. Sub. for HB 2582** was adopted.

On roll call, the vote was: Yeas 121; Nays 2; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, DeGraaf, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Fund, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Johnson, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Kuether, Lane, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Ruiz, Schroeder, Schwab, Schwartz, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley, Yoder.

Nays: Landwehr, Merrick.

Present but not voting: None.

Absent or not voting: Hawk, Light.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 368**, submits the following report:

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

On page 1, in line 39, by striking “, then restrict the person’s driving privi-”; by striking all in line 40; in line 41, by striking all before the semicolon and inserting “and at the end of the suspension, restrict the person’s driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device”;

On page 2, after line 32, by inserting the following:

“(3) Whenever a person’s driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person’s driving privileges are fully reinstated.”;

On page 4, in line 4, by striking “subsection (b)(1) of K.S.A. 8-1014” and inserting “subsection (f) of K.S.A. 8-1567a”; after line 16, by inserting “Prior to issuing such restricted license, the division shall receive proof of the installation of such device.”; in line 17, by striking “one-year” and inserting “applicable”; in line 18, by striking “subsection (b)(2)” and inserting “subsection (b)”; in line 19, by striking “for”; in line 20, by striking “one year” and inserting “pursuant to subsection (b) of K.S.A. 8-1014, and amendments thereto.”; after line 24, by inserting “Proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person’s driving privileges are fully reinstated.”;

On page 14, in line 11, by striking “and 8-1015” and inserting “, 8-1015 and 8-1567, as amended by section 1 of 2010 Senate Bill No. 586.”;

In the title, in line 14, before the period by inserting “and K.S.A. 2009 Supp. 8-1567, as amended by section 1 of 2010 Senate Bill No. 586”;

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

LANCE KINZER

JEFF WHITHAM

JANICE L. PAULS

Conferees on part of House

THOMAS C. OWENS

JOHN VRATIL

LAURA KELLY

Conferees on part of Senate

On motion of Rep. Kinzer, the conference committee report on **SB 368** was adopted.

On roll call, the vote was: Yeas 123; Nays 1; Present but not voting: 0; Absent or not voting: 1.

Yeas: Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, DeGraaf, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Fund, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Johnson, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Knox, Kuether, Landwehr, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Merrick, Morrison, Moxley, Myers, Neighbor, Neufeld, O’Brien, O’Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Powell, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Ruiz, Schroeder, Schwab, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, Suellentrop, D. Svaty, Swanson, Swenson, Tafanelli, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley, Yoder.

Nays: Schwartz.

Present but not voting: None.

Absent or not voting: Hawk.

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

Speaker O'Neal called the House to order.

On motion of Rep. Merrick, the House recessed until 5:45 p.m.

EVENING SESSION

The House met pursuant to recess with Speaker O'Neal in the chair.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Merrick, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **SB 452**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 452**, submits the following report:

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

On page 1, by striking all in lines 21 through 43;

By striking all on pages 2 through 4;

On page 5, by striking all in lines 1 through 36 and inserting the following:

“New Section 1. (a) Any manufacturer or supplier of alcoholic liquor or cereal malt beverage, whether licensed in this state or any other state, may apply for an annual packaging and warehousing facility permit. The application shall be on a form prescribed by the director and shall include all information the director deems necessary.

(b) A packaging and warehousing facility permit shall allow:

(1) The transfer of alcoholic liquor or cereal malt beverage to the licensed premises of a packaging and warehousing facility for the purpose of packaging or storage, or both;

(2) the sale and transfer from the licensed premises of a packaging and warehousing facility to the licensed premises of a spirits, wine or beer distributor licensed in Kansas or to a Kansas supplier; and

(3) the transfer from the licensed premises of a packaging and warehousing facility to another state.

(c) The annual fee for a packaging and warehousing facility permit shall be \$2,500.

(d) Each brand and label of alcoholic liquor or cereal malt beverage that is intended for sale to distributors in Kansas and is transported, packaged or stored at a licensed packaging and warehousing facility must be registered in accordance with the provisions of K.S.A. 41-331, and amendments thereto.

(e) The tax imposed pursuant to K.S.A. 41-501, and amendments thereto, shall be paid on alcoholic liquor or cereal malt beverage imported into this state under a packaging and warehousing facility permit only if the alcoholic liquor or cereal malt beverage is sold to a distributor for sale at wholesale in this state and shall be paid by the distributor who purchases the alcoholic liquor or cereal malt beverage for sale at wholesale.

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

On page 10, after line 20, by inserting the following:

“New Sec. 4. (a) The director shall issue a drinking establishment license to any municipal corporation that qualifies under K.S.A. 41-2601 et seq., and amendments thereto, for the premises specified in the license application.

(b) Municipal corporations applying for a drinking establishment license shall not be subject to the provisions of subsection (a)(1) or (a)(3) through (9) of K.S.A. 41-2623, and amendments thereto.

Sec. 5. K.S.A. 2009 Supp. 41-308a is hereby amended to read as follows: 41-308a. (a) A farm winery license shall allow:

(1) The manufacture of domestic table wine and domestic fortified wine in a quantity not exceeding 100,000 gallons per year and the storage thereof;

(2) the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, clubs, drinking establishments, holders of temporary permits as authorized by K.S.A. 41-2645, and amendments thereto, and caterers;

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

(4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

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

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

(7) the sale and shipping, in the original unopened container, to consumers outside this state of wine manufactured by the licensee, provided that the licensee complies with applicable laws and rules and regulations of the jurisdiction to which the wine is shipped; and

(8) the sale and shipping of wine within this state pursuant to a permit issued pursuant to K.S.A. 2009 Supp. ~~41-348~~ 41-350, and amendments thereto.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a farm winery licensee, the director may issue not to exceed three winery outlet licenses to the farm winery licensee. A winery outlet license shall allow:

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

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments; and

(3) the manufacture of domestic table wine and domestic fortified wine and the storage thereof; provided, that the aggregate quantity of wine produced by the farm winery licensee, including all winery outlets, shall not exceed 100,000 gallons per year.

(c) Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director based upon the director's findings and judgment. The label of domestic wine and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.

(d) A farm winery or winery outlet may sell domestic wine and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

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

(f) A farm winery license or winery outlet license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(g) No farm winery or winery outlet shall:

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

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

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

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

(h) Whenever a farm winery or winery outlet licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and order forfeiture of all fees paid for the license, after a hearing before the director for that purpose in accordance with the provisions of the Kansas administrative procedure act.

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

Sec. 6. K.S.A. 2009 Supp. 41-310 is hereby amended to read as follows: 41-310. (a) At the time application is made to the director for a license of any class, the applicant shall pay the fee provided by this section.

(b) The ~~annual~~ fee for a manufacturer's license to manufacture alcohol and spirits shall be ~~\$2,500~~ \$5,000.

(c) The ~~annual~~ fee for a manufacturer's license to manufacture beer and cereal malt beverage shall be:

(1) For 1 to 100 barrel daily capacity or any part thereof, ~~\$200~~ \$400.

(2) For 100 to 150 barrel daily capacity, ~~\$400~~ \$800.

(3) For 150 to 200 barrel daily capacity, ~~\$700~~ \$1,400.

(4) For 200 to 300 barrel daily capacity, ~~\$1,000~~ \$2,000.

(5) For 300 to 400 barrel daily capacity, ~~\$1,300~~ \$2,600.

(6) For 400 to 500 barrel daily capacity, ~~\$1,400~~ \$2,800.

(7) For 500 or more barrel daily capacity, ~~\$1,600~~ \$3,200.

As used in this subsection, "daily capacity" means the average daily barrel production for the previous 12 months of manufacturing operation. If no basis for comparison exists, the licensee shall pay in advance for *operation during the first year's operation term of the license* a fee of ~~\$1,000~~ \$2,000.

(d) The ~~annual~~ fee for a manufacturer's license to manufacture wine shall be ~~\$500~~ \$1,000.

(e) (1) The ~~annual~~ fee for a microbrewery license or a farm winery license shall be ~~\$250~~ \$500.

(2) The ~~annual~~ fee for a winery outlet license shall be ~~\$50~~ \$100.

(3) The ~~annual~~ fee for a microbrewery packaging and warehousing facility license shall be ~~\$100~~ \$200.

(f) The ~~annual~~ fee for a spirits distributor's license for the first and each additional distributing place of business operated in this state by the licensee and wholesaling and jobbing spirits shall be ~~\$1,000~~ \$2,000.

(g) The ~~annual~~ fee for a wine distributor's license for the first and each additional distributing place of business operated in this state by the licensee and wholesaling and jobbing wine shall be ~~\$1,000~~ \$2,000.

(h) The ~~annual~~ fee for a beer distributor's license, for the first and each additional wholesale distributing place of business operated in this state by the licensee and wholesaling or jobbing beer and cereal malt beverage shall be ~~\$1,000~~ \$2,000.

(i) The ~~annual~~ fee for a nonbeverage user's license shall be:

(1) For class 1, ~~\$10~~ \$20.

(2) For class 2, ~~\$50~~ \$100.

(3) For class 3, ~~\$100~~ \$200.

(4) For class 4, ~~\$200~~ \$400.

(5) For class 5, ~~\$500~~ \$1,000.

(j) In addition to the license fees prescribed by subsections (b), (c), (d), (f), (g), (h) and (i):

(1) Any city in which the licensed premises are located may levy and collect ~~an annual~~ a biennial occupation or license tax on the licensee in an amount not exceeding the amount of the ~~annual~~ license fee required to be paid under this act to obtain the license, but no city shall impose an occupation or privilege tax on the licensee in excess of that amount; and

(2) any township in which the licensed premises are located may levy and collect ~~an annual~~ a biennial occupation or license tax on the licensee in an amount not exceeding the amount of the ~~annual~~ license fee required to be paid under this act to obtain the license, but no township shall impose an occupation or privilege tax on the licensee in excess of that amount; the township board of the township is authorized to fix and impose the tax and the tax shall be paid by the licensee to the township treasurer, who shall issue a receipt therefor to the licensee and shall cause the tax paid to be placed in the general fund of the township.

(k) The ~~annual~~ fee for a retailer's license shall be ~~\$250~~ \$500.

(l) In addition to the license fee prescribed by subsection (k):

(1) Any city in which the licensed premises are located ~~shall~~ may levy and collect ~~an annual~~ a biennial occupation or license tax on the licensee in an amount not less than ~~\$100~~ \$200 nor more than ~~\$300~~ \$600, but no other occupation or excise tax or license fee shall be levied by any city against or collected from the licensee; and

(2) any township in which the licensed premises are located ~~shall~~ may levy and collect ~~an annual~~ a biennial occupation or license tax on the licensee in an amount not less than ~~\$100~~ \$200 nor more than ~~\$300~~ \$600; the township board of the township is authorized to fix and impose the tax and the tax shall be paid by the licensee to the township treasurer, who shall issue a receipt therefor to the licensee and shall cause the tax paid to be placed in the general fund of the township.

(m) The license ~~year~~ term for a license shall commence on the date the license is issued by the director and shall end ~~one year~~ two years after that date. *The director may, at the director's sole discretion and after examination of the circumstances, extend the license term of any license for not more than 30 days beyond the date such license would expire pursuant to this section. Any extension of the license term by the director pursuant to this section shall automatically extend the due date for payment by the licensee of any occupation or license tax levied by a city or township pursuant to this section by the same number of days the director has extended the license term.*

Sec. 7. K.S.A. 2009 Supp. 41-311 is hereby amended to read as follows: 41-311. (a) No license of any kind shall be issued pursuant to the liquor control act to a person:

(1) Who has not been a citizen of the United States for at least 10 years, except that the spouse of a deceased retail licensee may receive and renew a retail license notwithstanding the provisions of this subsection (a)(1) if such spouse is otherwise qualified to hold a retail license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;

(2) who has been convicted of a felony under the laws of this state, any other state or the United States;

(3) who has had a license revoked for cause under the provisions of the liquor control act, the beer and cereal malt beverage keg registration act or who has had any license issued under the cereal malt beverage laws of any state revoked for cause except that a license may be issued to a person whose license was revoked for the conviction of a misdemeanor at any time after the lapse of 10 years following the date of the revocation;

(4) who has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(5) who has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(6) who is not at least 21 years of age;

(7) who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the director;

- (8) who intends to carry on the business authorized by the license as agent of another;
- (9) who at the time of application for renewal of any license issued under this act would not be eligible for the license upon a first application, except as provided by subsection (a)(12);
- (10) who is the holder of a valid and existing license issued under article 27 of chapter 41 of the Kansas Statutes Annotated unless the person agrees to and does surrender the license to the officer issuing the same upon the issuance to the person of a license under this act, except that a retailer licensed pursuant to K.S.A. 41-2702, and amendments thereto, shall be eligible to receive a retailer's license under the Kansas liquor control act;
- (11) who does not own the premises for which a license is sought, or does not, *at the time of application*, have a written lease thereon ~~for at least 3/4 of the period for which the license is to be issued~~;
- (12) whose spouse would be ineligible to receive a license under this act for any reason other than citizenship, residence requirements or age, except that this subsection (a)(12) shall not apply in determining eligibility for a renewal license;
- (13) whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act; or
- (14) who does not provide any data or information required by K.S.A. 2009 Supp. 41-311b, and amendments thereto.
- (b) No retailer's license shall be issued to:
- (1) A person who is not a resident of this state;
 - (2) a person who has not been a resident of this state for at least four years immediately preceding the date of application;
 - (3) a person who has a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under this act, *except that the spouse of an applicant for a retailer's license may own and hold a farm winery license, microbrewery license, or both, if the spouse does not hold a retailer's license issued under this act*;
 - (4) a person who has a beneficial interest in any other retail establishment licensed under this act, except that the spouse of a licensee may own and hold a retailer's license for another retail establishment;
 - (5) a copartnership, unless all of the copartners are qualified to obtain a license;
 - (6) a corporation; or
 - (7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.
- (c) No manufacturer's license shall be issued to:
- (1) A corporation, if any officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a manufacturer's license for any reason other than citizenship and residence requirements;
 - (2) a copartnership, unless all of the copartners shall have been residents of this state for at least five years immediately preceding the date of application and unless all the members of the copartnership would be eligible to receive a manufacturer's license under this act;
 - (3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license;
 - (4) an individual who is not a resident of this state;
 - (5) an individual who has not been a resident of this state for at least five years immediately preceding the date of application; or
 - (6) a person who has a beneficial interest in a distributor; ~~or retailer, farm winery or microbrewery~~ licensed under this act.
- (d) No distributor's license shall be issued to:
- (1) A corporation, if any officer, director or stockholder of the corporation would be ineligible to receive a distributor's license for any reason. It shall be unlawful for any stockholder of a corporation licensed as a distributor to transfer any stock in the corporation to any person who would be ineligible to receive a distributor's license for any reason, and any such transfer shall be null and void, except that: (A) If any stockholder owning stock in the

corporation dies and an heir or devisee to whom stock of the corporation descends by descent and distribution or by will is ineligible to receive a distributor's license, the legal representatives of the deceased stockholder's estate and the ineligible heir or devisee shall have 14 months from the date of the death of the stockholder within which to sell the stock to a person eligible to receive a distributor's license, any such sale by a legal representative to be made in accordance with the provisions of the probate code; or (B) if the stock in any such corporation is the subject of any trust and any trustee or beneficiary of the trust who is 21 years of age or older is ineligible to receive a distributor's license, the trustee, within 14 months after the effective date of the trust, shall sell the stock to a person eligible to receive a distributor's license and hold and disburse the proceeds in accordance with the terms of the trust. If any legal representatives, heirs, devisees or trustees fail, refuse or neglect to sell any stock as required by this subsection, the stock shall revert to and become the property of the corporation, and the corporation shall pay to the legal representatives, heirs, devisees or trustees the book value of the stock. During the period of 14 months prescribed by this subsection, the corporation shall not be denied a distributor's license or have its distributor's license revoked if the corporation meets all of the other requirements necessary to have a distributor's license;

(2) a copartnership, unless all of the copartners are eligible to receive a distributor's license;

(3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license; or

(4) a person who has a beneficial interest in a manufacturer, retailer, farm winery or microbrewery licensed under this act.

(e) No nonbeverage user's license shall be issued to a corporation, if any officer, manager or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a nonbeverage user's license for any reason other than citizenship and residence requirements.

(f) No microbrewery license or farm winery license shall be issued to a:

(1) Person who is not a resident of this state;

(2) person who has not been a resident of this state for at least ~~four years~~ *one year* immediately preceding the date of application;

(3) person who has a beneficial interest in a ~~manufacturer or~~ distributor licensed under this act ~~or a person who currently has a beneficial interest in a farm winery;~~

(4) person, copartnership or association which has a beneficial interest in any retailer licensed under this act or under K.S.A. 41-2702, and amendments thereto, *except that the spouse of an applicant for a microbrewery or farm winery license may own and hold a retailer's license if the spouse does not hold a microbrewery or farm winery license issued under this act;*

(5) copartnership, unless all of the copartners are qualified to obtain a license;

(6) corporation, unless stockholders owning in the aggregate 50% or more of the stock of the corporation would be eligible to receive such license and all other stockholders would be eligible to receive such license except for reason of citizenship or residency; or

(7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

(g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4), (d)(3), (f)(1), (f)(2) and K.S.A. 2009 Supp. 41-311b, and amendments thereto, shall not apply in determining eligibility for the 10th, or a subsequent, consecutive renewal of a license if the applicant has appointed a citizen of the United States who is a resident of Kansas as the applicant's agent and filed with the director a duly authenticated copy of a duly executed power of attorney, authorizing the agent to accept service of process from the director and the courts of this state and to exercise full authority, control and responsibility for the conduct of all business and transactions within the state relative to alcoholic liquor and the business licensed. The agent must be satisfactory to and approved by the director, except that the director shall not approve as an agent any person who:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has had a license issued under the alcoholic liquor or cereal malt beverage laws of this or any other state revoked for cause, except that a person may be appointed as an agent if the person's license was revoked for the conviction of a misdemeanor and 10 years have lapsed since the date of the revocation;

(3) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(4) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes; or

(5) is less than 21 years of age.

Sec. 8. K.S.A. 2009 Supp. 41-317 is hereby amended to read as follows: 41-317. (a) Applications for all licenses under this act shall be ~~upon forms prescribed and furnished by the director and shall be filed with the director in duplicate completed and submitted to the director in a manner prescribed by the director.~~ Each application shall be accompanied by a state registration applicant shall submit an application fee of \$50 for each initial application and \$10 for each renewal application to defray the cost of preparing and furnishing standard forms incident to the administration of this act and the cost of processing the application. Each application shall also be accompanied by a deposit of a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount of the license fee required to be paid for the kind of license applied for, which license fee shall be returned to the applicant if the application is denied. All registration fees shall be remitted by the director 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. All license fees received by the director, including fees received for licenses to manufacture beer, regardless of its alcoholic content, shall be paid into the state treasury by the director and shall be credited to the state general fund.

(b) Each applicant shall submit to the division of alcoholic beverage control the full amount of the application fee and:

(1) The full amount of the license fee required to be paid for the kind of license specified in the application; or

(2) one-half of the license fee required to be paid for the kind of license specified in the application.

(c) If the applicant elects to pay only one-half of the license fee pursuant to subsection (b)(2), the remaining one-half of the license fee plus 10% of such remaining balance shall be due and payable one year from the date of issuance of the license. Notwithstanding any other provision of law, failure to pay the full amount due under this paragraph on the date it is due shall result in the automatic cancellation of such license for the remainder of the license term. The director may, at the director's sole discretion and after examination of the circumstances, extend the date payment is due pursuant to this paragraph for not more than 30 days beyond the date such payment is originally due.

(d) Any license fee paid by an applicant shall be returned to the applicant if the application is denied.

(e) Payment of all fees required to be paid pursuant to this section may be made by personal, certified or cashier's check, United States post office money order, debit or credit card or cash, or by electronic payment authorized by the applicant in a manner prescribed by the director.

(f) All fees received by the director pursuant to this section shall be remitted by the director 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.

~~(h)~~ (g) Every applicant for a manufacturer's, distributor's, nonbeverage user's, microbrewery, farm winery, retailer's or special order shipping license shall file with the application a joint and several bond on a form prescribed by the director and executed by good

and sufficient corporate sureties licensed to do business within the state of Kansas to the director, in the following amounts:

- (1) For a manufacturer, \$25,000;
- (2) for a spirits distributor, \$15,000 or an amount equal to the highest monthly liability of the distributor for taxes imposed by the Kansas liquor control act for any of the 12 months immediately prior to renewal of the distributor's license, whichever amount is greater;
- (3) for a beer or wine distributor, \$5,000 or an amount equal to the highest monthly liability of the distributor for taxes imposed by the Kansas liquor control act for any of the 12 months immediately prior to renewal of the distributor's license, whichever amount is greater;
- (4) for a retailer, \$2,000;
- (5) for nonbeverage users, \$200 for class 1, \$500 for class 2, \$1,000 for class 3, \$5,000 for class 4 and \$10,000 for class 5;
- (6) for a microbrewery or a farm winery, \$2,000; and
- (7) for a winery holding a special order shipping license, \$750, unless the winery has already complied with subsection ~~(b)(6)~~ (g)(6).

If a distributor holds or applies for more than one distributor's license, only one bond for all such licenses shall be required, which bond shall be in an amount equal to the highest applicable bond.

~~(c)~~ (h) All bonds required by this section shall be conditioned on the licensee's compliance with the provisions of this act and payment of all taxes, fees, fines and forfeitures which may be assessed against the licensee.

Sec. 9. K.S.A. 41-326 is hereby amended to read as follows: 41-326. A license shall be purely a personal privilege, valid for not to exceed ~~one year~~ *two years* after issuance, *except as otherwise provided by law*, unless sooner suspended or revoked, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. A license shall not descend by the laws of testate or intestate devolution but shall cease and expire upon the death of the licensee except that executors, administrators or representatives of the estate of any deceased licensee and the trustee of any insolvent or bankrupt licensee, when such estate consists in part of alcoholic liquor, may continue the business of the sale, distribution or manufacture of alcoholic liquor under order of the appropriate court and may exercise the privilege of the deceased, insolvent or bankrupt licensee after the death of such decedent, or after such insolvency or bankruptcy, until the expiration of such license but not longer than one year after the death, bankruptcy or insolvency of such licensee.

~~A refund shall be made of that portion of the license fee paid for any period in which the licensee shall be prevented from operating under such license in accordance with the provisions of this section. When the licensee pays the full amount of the license fee upon application and is prevented from operating under such license in accordance with the provisions of this act for the entire second year of the license term, a refund shall be made of one-half of the license fee paid by such licensee.~~ The secretary of revenue may adopt rules and regulations pursuant to K.S.A. 41-210, and amendments thereto, which provide for the authorization of refunds of ~~that portion of the license fees paid for any period in which one-half of the license fee paid when the licensee does not use such license for the entire second year of the license term~~ as a result of the cancellation of the license upon the request of the licensee for voluntary reasons.

Sec. 10. K.S.A. 2009 Supp. 41-350 is hereby amended to read as follows: 41-350. (a) For the purposes of this act, the term "winery" means any maker or producer of wine whether in this state or in any other state, who holds a valid federal basic wine manufacturing permit. The terms "director" and "secretary" have the meaning ascribed to these terms in K.S.A. 2009 Supp. 41-102, and amendments thereto.

(b) Any winery may be authorized to make direct shipments of wine to consumers in this state upon obtaining a special order shipping license from the secretary pursuant to this act.

(1) A special order shipping license shall only be issued to a winery upon compliance with all applicable provisions of this act and the regulations promulgated pursuant to this act, and upon payment of a license fee in the amount of ~~\$50~~ *\$100*. *The license term for a special*

order shipping license shall commence on the date the license is issued by the director and shall end two years after that date.

(2) A special order shipping license shall entitle the winery to ship wine upon order directly to consumers for personal or household use in this state. The purchaser shall pay the purchase price and all shipping costs directly to the permit holder. Enforcement taxes collected herein shall be paid solely on the purchase price and not on the shipping costs.

(c) No holder of a special order shipping license shall be permitted to ship in excess of 12 standard cases of wine of one brand or a combination of brands into this state to any one consumer or address per calendar year.

(d) (1) Before accepting an order from a consumer in this state, the holder of a special order shipping license shall require that the person placing the order to state affirmatively that he or she is 21 years of age or older and shall verify the age of such person placing the order either by the physical examination of an approved government issued form of identification or by utilizing an internet based age and identification service approved by the director of alcoholic beverage control, or the director's designee.

(2) Every shipment of wine by the holder of a special order shipping license shall be clearly marked 'Alcoholic Beverages, Adult Signature Required' and the carrier delivering such shipment shall be responsible for obtaining the signature of an adult who is at least 21 years of age as a condition of delivery.

(e) A special order shipping license shall not authorize the shipment of any wine to any premises licensed to sell alcoholic beverages pursuant to this act or the club and drinking establishment act.

(f) The failure to comply strictly with the requirements of this act and rules and regulations promulgated pursuant to this act shall be grounds for the revocation of a special order shipping license or other disciplinary action by the director. After notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the director may refuse to issue or renew or may revoke a shipping permit upon a finding that the permit holder has failed to comply with any provision of this section or K.S.A. 2009 Supp. 41-501 et seq., and amendments thereto, or any rules and regulations adopted pursuant to such statutes. Upon revocation of a special order shipping license for shipment of wine to a person not of legal age as required herein such winery shall not be issued any special order shipping license pursuant to this act for a period of one year from the date of revocation.

(g) The holder of a special order shipping license shall collect all gallonage taxes imposed by K.S.A. 2009 Supp. 41-501 et seq., and amendments thereto, shall remit such taxes annually in a manner prescribed by the secretary and shall accompany such remittance with such reports, documentation and other information as may be required by the secretary. In addition, an applicant for and a holder of a special order shipping license, as a condition of receiving and holding a valid license, shall:

(1) Collect and pay the applicable Kansas enforcement tax on each sale shipped to a consumer in Kansas imposed by K.S.A. 79-4101 et seq., and amendments thereto;

(2) accompany each remittance with such sales tax reports, documentation and other information as may be required by the director of taxation; and

(3) if the holder of the license is an out-of-state shipper, the licensee shall be deemed to have appointed the secretary of state as the resident agent and representative of the licensee to accept service of process from the secretary of revenue, the director and the courts of this state concerning enforcement of this section, K.S.A. 2009 Supp. 41-501 et seq., and amendments thereto, and any related laws and rules and regulations and to accept service of any notice or order provided for in the liquor control act.

(h) The secretary of revenue may adopt rules and regulations to implement, administer and enforce the provisions of this section.

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

Sec. 11. K.S.A. 41-2601 is hereby amended to read as follows: 41-2601. As used in the club and drinking establishment act:

(a) The following terms shall have the meanings provided by K.S.A. 41-102 and amendments thereto: (1) "Alcoholic liquor"; (2) "director"; (3) "original package"; (4) "person"; (5) "sale"; and (6) "to sell."

(b) "Beneficial interest" shall not include any interest a person may have as owner, operator, lessee or franchise holder of a licensed hotel or motel on the premises of which a club or drinking establishment is located.

(c) "Caterer" means an individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(d) "Cereal malt beverage" has the meaning provided by K.S.A. 41-2701 and amendments thereto.

(e) "Class A club" means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them.

(f) "Class B club" means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(g) "Club" means a class A or class B club.

(h) "Minibar" means a closed cabinet, whether nonrefrigerated or wholly or partially refrigerated, access to the interior of which is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.

(i) "Drinking establishment" means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(j) "Food" means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

(k) "Food service establishment" has the meaning provided by K.S.A. 36-501 and amendments thereto.

(l) "Hotel" has the meaning provided by K.S.A. 36-501 and amendments thereto.

(m) "Minor" means a person under 21 years of age.

(n) "Morals charge" means a charge involving prostitution; procuring any person; soliciting of a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy; or a crime against nature.

(o) "*Municipal corporation*" means the governing body of any county or city.

~~(p)~~ (p) "Restaurant" means:

(1) In the case of a club, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed club premises not less than 50% of its gross receipts from all sales of food and beverages on such premises in a 12-month period;

(2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 41-2642 and amendments thereto, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and

(3) in the case of a drinking establishment subject to no food sales requirement under K.S.A. 41-2642 and amendments thereto, a licensed food service establishment.

~~(q)~~ (q) "RV resort" means premises where a place to park recreational vehicles, as defined in K.S.A. 75-1212 and amendments thereto, is offered for pay, primarily to transient guests, for overnight or longer use while such recreational vehicles are used as sleeping or living accommodations.

~~(r)~~ (r) "Secretary" means the secretary of revenue.

~~(s)~~ (s) "Temporary permit" means a temporary permit issued pursuant to K.S.A. 41-2645 and amendments thereto.

Sec. 12. K.S.A. 41-2605 is hereby amended to read as follows: 41-2605. The director shall issue ~~an annual~~ a license to each applicant for licensure which qualifies under this act. Such

license shall be issued in the name of the corporation, *municipal corporation*, partners, trustees, association officers or individual applying.

Sec. 13. K.S.A. 2009 Supp. 41-2606 is hereby amended to read as follows: 41-2606. (a) Applications for all licenses under this act shall be ~~upon forms prescribed and furnished by the director and shall be filed with the director in duplicate~~ *completed and submitted to the director in a manner prescribed by the director*. Each application shall be accompanied by applicant shall submit an application fee of \$50, for each initial application, and \$10, for each renewal application, to defray the cost of ~~preparing and furnishing standard forms~~ incident to the administration of this act and the cost of processing such application. Each application shall also be accompanied by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount of the license fee prescribed by K.S.A. 41-2622, and amendments thereto, which fee shall be returned to the applicant if the application is denied.

(b) Each application for licensure as a club shall be accompanied by a copy of the current bylaws and rules of the club and a current list of the officers of the club.

(c) Each applicant shall submit to the division of alcoholic beverage control the full amount of the application fee and:

(1) The full amount of the license fee required to be paid for the kind of license specified in the application; or

(2) one-half of the full amount of the license fee required to be paid for the kind of license specified in the application.

(d) If the applicant elects to pay only one-half of the license fee pursuant to subsection (c)(2), the remaining one-half of the license fee plus 10% of such remaining balance shall be due and payable one year from the date of issuance of the license. Notwithstanding any other provision of law, failure to pay the full amount due under this paragraph on the date it is due shall result in the automatic cancellation of such license for the remainder of the license term. The director may, at the director's sole discretion and after examination of the circumstances, extend the date payment is due pursuant to this paragraph for not more than 30 days beyond the date such payment is originally due.

(e) Any license fee paid by an applicant shall be returned to the applicant if the application is denied.

(f) Payment of all fees required to be paid pursuant to this section may be made by personal, certified or cashier's check, United States post office money order, debit or credit card or cash, or by electronic payment authorized by the applicant in a manner prescribed by the director.

~~(g)~~ (g) All application fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 14. K.S.A. 41-2607 is hereby amended to read as follows: 41-2607. (a) The license provided herein shall be issued for a term of ~~one year~~ *two years*, renewable on expiration. ~~The secretary of revenue shall adopt, in accordance with K.S.A. 41-210 and amendments thereto, rules and regulations providing for the authorization of refunds of the license fees paid for any period in which the licensee shall not use such license as the result of the license being canceled at the request of the licensee and for voluntary reasons. When the licensee pays the full amount of the license fee upon application and is prevented from operating under such license in accordance with the provisions of this act for the entire second year of the license term, a refund shall be made of one-half of the license fee paid by such licensee. The secretary shall adopt, in accordance with K.S.A. 41-210, and amendments thereto, rules and regulations providing for the authorization of refunds of one-half of the license fee paid when the licensee does not use such license for the entire second year of the license term as a result of the cancellation of the license upon the request of the licensee for voluntary reasons.~~

(b) The director, may, at the director's sole discretion and after examination of the circumstances, extend the license term of any license for not more than 30 days beyond such date the license would expire pursuant to this section. Any extension of the license term by the director pursuant to this section shall automatically extend the due date for payment by

the licensee of any occupation or license tax levied by a city or township pursuant to K.S.A. 41-2622, and amendments thereto, by the same number of days the director has extended the license term.

Sec. 15. K.S.A. 2009 Supp. 41-2622 is hereby amended to read as follows: 41-2622. (a) At the time application is made to the director for a license pursuant to the club and drinking establishment act, the applicant shall pay the following ~~annual~~ license fee in the manner provided by K.S.A. 41-2606, and amendments thereto:

- (1) For a class A club which is a bona fide nonprofit fraternal or war veterans' club, as defined by rules and regulations of the secretary, ~~\$250~~ \$500;
- (2) for a class A club which is a bona fide nonprofit social club, as defined by rules and regulations of the secretary, and which has not more than 500 members, ~~\$500~~ \$1,000;
- (3) for a class A club which is a bona fide nonprofit social club, as defined by rules and regulations of the secretary, and which has more than 500 members, ~~\$1,000~~ \$2,000;
- (4) for a class B club, ~~\$1,000~~ \$2,000;
- (5) for a drinking establishment, \$1,000;
- (6) for a hotel of which the entire premises are licensed as a drinking establishment, \$3,000;
- (7) for a caterer, ~~\$500~~ \$1,000;
- (8) for a drinking establishment/caterer, \$1,500; and
- (9) for a drinking establishment/caterer, if the drinking establishment is a hotel of which the entire premises are licensed as a drinking establishment, \$3,500.

~~If a licensee is described by more than one of the above, the highest fee shall apply.~~

(b) *On and after July 1, 2011, at the time an application is submitted to the director for a drinking establishment license pursuant to the club and drinking establishment act, the applicant shall pay the following license fee in the manner provided by K.S.A. 41-2606, and amendments thereto:*

- (1) *For a drinking establishment, \$2,000;*
- (2) *for a hotel of which the entire premises are licensed as a drinking establishment, \$6,000;*
- (3) *for a drinking establishment/caterer, \$3,000; and*
- (4) *for a drinking establishment/caterer, if the drinking establishment is a hotel of which the entire premises are licensed as a drinking establishment, \$7,000.*

~~(b)~~ (c) In addition to the fee provided by ~~subsection (a)~~ subsections (a) and (b), any city where the licensed premises of a club or drinking establishment are located or, if such licensed premises are not located in a city, the board of county commissioners of the county where the licensed premises are located may levy and collect ~~an annual~~ a biennial occupation or license tax from the licensee in an amount equal to not less than ~~\$100~~ \$200 nor more than ~~\$250~~ \$500.

~~(d)~~ (d) No occupational or excise tax or license fee other than that authorized by subsection ~~(b)~~ (c) shall be levied by any city or county against or collected from a licensed club or drinking establishment.

~~(d)~~ (e) The director shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Of each such deposit, 50% shall be credited to the state general fund, and the remaining 50% shall be credited to the other state fees fund of the department of social and rehabilitation services. In addition to other purposes for which expenditures may be made from the other state fees fund of the department of social and rehabilitation services, expenditures may be made by the secretary of social and rehabilitation services for the purpose of implementing the powers and duties of the secretary under the provisions of K.S.A. 65-4006 and 65-4007, and amendments thereto.

Sec. 16. K.S.A. 2009 Supp. 41-2623 is hereby amended to read as follows: 41-2623. (a) No license shall be issued under the provisions of this act to:

- (1) Any person described in subsection (a)(1), (2), (4), (5), (6), (7), (8), (9), (12) or (13) of K.S.A. 41-311, and amendments thereto, except that the provisions of subsection (a)(7) of such section shall not apply to nor prohibit the issuance of a license for a class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof.

(2) A person who has had the person's license revoked for cause under the provisions of this act.

(3) A person who has not been a resident of this state for a period of at least one year immediately preceding the date of application.

(4) A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquors or a beneficial interest in any other club, drinking establishment or caterer licensed hereunder, except that:

(A) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more other clubs or drinking establishments licensed hereunder if such other clubs or establishments are located in hotels.

(B) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants.

(C) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer.

(D) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the liquor control act if such distributor or retailer sells no alcoholic liquor to such club.

(E) Any person who has a beneficial interest in a microbrewery or farm winery licensed pursuant to the Kansas liquor control act may be issued any or all of the following: (1) Class B club license; (2) drinking establishment license; and (3) caterer's license.

(5) A copartnership, unless all of the copartners are qualified to obtain a license.

(6) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residence requirements.

(7) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 5% of the common or preferred stock, of a corporation which:

(A) Has had a license revoked under the provisions of the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(8) A corporation organized under the laws of any state other than this state.

(9) A trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) of K.S.A. 41-311, and amendments thereto shall not apply in determining whether a beneficiary would be eligible for a license.

(b) No club or drinking establishment license shall be issued under the provisions of the club and drinking establishment act to:

(1) A person described in subsection (a)(11) of K.S.A. 41-311, and amendments thereto who does not own the premises for which a license is sought, or does not, at the time the application is submitted, have a written lease thereon, except that an applicant seeking a license for a premises which is owned by a city or county, or is a stadium, arena, convention center, theater, museum, amphitheater or other similar premises may submit an executed agreement to provide alcoholic beverage services at the premises listed in the application in lieu of a lease.

(2) A person who is not a resident of the county in which the premises sought to be licensed are located.

Sec. 17. K.S.A. 41-2629 is hereby amended to read as follows: 41-2629. (a) A class B club license, ~~drinking establishment license~~ or caterer's license shall be ~~purely a personal privilege, good for~~ issued for a term not to exceed ~~one year~~ two years after issuance, except as otherwise provided by law, unless sooner suspended or revoked as provided in this act.

(b) Prior to July 1, 2011, a drinking establishment license shall be issued for a term not to exceed one year after issuance, except as otherwise provided by law, unless sooner sus-

pended or revoked as provided by this act. On and after July 1, 2011, a drinking establishment license shall be issued for a term not to exceed two years after issuance, except as otherwise provided by law, unless sooner suspended or revoked as provided by this act.

(c) The director, may, at the director's sole discretion and after examination of the circumstances, extend the license term of any license for not more than 30 days beyond such date the license would expire pursuant to this section. Any extension of the license term by the director pursuant to this section shall automatically extend the due date for payment by the licensee of any occupation or license tax levied by a city or township pursuant to K.S.A. 41-2622, and amendments thereto, by the same number of days the director has extended the license term.

(d) A class B license, drinking establishment license or caterer's license shall be purely a personal privilege and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. A class B club license, drinking establishment license or caterer's license shall not descend by the laws of testate or intestate devolution but shall cease or expire upon the death of the licensee subject to the following provision.

(e) An executor, administrator or representative of the estate of any deceased holder of a class B club, drinking establishment or caterer's license or the trustee of any insolvent or bankrupt class B club, drinking establishment or caterer's license may continue the licensee's business under order of the appropriate court and may exercise the privilege of the deceased, insolvent or bankrupt licensee after the death of such licensee or after such insolvency or bankruptcy until the expiration of such license, but in no case longer than one year after the death, insolvency or bankruptcy of such licensee.

(f) ~~A refund shall be made of that portion of the license fee paid for any period in which the licensee shall be prevented from operating under such license in accordance with the provisions of this act, other than that caused by suspension or revocation. When the licensee pays the full amount of the license fee upon application and is prevented from operating under such license in accordance with the provisions of this act for the entire second year of the license term, a refund shall be made of one-half of the license fee paid by such licensee.~~ The secretary shall adopt, in accordance with K.S.A. 41-210, and amendments thereto, rules and regulations providing for the authorization of refunds of ~~the license fees paid for any period in which one-half of the license fee paid when the licensee does not use such license being canceled upon the request of the licensee and for voluntary reasons for the entire second year of the license term as a result of the cancellation of the license upon the request of the licensee for voluntary reasons.~~

Sec. 18. K.S.A. 2009 Supp. 41-308b is hereby amended to read as follows: 41-308b. (a) A microbrewery license shall allow:

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) No microbrewery shall:

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

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

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

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

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

And by renumbering the remaining sections accordingly;

Also on page 10, in line 21, by striking all after “K.S.A.”; in line 22, by striking “727” and inserting “41-326, 41-2601, 41-2605, 41-2607 and 41-2629 and K.S.A. 2009 Supp. 41-102, 41-308a, 41-308b, 41-310, 41-311, 41-317, 41-350, 41-727, 41-2606, 41-2622 and 41-2623”;

In the title, in line 15, by striking “al-”; in line 16, by striking “coholic beverages”; in line 17, by striking “2009 Supp. 41-102, 41-311 and 41-727” and inserting “41-326, 41-2601, 41-2605, 41-2607 and 41-2629 and K.S.A. 2009 Supp. 41-102, 41-308a, 41-308b, 41-310, 41-311, 41-317, 41-350, 41-727, 41-2606, 41-2622 and 41-2623”;

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

MELVIN J. NEUFELD

S. MIKE KIEGERL

JUDITH LOGANBILL

Conferees on part of House

PETE BRUNGARDT

ROGER P. REITZ

OLETHA FAUST-GOUDEAU

Conferees on part of Senate

On motion of Rep. Neufeld to adopt the conference committee report on **SB 452**, Rep. Siegfried offered a substitute motion to not adopt the conference committee report and asked that a new conference committee be appointed. The substitute motion prevailed.

Speaker O'Neal thereupon appointed Reps. Neufeld, Kiegerl and Loganbill as second conferees on the part of the House.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2454**, submits the following report:

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

On page 1, by striking all in lines 15 through 18;

By striking all on pages 2 through 7;

On page 8, by striking all in lines 1 through 14 and inserting the following:

"Section 1. K.S.A. 65-177 is hereby amended to read as follows: 65-177. (a) The term "data" as used in ~~this act~~ K.S.A. 65-177 through 65-179, and amendments thereto, shall be construed to include all facts, information, records of interviews, written reports, statements, notes, or memoranda secured in connection with an authorized medical research study.

(b) The secretary of health and environment ~~may~~ shall receive data secured in connection with medical research studies conducted for the purpose of reducing morbidity or mortality from maternal, perinatal and anesthetic causes. Such studies may be conducted by the secretary of health and environment and his staff or with other qualified persons, agencies or organizations. *If such studies are conducted with any funding not provided by the state of Kansas, then the source of such funding shall be clearly identified in such study.* Where authorization to conduct such a study is granted by the secretary of health and environment, all data voluntarily made available to the secretary of health and environment in connection with such study shall be treated as confidential and shall be used solely for purposes of medical research. Research files and opinions expressed upon the evidence found in such research shall not be admissible as evidence in any action in any court or before any other tribunal: ~~Provided, however, That any, except that statistics or tables resulting from such data shall be admissible and may be received as evidence: Provided, That this act.~~ This section shall not affect the right of any patient or his such patient's guardians, representatives or heirs to require hospitals, physicians, sanatoriums, rest homes, nursing homes or other persons or agencies to furnish his such patient's hospital record to his such patient's representatives upon written authorization, or the admissibility in evidence thereof.

(c) No employee of the secretary of health and environment shall interview any patient named in any such report, nor any relative of any such patient: ~~Provided, That, unless otherwise provided in K.S.A. 65-2422d, and amendments thereto.~~ Nothing in this act section shall prohibit the publication by the secretary of health and environment or a duly authorized cooperating person, agency or organization, of final reports or statistical compilations derived from morbidity or mortality studies, which reports or compilations do not identify individuals, associations, corporations or institutions which were the subjects of such studies, or reveal sources of information.

Sec. 2. K.S.A. 65-2402 is hereby amended to read as follows: 65-2402. (a) The secretary shall: (1) Establish within the division of health suitable offices properly equipped for the preservation of official records. (2) Maintain a complete cross-index on all records filed under the provisions of this act. (3) Install a statewide system of vital statistics. (4) Make and may amend, after notice and hearing, necessary regulations, give instructions and prescribe forms for collection, transcribing, compiling and preserving vital statistics. (5) Enforce this act and the regulations made pursuant thereto.

(b) Any person offered a position of employment in the office of vital statistics, subject to a criminal history records check, shall be given a written notice that a criminal history records check is required. The secretary shall require such applicant to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The secretary shall submit the fingerprints to

the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the secretary in taking and processing of fingerprints of applicants. The secretary may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the applicant and in the official determination of the eligibility of the applicant to perform tasks within the office of vital statistics. If the criminal history record information is used to disqualify an applicant, the applicant shall be informed in writing of that decision.

Sec. 3. K.S.A. 2009 Supp. 65-2422d is hereby amended to read as follows: 65-2422d. (a) The records and files of the division of health pertaining to vital statistics shall be open to inspection, subject to the provisions of ~~this~~ *the uniform vital statistics* act and rules and regulations of the secretary. It shall be unlawful for any officer or employee of the state to disclose data contained in vital statistical records, except as authorized by ~~this~~ *the uniform vital statistics* act and the secretary, and it shall be unlawful for anyone who possesses, stores or in any way handles vital statistics records under contract with the state to disclose any data contained in the records, except as authorized by law.

(b) No information concerning the birth of a child shall be disclosed in a manner that enables determination that the child was born out of wedlock, except upon order of a court in a case where the information is necessary for the determination of personal or property rights and then only for that purpose, or except that employees of the office of child support enforcement of the federal department of health and human services shall be provided information when the information is necessary to ensure compliance with federal reporting and audit requirements pursuant to title IV-D of the federal social security act or except that the secretary of social and rehabilitation services or the secretary's designee performing child support enforcement functions pursuant to title IV-D of the federal social security act shall be provided information and copies of birth certificates when the information is necessary to establish parentage in legal actions or to ensure compliance with federal reporting and audit requirements pursuant to title IV-D of the federal social security act. Nothing in this subsection shall be construed as exempting such employees of the federal department of health and human services or the secretary of social and rehabilitation services or the secretary's designee from the fees prescribed by K.S.A. 65-2418, and amendments thereto.

(c) Except as provided in subsection (b), and amendments thereto, the state registrar shall not permit inspection of the records or issue a certified copy or abstract of a certificate or part thereof unless the state registrar is satisfied the applicant therefor has a direct interest in the matter recorded and the information contained in the record is necessary for the determination of personal or property rights. The state registrar's decision shall be subject, however, to review by the secretary or by a court in accordance with the *Kansas judicial review* act ~~for judicial review and civil enforcement of agency actions~~, subject to the limitations of this section.

(d) The secretary shall permit the use of data contained in vital statistical records for research purposes only, but no identifying use of them shall be made. *The secretary shall permit the use of birth, death and still birth certificates as identifiable data for purposes of maternal and child health surveillance and monitoring. The secretary or the secretary's designee may interview individuals for purposes of maternal and child health surveillance and monitoring only with an approval of the health and environmental institutional review board as provided in title 45, part 46 of the code of federal regulations. The secretary shall inform such individuals that the participation in such surveillance and monitoring is voluntary and may only be conducted with the written consent of the person who is the subject of the information or with the informed consent of a parent or legal guardian if the person is under 18 years of age. Informed consent is not required if the person who is the subject of the information is deceased.*

(e) Subject to the provisions of this section the secretary may direct the state registrar to release birth, death and stillbirth certificate data to federal, state or municipal agencies.

(f) On or before the 20th day of each month, the state registrar shall furnish to the county election officer of each county and the clerk of the district court in each county, without charge, a list of deceased residents of the county who were at least 18 years of age and for whom death certificates have been filed in the office of the state registrar during the pre-

ceding calendar month. The list shall include the name, age or date of birth, address and date of death of each of the deceased persons and shall be used solely by the election officer for the purpose of correcting records of their offices and by the clerk of the district court in each county for the purpose of correcting juror information for such county. Information provided under this subsection to the clerk of the district court shall be considered confidential and shall not be disclosed to the public. The provisions of subsection (b) of K.S.A. 45-229, and amendments thereto, shall not apply to the provisions of this subsection.

(g) No person shall prepare or issue any certificate which purports to be an original, certified copy or abstract or copy of a certificate of birth, death or fetal death, except as authorized in this act or rules and regulations adopted under this act.

(h) Records of births, deaths or marriages which are not in the custody of the secretary of health and environment and which were created before July 1, 1911, pursuant to chapter 129 of the 1885 Session Laws of Kansas, and any copies of such records, shall be open to inspection by any person and the provisions of this section shall not apply to such records.

(i) Social security numbers furnished pursuant to K.S.A. 65-2409a and amendments thereto shall only be used as permitted by title IV-D of the federal social security act and amendments thereto or as permitted by section 7(a) of the federal privacy act of 1974 and amendments thereto. The secretary shall make social security numbers furnished pursuant to K.S.A. 65-2409a and amendments thereto available to the department of social and rehabilitation services for purposes permitted under title IV-D of the federal social security act.

(j) Fact of death information may be disseminated to state and federal agencies administering benefit programs. Such information shall be used for file clearance purposes only.

Sec. 4. K.S.A. 65-177 and 65-2402 and K.S.A. 2009 Supp. 65-2422d and 65-2422d, as amended by section 138 of 2010 Senate Bill No. 376, are hereby repealed.”;

And by renumbering the remaining section accordingly;

Also on page 8, in line 16, by striking “statute book” and inserting “Kansas register”;

In the title, in line 10, by striking all after “concerning”; by striking all in lines 11 and 12 and inserting “the secretary of health and environment; relating to office of vital statistics; amending K.S.A. 65-177 and 65-2402 and K.S.A. 2009 Supp. 65-2422d and repealing the existing sections; also repealing K.S.A. 2009 Supp. 65-2422d, as amended by section 138 of 2010 Senate Bill No. 376.”;

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

THOMAS C. OWENS

DEREK SCHMIDT

DAVID HALEY

Conferees on part of Senate

PAT COLLOTON

JOE PATTON

MELODY MCCRAY-MILLER

Conferees on part of House

On motion of Rep. Colloton, the conference committee report on **HB 2454** was adopted.

On roll call, the vote was: Yeas 114; Nays 7; Present but not voting: 0; Absent or not voting: 4.

Yeas: Aurand, Ballard, Barnes, Benlon, Bethell, Bollier, Bowers, Brookens, A. Brown, T. Brown, Brunk, Burgess, Burroughs, Carlin, Carlson, Colloton, Craft, Crow, Crum, Davis, Dillmore, Donohoe, Faber, Feuerborn, Finney, Flaharty, Frownfelter, Furtado, Garcia, D. Gatewood, S. Gatewood, George, Goico, Gordon, Goyle, Grange, Grant, Hayzlett, Henderson, Henry, Hermanson, Hill, Hineman, C. Holmes, M. Holmes, Horst, Huebert, Jack, Johnson, Kelley, Kerschen, Kiegerl, King, Kinzer, Kleeb, Kuether, Lane, Light, Loganbill, Long, Lukert, Mah, Maloney, Mast, McCray-Miller, McLeland, Meier, Menghini, Morrison, Moxley, Myers, Neighbor, Neufeld, O'Brien, O'Neal, Olson, Otto, Palmer, Patton, Pauls, Peck, Peterson, Phelps, Pottorff, Prescott, Proehl, Quigley, Rardin, Rhoades, Roth, Ruiz, Schroeder, Seiwert, Shultz, Siegfried, Slattery, Sloan, Spalding, D. Svaty, Swanson,

MAY 5, 2010

1503

Swenson, Talia, Tietze, Trimmer, Vickrey, Ward, Wetta, Whitham, Williams, Winn, B. Wolf, K. Wolf, Worley, Yoder.

Nays: DeGraaf, Knox, Landwehr, Merrick, Powell, Schwartz, Suellentrop.

Present but not voting: None.

Absent or not voting: Fund, Hawk, Schwab, Tafanelli.

REPORT ON ENROLLED RESOLUTIONS

HR 6043 reported correctly enrolled and properly signed on May 5, 2010.

On motion of Rep. Merrick, the House adjourned until 8:00 a.m., Thursday, May 6, 2010.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

