

CORRECTED

Journal of the Senate

FIFTY-THIRD DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, March 30, 2010—10:00 a.m.

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

Heavenly Father,
The time is getting short,
There's still a lot to do.
Some of it must be done
Before the session's through.
All of them represent
Over 60,000 persons;
All have other responsibilities
Making the pressure worsen.
Almost all have other jobs
Which they have left behind.
Sickness afflicts some of them
Which puts them in a bind.
Kids expect their parents
To attend all their games.
Grandchildren were disappointed
When grandparents never came.
Some of them must travel
Several hundred miles.
Fatigue and lack of time
Are adding to their trials.
I've said it many times before,
And I'll say it once again:
They have too many critics,
Let's PRAY for these women and men!
I pray in the Name of Jesus Christ,
AMEN

The Pledge of Allegiance was led by President Stephen Morris.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following resolution was introduced and read by title:

SENATE CONCURRENT RESOLUTION No. 1630—

By Senators Morris, Abrams, Apple, Barnett, Brownlee, Brungardt, Colyer, Donovan, Em-
ler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey,

Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Ostmeyer, Owens, Petersen, Pyle, Reitz, D. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil and Wagle

A CONCURRENT RESOLUTION supporting participation with the State of Colorado in the Pierre Auger Observatory project proposed to be built in Colorado; providing for formation of a task force to lead the Kansas effort in collaboration with Colorado.

WHEREAS, The Pierre Auger Observatory project is a world-class research project proposed to be built in southeastern Colorado (“Auger North”), a location chosen by the scientific community due to its altitude and latitude and because it offers large, relatively unpopulated expanses under clear skies that experience low interference from lights; and

WHEREAS, The observatory, together with the Pierre Auger Cosmic-Ray Observatory located in Argentina (“Auger South”), will conduct the most advanced effort ever in the study of ultra-high energy cosmic rays, the highest energy particles in the universe; and

WHEREAS, The project involves collaboration of 400 scientists from more than 70 universities in 17 countries — Argentina, Australia, Bolivia, Brazil, Czech Republic, France, Germany, Italy, Mexico, Netherlands, Poland, Portugal, Slovenia, Spain, United Kingdom, United States and Vietnam — and would bring scientists from around the world to visit the observatory; and

WHEREAS, The project would bring educational benefits to the region, involving Wichita State University, Kansas State University, the University of Kansas and Fort Hays State University, as well as recognition for being the location of a world renowned research facility; and

WHEREAS, The observatory would create an opportunity in education and outreach and would benefit the economy of the region, attracting tourists from around the world and creating jobs affiliated with the project, as well as a visitor center; and

WHEREAS, The observatory site will cover an area of 8,000 square miles and will require the cooperation of local landowners who could potentially benefit from tax credits if they choose to participate in the project: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Kansas Legislature strongly supports participation with the State of Colorado in Auger North and pledges the support of Kansas educational institutions, with their demonstrated expertise and experience with research; and

Be it further resolved: That a task force be formed to lead the Kansas effort in collaboration with Colorado, such task force to be composed of: The Governor or the Governor’s designee, the President of the Senate or the President’s designee, the Minority Leader of the Senate or the Minority Leader’s designee, the Speaker of the House of Representatives or the Speaker’s designee, the Minority Leader of the House of Representatives or the Minority Leader’s designee and one representative appointed by the chief executive officer of each of the following: The Kansas Board of Regents, Kansas Bioscience Authority, University of Kansas, Wichita State University and Kansas State University; and

Be it further resolved: That the Secretary of State provide enrolled copies of this resolution to Governor Mark Parkinson; Lieutenant Governor Troy Findley; Donald L. Beggs, President, Wichita State University; Kirk Schulz, President, Kansas State University; Bernadette Gray-Little, Chancellor, University of Kansas; Edward H. Hammond, President, Fort Hays State University; Reggie Robinson, President and CEO, Kansas Board of Regents; and Thomas V. Thornton, President and CEO, Kansas Bioscience Authority.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to Committee as indicated:

Ways and Means: **HB 2446**.

CHANGE OF REFERENCE

The President withdrew **S Sub for HB 2631** from the Calendar under the heading of General Orders, and referred the bill to the Committee on **Ways and Means**.

MESSAGE FROM THE HOUSE

The House concurs in Senate amendments to **HB 2560**.

The House concurs in Senate amendments to **Substitute HB 2345** and requests the Senate to return the bill.

The House concurs in Senate amendments to **HB 2500** and requests the Senate to return the bill.

The House concurs in Senate amendments to **HB 2551** and requests the Senate to return the bill.

The House concurs in Senate amendments to **HB 2553** and requests the Senate to return the bill.

The House nonconcur in Senate amendments to **HB 2554**, requests a conference and appoints Representatives Gordon, Donohoe and Benlon as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **House Substitute for Substitute SB 214** and has appointed Representatives Powell, Fund and Lukert as conferees on the part of the House.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators D. Schmidt, Marshall and Schodorf introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1864—

A RESOLUTION congratulating and commending Ray Woods of Independence, Kansas, for being the most-traveled citizen in Montgomery County.

WHEREAS, Ray Woods of Independence, Kansas, has recently completed his life-long goal of visiting every country, as well as many places not officially recognized, for a total of 319 destinations across the world; and

WHEREAS, Ray was born in Kansas, graduated from the University of Kansas, and is Vice President of Woods Lumber and Independence ReadyMix in Independence, where he lives with his family. He also served as President of the Kansas Ready Mixed Concrete Association in 1980; and

WHEREAS, Ray has always had an adventurous spirit, whether it came to his early travel aspirations with his grandmother, his time spent with the Peace Corps in the Philippines, or his visionary leadership in expanding his business into new areas; and

WHEREAS, Not only has Ray visited common vacation destinations, but he has also traveled to remote and dangerous places, such as Antarctica, Libya, Iran and Iraq. He was the first Westerner to visit Afghanistan after the fall of the Taliban, as well as being one of very few tourists to have seen North Korea. He completed his travel list in Scotland, which he saved as a special destination, as much of his family heritage comes from there; and

WHEREAS, Ray was the recipient of the "Special Award" designation with The Travelers' Century Club, an exclusive club whose members each have visited at least 100 countries. He also ranked as one of the top world travelers by the Most Traveled People Website; and

WHEREAS, Ray has been very generous with the knowledge he has learned of the world, often speaking to community groups about his travels, and has come to believe that no matter where you go in the world, people are friendly by nature: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Ray Woods for achieving his unique accomplishment of having visited 319 destinations around the world, and for his outstanding leadership, generosity and service to his community, and extend our best wishes for his continued success and happiness; and

Be it further resolved: That the Secretary of the Senate be directed to send three enrolled copies of this resolution to Senator D. Schmidt.

On emergency motion of Senator D. Schmidt **SR 1864** was adopted unanimously.

Senator D. Schmidt introduced and congratulated Ray Woods of Independence, Kansas, for being the most-traveled citizen in Montgomery County. Also introduced were family members: Mark Woods, Kathy Woods, Tommy Woods, Kyle Woods and Kara Henshel.

REPORT ON ENGROSSED BILLS

SB 67; H Sub for SB 234; SB 439 reported correctly engrossed March 30, 2010.
Also, **SB 346, SB 386, SB 389, SB 461; SCR 1615** correctly re-engrossed March 30, 2010.

REPORTS OF STANDING COMMITTEES

Committee on **Transportation** recommends **HB 2650** be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2650," as follows:
"SENATE Substitute for HOUSE BILL No. 2650

By Committee on Transportation

"AN ACT relating to transportation; providing for a transportation works for Kansas program; relating to the financing thereof; amending K.S.A. 8-143b, 8-143c, 8-143g, 8-143h, 8-143i, 8-143k, 8-195, 8-234b, 8-2409, 12-1775, 68-416, 68-20,120, 68-2316, 68-2320, 68-2321 and 68-2328 and K.S.A. 2009 Supp. 8-142, 8-143, 8-143j, 8-143l, 8-145, 8-172, 8-2406, 8-2425, 12-6a35, 12-6a36, 12-1774, 12-1774a, 12-17,148, 12-17,149, 68-2315, 68-2331, 75-5035, 75-5048, 75-5061, 75-5063, 75-5064, 75-5160, 79-3492b, 79-34,141, 79-34,142, 79-3603, 79-3620, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 68-2314a."; and the substitute bill be passed.

Committee on **Ways and Means** recommends **HB 2107** be passed.

COMMITTEE OF THE WHOLE

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

On motion of Senator McGinn the following report was adopted:

On emergency motion of Senator D. Schmidt **HB 2107** was moved to the top of the calendar under the heading of General Orders.

Recommended **HB 2107** be passed.

HB 2666 be amended by adoption of the committee amendments, and the bill be passed as amended.

The Committee Report on **HB 2226** recommending a **Senate Sub for HB 2226** be adopted, and the substitute bill be passed.

The Committee Report on **HB 2356** recommending a Senate Sub for **HB 2356** be adopted, and the substitute bill be passed.

S Sub for Sub HB 2320 be amended by adoption of the committee report recommending a substitute bill. Senator McGinn moved to return **S Sub for Sub HB 2320** to the Committee on Ways and Means. The motion carried.

On motion of Senator D. Schmidt, the Senate recessed until 1:30 p.m.

The Senate met pursuant to recess with President Morris in the chair.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Barnett moved on Monday, March 29, 2010 the Senate concur in house amendments to **H Sub for SB 25**.

H Sub for SB 25, An act concerning social workers; social worker safety awareness training; amending K.S.A. 2009 Supp. 65-6313 and repealing the existing section.

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

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

The Senate concurred.

Senator Brungardt moved on Monday, March 29, 2010 the Senate concur in house amendments to **H Sub for SB 75**.

H Sub for SB 75, An act relating to cemetery corporations; providing for certain enforcement actions by the secretary of state; amending K.S.A. 16-326 and repealing the existing section.

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

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

The Senate concurred.

Senator Teichman moved on Monday, March 29, 2010 the Senate concur in house amendments to **H Sub for SB 200**.

H Sub for SB 200, An act concerning insurance; relating to privilege fees for health maintenance organizations; amending K.S.A. 2009 Supp. 40-3213 and repealing the existing section.

On roll call, the vote was: Yeas 32, Nays 8, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Abrams, Colyer, Huelskamp, Marshall, Masterson, Ostmeyer, Pilcher-Cook, Pyle.

The Senate concurred.

Senator Donovan moved on Monday, March 29, 2010 the Senate concur in house amendments to **H Sub for SB 255**.

H Sub for SB 255, An act concerning sales taxation; relating to countywide retailers' sales tax; Pottawatomie and Kingman counties; amending K.S.A. 12-197 and K.S.A. 2009 Supp. 12-187, as amended by section 1 of 2010 Senate Substitute for House Bill No. 2353, 12-189, as amended by section 2 of 2010 Senate Substitute for House Bill No. 2353, and 12-192, as amended by section 3 of 2010 Senate Substitute for House Bill No. 2353 and repealing the existing sections.

On roll call, the vote was: Yeas 33, Nays 7, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Abrams, Bruce, Colyer, Huelskamp, Marshall, Ostmeyer, Pilcher-Cook.

The Senate concurred.

Senator Donovan moved on Monday, March 29, 2010 the Senate concur in house amendments to **H Sub for SB 312**.

H Sub for SB 312, An act concerning property taxation; relating to refunds of taxes; loans to counties by pooled money investment board, terms and limitations; amending K.S.A. 2009 Supp. 75-4209 and 79-2005 and repealing the existing sections.

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

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

The Senate concurred.

Senator Brungardt moved on Monday, March 29, 2010 the Senate concur in house amendments to **SB 531**.

SB 531, An act enacting the radon certification law; amending K.S.A. 48-1625 and repealing the existing section.

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

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

Nays: Huelskamp, Pilcher-Cook, Pyle.

The Senate concurred.

ORIGINAL MOTION

On motion of Senator Brownlee, the Senate acceded to the request of the House for a conference on **HB 2554**.

The President appointed Senators Brownlee, Lynn and Holland as conferees on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2412**, 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 3, in line 5, by striking "a member" and inserting "the chairperson"; in line 18, after "the" by inserting "chairperson of the"; also in line 18, after "The" by inserting "chairperson of the"; in line 20, after "the" by inserting "chairperson of the"; in line 24, after "The" by inserting "chairperson of the"; in line 25, before "board" by inserting "chairperson of the"; in line 28, after "The" by inserting "chairperson of the";

On page 4, in line 2, after "the" where it appears the first time by inserting "chairperson of the"; in line 7, after "the" where it appears the first time by inserting "chairperson of the";

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

Senator Owens moved the Senate adopt the Conference Committee Report on **HB 2412**.

On roll call, the vote was: Yeas 27, Nays 13, Present and Passing 0, Absent or Not Voting 0.

Yeas: Apple, Barnett, Brownlee, Brungardt, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Lee, Marshall, Masterson, McGinn, Morris, Owens, Reitz, Schmidt V, Steineger, Teichman, Umbarger, Vratil.

Nays: Abrams, Bruce, Colyer, Huelskamp, Lynn, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt D, Schodorf, Taddiken, Wagle.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: **House Bill 2412** is well-intended. Its humanitarian purpose is to allow Kansas inmates within 30 days of death to be released from prison to die at home. I am sympathetic to that humanitarian purpose, and so I have supported this legislation until this final point in the process in the hope that important concerns could be resolved.

Unfortunately, it became apparent to me during the conference committee that one critical concern cannot be resolved. This bill allows the release of a terminal inmate to occur BEFORE notice of the intended release is given to prosecutors, victims, and family members of victims. This is a departure from our current functional incapacitation law.

This early release would be available to terminally ill inmates who have committed serious crimes, such as rape or armed robbery. I cannot support a measure that allows violent felons to be released, even on humanitarian grounds, without prior notice to their victims. Therefore, I vote no on this conference committee report on **House Bill 2412**. — D. SCHMIDT

Senators Lynn and Petersen request the record to show they concur with the "Explanation of Vote" offered by Senator D. Schmidt on **HB 2412**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2435**, 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 of the Whole amendments, as follows:

On page 25, after line 33, by inserting the following:

"Sec. 19. K.S.A. 2009 Supp. 21-4704 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 33 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	7 6 5

LEGEND
Presumptive Probation
Non-Drug
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 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 or felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, 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 or felony violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, 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) (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."*;

And by renumbering the remaining sections accordingly;

Also on page 25, in line 37, by striking "and" and inserting a comma; also in line 37, after "21-4642" by inserting "and 21-4704";

In the title, in line 18, by striking "and" where it appears the first time and inserting a comma; also in line 18, after "21-4642" by inserting "and 21-4704";

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

Senator D. Schmidt moved the Senate adopt the Conference Committee Report on **HB 2435**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2652**, 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 2, by striking all in lines 15 through 37;

And by renumbering the remaining sections accordingly;

In the title, in line 14, by striking "utilities" and inserting "the Kelsey Smith act"; also in line 14, by striking "K.S.A."; in line 15, by striking "66-1811 and"; in line 16, by striking "sections" and inserting "section";

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

PAT APPLE
 MIKE PETERSEN
 OLETHA FAUST-GOUDEAU
Conferees on part of Senate

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

Senator Apple moved the Senate adopt the Conference Committee Report on **HB 2652** on Monday, March 29, 2010.

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

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

The Conference Committee report was adopted.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Barnett, Abrams, Apple, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pitcher-Cook, Reitz, D. Schmidt, V. Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1862—

A RESOLUTION designating April 5-11, 2010 as National Public Health Week in Kansas.

WHEREAS, The week of April 5-11 is National Public Health Week and the theme is “A Healthier America: One Community at a Time”; and

WHEREAS, Since 1996, the American Public Health Association, through its sponsorship of National Public Health Week, has educated the public, policy-makers and public health professionals about issues important to improving the public’s health; and

WHEREAS, Our nation spends more on health care than any other country, but an estimated 46.3 million Americans do not have health insurance and millions more do not have access to life-saving clinical preventive services; and

WHEREAS, Millions of people in America do not have access to cost-effective community-based preventive services; and

WHEREAS, Many of the illnesses that are caused by tobacco use, poor diet, physical inactivity and alcohol consumption are potentially preventable; and

WHEREAS, Many neighborhoods lack access to safe walkways and bikeways; are too far from offices, schools, health providers and grocery stores to walk; and are inaccessible to public transportation; and

WHEREAS, Studies have shown that 10.5 million cases of infectious diseases and 33,000 deaths can be prevented in the United States by the standard childhood immunization series; and

WHEREAS, Despite challenges, public health professionals and lawmakers are working on policies that place an emphasis on prevention and support a strong public health infrastructure; and

WHEREAS, By making a change in our individual communities, we will improve the health of our nation: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we hereby proclaim the week of April 5-11, 2010 as National Public Health Week in Kansas and call upon the people of Kansas to observe this week by helping our families, friends, neighbors, co-workers and

leaders better understand the importance of public health to a successful health system in light of this year's theme, "A Healthier America: One Community at a Time."

Be it further resolved: That the Secretary of the Senate be directed to send eight enrolled copies of this resolution to Senator Barnett.

On emergency motion of Senator Barnett **SR 1862** was adopted unanimously.

In recognition of April 5-11, 2010, as National Public Health Week in Kansas Senator Barnett introduced and thanked members of the Department of Health and Environment: Bob Bremby, Liz Conrade, Dr. Jason Eberhart-Phillips, Linda Franzier, Anne Gray, Heather Heneke, and her daughter Mariah, Tanya Honderick, Robert Lowery, Dick Morrisey, Erin Reece, Elaine Schwartz and Marvin Stottlemire.

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

SENATE RESOLUTION No. 1863—

A RESOLUTION congratulating and commending Bill McCarter upon his retirement from the City of Topeka public works department.

WHEREAS, After 59 years of working for the city of Topeka, Bill McCarter retired in March 2010; and

WHEREAS, Bill worked as an engineering affairs officer in the public works department, where he began working in 1951 as a senior at Topeka High School. Officials in the department believe that he may have set a longevity record for city employees; and

WHEREAS, Bill was known for his vast knowledge of the history of public works in Topeka, as well as his kindness and people skills in answering questions and concerns for the public. He would often go out of his way to help those effected by city projects and would spend his evenings and weekends helping people who he wasn't able to help while he was in the office during regular business hours; and

WHEREAS, In 1985, Bill was the recipient of an Award of Merit from the Kansas Chapter of the American Public Works Association for his outstanding performance; and

WHEREAS, Bill also served 43 years in the Kansas National Guard; and

WHEREAS, Bill and his late wife Shirley raised five children in Topeka, four of whom are still living. The couple celebrated their 50th wedding anniversary in 2002. Bill plans to use his free time to finish a book to preserve his memories of his life with his family now that he has retired: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Bill McCarter for his long and dedicated career with the engineering division of the City of Topeka public works department, thank him for his years of generosity to the people of this city, and wish him all the best with his personal interests in his retirement; and

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

On emergency motion of Senator Hensley **SR 1863** was adopted unanimously.

REPORTS OF STANDING COMMITTEES

Committee on **Public Health and Welfare** recommends **HB 2310** be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2310," as follows:

"SENATE Substitute for HOUSE BILL No. 2310

By Committee on Public Health and Welfare

"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."; and the substitute bill be passed.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a 2/3 constitutional majority, and **HB 2107**; **S Sub for HB 2226**, **S Sub for HB 2356**; **HB 2666** were advanced to Final Action and roll call.

HB 2107, An act concerning retirement and pensions; relating to the Kansas police and firemen's retirement system; affiliation of adjutant general; membership of certain firefighters; contributions.

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

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

The bill passed.

S Sub for HB 2226, An act concerning district court fines, penalties and forfeitures; relating to traffic fines; relating to funding of the alcohol and drug abuse treatment fund; creating the criminal justice information system line fund; amending K.S.A. 2009 Supp. 8-2118 and 74-7336 and repealing the existing sections.

On roll call, the vote was: Yeas 30, Nays 10, Present and Passing 0, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brungardt, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, McGinn, Morris, Ostmeyer, Owens, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Nays: Brownlee, Bruce, Colyer, Huelskamp, Masterson, Petersen, Pilcher-Cook, Pyle, Taddiken, Wagle.

The substitute bill passed.

S Sub for HB 2356, An act concerning child care; relating to supervision of children in child care facilities and licensing and inspection of family child care homes; amending K.S.A. 39-7,129, 65-504, 65-506, 65-512, 65-523, 65-524, 65-530 and 65-531 and K.S.A. 2009 Supp. 59-29a11, 65-503, 65-516, 65-525 and 65-526 and repealing the existing sections; also repealing K.S.A. 65-517, 65-518, 65-519, 65-520, 65-521 and 65-522.

On roll call, the vote was: Yeas 25, Nays 14, Present and Passing 1, Absent or Not Voting 0.

Yeas: Apple, Barnett, Brungardt, Colyer, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Lynn, Morris, Owens, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Nays: Abrams, Brownlee, Bruce, Donovan, Huelskamp, Kelsey, Marshall, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Taddiken, Wagle.

Present and Passing: McGinn.

The substitute bill passed.

HB 2666, An act concerning the animal health department; relating to fees; amending K.S.A. 47-1001e and K.S.A. 2009 Supp. 47-1011, 47-1503 and 47-2101 and repealing the existing sections.

On roll call, the vote was: Yeas 26, Nays 14, Present and Passing 0, Absent or Not Voting 0.

Yeas: Apple, Brungardt, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Masterson, McGinn, Morris, Owens, Petersen, Reitz, Schmidt D, Schmidt V, Steineger, Taddiken, Teichman, Umbarger, Vratil.

Nays: Abrams, Barnett, Brownlee, Bruce, Colyer, Huelskamp, Kelsey, Lynn, Marshall, Ostmeyer, Pilcher-Cook, Pyle, Schodorf, Wagle.

The bill passed, as amended.

On motion of Senator D. Schmidt, the Senate recessed until 4:30 p.m.

The Senate met pursuant to recess with President Morris in the chair.

MESSAGE FROM THE HOUSE

The House concurs in Senate amendments to **HB 2666**.

The House concurs in Senate amendments to Substitute for **HB 2517** and requests the Senate to return the bill.

The House concurs in Senate amendments to **Senate Substitute for Substitute for HB 2538** and requests the Senate to return the bill.

The House concurs in Senate amendments to **HB 2608** and requests the Senate to return the bill.

The House adopts the conference committee report on **HB 2412**.

The House adopts the conference committee report on **HB 2435**.

The House adopts the conference committee report on **HB 2652**.

The House adopts the conference committee report on **SB 30**.

The House adopts the conference committee report on **SB 362**.

The House adopts the conference committee report on **SB 369**.

The House not adopts the conference committee report on **SB 368**, requests a conference and appoints Representatives Kinzer, Whitham and Pauls as second conferees on the part of the House.

The House nonconcur in Senate amendments to **Senate Substitute for HB 226**, requests a conference and appoints Representative Kinzer, Whitham and Pauls as conferees on the part of the House.

The House nonconcur in Senate amendments to **Senate Substitute for HB 2356**, requests a conference and appoints Representatives Landwehr, Crum and Flaharty as conferees on the part of the House.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Brungardt moved the Senate concur in house amendments to **H Sub for SB 213**.

H Sub for SB 213, An act concerning the rules and regulations filing act; pertaining to the filing process; amending K.S.A. 77-415a, 77-415b, 77-417, 77-418, 77-419, 77-420, 77-421a, 77-423, 77-428, 77-429, 77-430a and 77-436 and K.S.A. 2009 Supp. 77-415, 77-416, 77-421, 77-422, 77-424, 77-430, 77-431 and 77-435 and repealing the existing sections.

On roll call, the vote was: Yeas 38, Nays 2, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Huelskamp, Pilcher-Cook.

The Senate concurred.

Senator Teichman moved the Senate concur in house amendments to **SB 382**.

SB 382, An act concerning the housing loan deposit program; relating to requirements for borrowers; amending K.S.A. 2009 Supp. 75-4277 and 75-4279 and repealing the existing sections.

On roll call, the vote was: Yeas 38, Nays 2, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Pilcher-Cook, Taddiken.

The Senate concurred.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2039**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as SENATE Substitute for HOUSE Bill No. 2039, as follows:

On page 1, by striking all in lines 15 through 43;

By striking all on page 2;

On page 3, by striking all in lines 1 through 20 and inserting the following:

“Section 1. K.S.A. 19-804a is hereby amended to read as follows: 19-804a. ~~Except in those counties operating under the provisions of the consolidated law enforcement act,~~ When there shall be no sheriff or undersheriff in ~~an organized~~ any county, it shall be the duty of the county clerk to exercise all the powers and duties of the sheriff of ~~his such clerk's~~ county until a sheriff be elected or qualified; ~~and when.~~ When the sheriff for any cause shall be committed to the jail of ~~his such sheriff's~~ county, the county clerk shall be keeper thereof during the time the sheriff shall remain a prisoner therein.

Sec. 2. K.S.A. 19-804a is hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, in line 11, by striking all after “concerning”; by striking all in line 12 and inserting “county officers; relating to undersheriffs; amending K.S.A. 19-804a and repealing the existing section.”;

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

THOMAS OWENS

D. SCHMIDT

D. HALEY

Conferees on part of Senate

LANCE KINZER

JEFF WHITHAM

JANICE PAULS

Conferees on part of House

Senator Owens moved the Senate adopt the Conference Committee Report on **S Sub for HB 2039**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2115**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as Senate Substitute for House Bill No. 2115, as follows:

On page 1, by striking all in lines 22 through 43;

By striking all on pages 2 through 7;

On page 8, by striking all in lines 1 through 11 and inserting the following:

“Section 1. K.S.A. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies which are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under K.S.A. 65-6703, and amendments thereto, if applicable to the pregnancy terminated, and such other

information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated. *Each report required by subsection (c)(4) of K.S.A. 65-6703, and amendments thereto, shall specify the medical diagnosis and condition constituting a substantial and irreversible impairment of a major bodily function or the medical diagnosis and condition which necessitated performance of an abortion to preserve the life of the pregnant woman. Each report required by K.S.A. 65-6703, and amendments thereto, shall include a sworn statement by the physician performing the abortion and the referring physician that such physicians are not legally or financially affiliated.*

(c) Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section, except that such information, including information identifying such persons and facilities may be disclosed to the state board of healing arts upon request of the board for disciplinary action conducted by the board and may be disclosed to the attorney general upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the state board of healing arts or the attorney general pursuant to this subsection shall be used solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner which would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

(d) In addition to such criminal penalty under subsection (c), any person licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

(e) For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports of terminations of pregnancies required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

(f) *The annual public report on abortions performed in Kansas issued by the secretary of health and environment shall contain the information required to be reported by this section to the extent such information is not deemed confidential pursuant to this section. The secretary of health and environment shall adopt rules and regulations to implement this section. Such rules and regulations shall prescribe, in detail, the information required to be kept by the physicians and hospitals and the information required in the reports which must be submitted to the secretary.*

Sec. 2. K.S.A. 2009 Supp. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, or a misdemeanor under K.S.A. 65-

6703, and amendments thereto, after July 1, 2010, unless a $\frac{2}{3}$ majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony or a misdemeanor under K.S.A. 65-6703, and amendments thereto, after July 1, 2010, and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a $\frac{2}{3}$ majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall have authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate either in the course of an investigation or a disciplinary proceeding. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c, and amendments thereto, or to a committee consisting of the officers of the board elected pursuant to K.S.A. 65-2818, and amendments thereto, and the executive director appointed pursuant to K.S.A. 65-2878, and amendments thereto, or to a presiding officer authorized pursuant to K.S.A. 77-514, and amendments thereto. The determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of a renewal to practice the healing arts in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122, and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.

(n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(q) The licensee has violated a federal law or regulation relating to controlled substances.

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a, and amendments thereto.

(z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

(aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

(bb) The licensee as the responsible physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406, and amendments thereto, as established by any of the following:

~~(A)~~ (1) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, and amendments thereto.

~~(B)~~ (2) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.

~~(C)~~ (3) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.

Sec. 3. K.S.A. 65-6701 is hereby amended to read as follows: 65-6701. As used in ~~this act~~ *K.S.A. 65-6701 through 65-6721, and amendments thereto*:

(a) "Abortion" means the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include: (1) The use of any drug or device that inhibits or prevents ovulation, fertilization or the implantation of an embryo; or (2) disposition of the product of *in vitro* fertilization prior to implantation.

(b) "Counselor" means a person who is: (1) Licensed to practice medicine and surgery; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) registered to practice professional counseling; (5) licensed as a social worker; (6) the holder of a master's or doctor's degree from an accredited graduate school of social work; (7) registered to practice marriage and family therapy; (8) a licensed physician assistant; or (9) a currently ordained member of the clergy or religious authority of any religious denomination or society. Counselor does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion.

(c) "Department" means the department of health and environment.

(d) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(e) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(f) "Minor" means a person less than 18 years of age.

(g) "Physician" means a person licensed to practice medicine and surgery in this state.

(h) "Pregnant" or "pregnancy" means that female reproductive condition of having a fetus in the mother's body.

(i) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, registered professional counselor, registered nurse or physician.

(j) "Unemancipated minor" means any minor who has never been: (1) Married; or (2) freed, by court order or otherwise, from the care, custody and control of the minor's parents.

(k) "Viable" means that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means of fetal development when it is the physician's judgment, according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances, that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.

Sec. 4. K.S.A. 65-6703 is hereby amended to read as follows: 65-6703. (a) No person shall perform or induce an abortion when the fetus is viable unless such person is a physician and has a documented referral from another physician *who is licensed to practice medicine in this state and who is not legally or financially affiliated with the physician performing or inducing the abortion and both physicians determine provide a written determination, based upon a medical judgment that would be made by a reasonably prudent physician, knowledgeable in the field, and knowledgeable about the case and the treatment possibilities with*

respect to the conditions involved, that: (1) The abortion is necessary to preserve the life of the pregnant woman; or (2) a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.

(b) *Except in the case of a medical emergency, a copy of the written documented referral and of the abortion-performing physician's written determination shall be provided to the pregnant woman no less than 30 minutes prior to the initiation of the abortion. The written determination shall be time-stamped at the time it is delivered to the pregnant woman. Such determination shall specify:*

(1) *If the fetus was determined to be nonviable and the medical basis of such determination;*

(2) *if the abortion is necessary to preserve the life of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause the death of the pregnant woman; or*

(3) *if a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the medical basis of such determination, including the specific medical condition the physician believes would cause a substantial and irreversible impairment of a major bodily function of the pregnant woman.*

~~(b)~~ (c) (1) Except in the case of a medical emergency, prior to performing an abortion upon a woman, the physician shall determine the gestational age of the fetus according to accepted obstetrical and neonatal practice and standards applied by physicians in the same or similar circumstances. If the physician determines the gestational age is less than 22 weeks, the physician shall document as part of the medical records of the woman the basis for the determination. *The medical reasons for the determination of the gestational age of the fetus shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.*

(2) If the physician determines the gestational age of the fetus is 22 or more weeks, prior to performing an abortion upon the woman the physician shall determine if the fetus is viable by using and exercising that degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent physician in the same or similar circumstances. In making this determination of viability, the physician shall perform or cause to be performed such medical examinations and tests as are necessary to make a finding of the gestational age of the fetus and shall enter such findings and determinations of viability in the medical record of the woman. *The medical reasons for the determination of the gestational age of the fetus shall also be reported by the physician as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.*

(3) If the physician determines the gestational age of a fetus is 22 or more weeks, and determines that the fetus is not viable and performs an abortion on the woman, the physician shall report such determinations, *the medical basis* and the reasons for such determinations in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician shall report such determinations, *the medical basis* and the reasons for such determinations in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(4) If the physician who is to perform the abortion determines the gestational age of a fetus is 22 or more weeks, and determines that the fetus is viable, both physicians under subsection (a) determine in accordance with the provisions of subsection (a) that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman and the physician performs an abortion on the woman, the physician who performs the abortion shall report such determinations, *the medical basis* and the reasons for such determinations ~~and the basis, including the specific medical diagnosis~~ for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a

major bodily function of the pregnant woman *and the name of the referring physician required by subsection (a)* in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the secretary of health and environment under K.S.A. 65-445, and amendments thereto, or if the abortion is not performed in a medical care facility, the physician who performs the abortion shall report such determinations, *the medical basis and the reasons for such determinations and the basis, including the specific medical diagnosis* for the determination that an abortion is necessary to preserve the life of the pregnant woman or that a continuation of the pregnancy will cause a substantial and irreversible impairment of a major bodily function of the pregnant woman *and the name of the referring physician required by subsection (a)* in writing to the secretary of health and environment as part of the written report made by the physician to the secretary of health and environment under K.S.A. 65-445, and amendments thereto.

(5) The physician shall retain the medical records required to be kept under paragraphs (1) and (2) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10 years and shall retain a copy of the written reports required under paragraphs (3) and (4) of this subsection ~~(b)~~ (c) for not less than ~~five~~ 10 years.

(d) *The secretary of health and environment shall adopt rules and regulations to administer this section. These rules and regulations shall include:*

(1) *A detailed list of the information that must be kept by a physician under paragraphs (1) and (2) of subsection (c);*

(2) *the contents of the written reports required under paragraphs (3) and (4) of subsection (c); and*

(3) *detailed information that must be provided by a physician to insure that the specific medical basis and clinical diagnosis regarding the woman and the viability or lack of viability of the fetus is reported.*

~~(e)~~ (e) A woman upon whom an abortion is performed shall not be prosecuted under this section for a conspiracy to violate this section pursuant to K.S.A. 21-3302, and amendments thereto.

~~(f)~~ (f) Nothing in this section shall be construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law.

~~(c)~~ As used in this section, "viable" means that stage of fetal development when it is the physician's judgment according to accepted obstetrical or neonatal standards of care and practice applied by physicians in the same or similar circumstances that there is a reasonable probability that the life of the child can be continued indefinitely outside the mother's womb with natural or artificial life-supportive measures.

(g) (1) *A woman upon whom an abortion is performed in violation of this section, the father, if married to the woman at the time she receives the abortion procedure, and the parents or custodial guardian of the woman, if the woman has not attained the age of 18 years at the time of the abortion, may in a civil action obtain appropriate relief, unless, in a case where the plaintiff is not the woman upon whom the abortion was performed, the pregnancy resulted from the plaintiff's criminal conduct.*

(2) *Such relief shall include:*

(A) *Money damages for all injuries, psychological and physical, occasioned by the violation of this section;*

(B) *statutory damages equal to three times the cost of the abortion; and*

(C) *reasonable attorney fees.*

~~(h)~~ (h) If any provision of this section is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this section without such invalid or unconstitutional provision.

~~(i)~~ (i) Upon a first conviction of a violation of this section, a person shall be guilty of a class A nonperson misdemeanor. Upon a second or subsequent conviction of a violation of this section, a person shall be guilty of a severity level 10, nonperson felony.

Sec. 5. K.S.A. 65-445, 65-6701, 65-6703, 65-6713 and K.S.A. 2009 Supp. 65-2836 are hereby repealed.;

And by renumbering the remaining section accordingly;

In the title, in line 9, by striking all after "ACT"; by striking all in lines 10 through 19 and inserting "concerning abortion; amending K.S.A. 65-445, 65-6701, 65-6703 and K.S.A. 2009 Supp. 65-2836 and repealing the existing sections; also repealing K.S.A. 65-6713.";

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

PAT APPLE
MIKE PETERSEN
Conferees on part of Senate

MELVIN NEUFELD
A. BROWN
Conferees on part of House

Senator Apple was recognized to explain the Conference Committee Report on **S Sub for HB 2115**.

Senator V. Schmidt moved to invoke Rule 26 to lay on the table.

On roll call, the vote was: Yeas 16, Nays 24, Present and Passing 0, Absent or Not Voting 0.

Yeas: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Reitz, Schmidt V, Schodorf, Steineger, Teichman, Vratil.

Nays: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Emler, Huelskamp, Kelsey, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Schmidt D, Taddiken, Umbarger, Wagle.

The motion failed.

Citing Rule 26, Senator Vratil moved to invoke the previous question.

The motion carried.

Senator Apple moved the Senate adopt the Conference Committee Report on **S Sub for HB 2115**.

On roll call, the vote was: Yeas 24, Nays 15, Present and Passing 1, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Emler, Huelskamp, Kelsey, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt D, Taddiken, Umbarger, Wagle.

Nays: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Reitz, Schmidt V, Schodorf, Steineger, Teichman, Vratil.

Present and Passing: Owens.

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "NO" on the conference committee report on **Senate Substitute for HB 2115**.

This conference committee report (that was put into a utilities bill and sent to conference with no opportunities for amendments) makes confusing changes to reporting requirements for physicians. We ask a physician to report if a fetus was determined to be nonviable without defining that term. We ask for the medical reasons for determination of gestational age when we may want to know what methods a physician used to make the determination, and with a definition of gestational age that limits the physician's reporting. The lack of clarity in reporting requirements is especially troubling because the statutes are being changed to require the Board of Healing Arts to revoke a licensee's license for a misdemeanor under K.S.A. 65-6703. There are other concerns, but perhaps the most egregious is the repeal of K.S.A. 65-6713 that establishes civil immunity for physicians who are fully compliant with the informed consent process included in the Women's Right to Know Act and according to standard medical practice. We should allow for health care for women, not set up obstacles for physicians who are following the oath they have taken. — MARCI FRANCISCO

Senators Faust-Goudeau, Haley, Hensley, Kelly and Kultala request the record to show they concur with the "Explanation of Vote" offered by Senator Francisco on **Senate Substitute for HB 2115**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2432**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as SENATE Substitute for HOUSE Bill No. 2432, as follows:

On page 1, by striking all in lines 15 through 43;

By striking all on pages 2 and 3;

On page 4, by striking all in lines 1 through 10 and inserting the following:

“Section 1. K.S.A. 60-2006 is hereby amended to read as follows: 60-2006. (a) In actions brought for the recovery of property damages only of less than ~~\$7,500~~ \$15,000 sustained and caused by the negligent operation of a motor vehicle, the prevailing party shall be allowed reasonable attorney fees which shall be taxed as part of the costs of the action unless:

(1) The prevailing party recovers no damages; or

(2) a tender equal to or in excess of the amount recovered was made by the adverse party before the commencement of the action in which judgment is rendered.

(b) For the plaintiff to be awarded attorney fees for the prosecution of such action, a written demand for the settlement of such claim containing all of the claimed elements of property damage and the total monetary amount demanded in the action shall have been made on the adverse party at such party's last known address not less than 30 days before the commencement of the action. For the defendant to be awarded attorney fees, a written offer of settlement of such claim shall have been made to the plaintiff at such plaintiff's last known address not more than 30 days after the defendant filed the answer in the action.

(c) This section shall apply to actions brought pursuant to the code of civil procedure and actions brought pursuant to the code of civil procedure for limited actions.

Sec. 2. K.S.A. 60-2006 is hereby repealed.”;

And by renumbering the remaining section accordingly;

In the title, in line 9, by striking all after “concerning”; by striking all in lines 10 through 12 and inserting “civil procedure; relating to property damage amount; amending K.S.A. 60-2006 and repealing the existing section.”;

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

THOMAS C. OWENS

DEREK SCHMIDT

DAVID HALEY

Conferees on part of Senate

LANCE KINZER

JEFF WHITHAM

JANICE L. PAULS

Conferees on part of House

Senator Owens moved the Senate adopt the Conference Committee Report on **S Sub for HB 2432**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2472**, 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 of the Whole amendments, as follows:

On page 1, after line 37, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”;

On page 3, after line 6, by inserting the following:

“(p) This section shall take effect on and after January 1, 2011.”;

Also on page 3, in line 7, before “Except” by inserting “(a)”; after line 10, by inserting the following:

“(b) This section shall take effect on and after January 1, 2011.”;

Also on page 3, in line 11, before “Every” by inserting “(a)”; after line 12, by inserting the following:

“(b) This section shall take effect on and after January 1, 2011.”;

Also on page 3, in line 13, before “This” by inserting “(a)”; after line 16, by inserting the following:

“(b) This section shall take effect on and after January 1, 2011.”;

Also on page 3, after line 34, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”;

On page 4, after line 9, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”;

On page 5, after line 26, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”; in line 30, by striking “and officers” and inserting “shall exercise the degree of care and loyalty to the association required of a trustee. Officers”;

On page 6, after line 7, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”;

Also on page 6, in line 8, by striking all after “(a)”; in line 9, by striking all before “The”; in line 30, by striking “(c)” and inserting “(b)”; after line 33, by inserting the following:

“(c) This section shall take effect on and after January 1, 2011.”;

On page 7, after line 23, by inserting the following:

“(g) This section shall take effect on and after January 1, 2011.”;

On page 9, after line 10, by inserting the following:

“(k) This section shall take effect on and after January 1, 2011.”;

Also on page 9, after line 29, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”;

On page 11, after line 28, by inserting the following:

“(h) This section shall take effect on and after January 1, 2011.”;

On page 13, after line 8, by inserting the following:

“(g) This section shall take effect on and after January 1, 2011.”;

On page 14, after line 1, by inserting the following:

“(i) This section shall take effect on and after January 1, 2011.”;

Also on page 14, after line 34, by inserting the following:

“(c) This section shall take effect on and after January 1, 2011.”;

On page 15, after line 14, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”;

Also on page 15, after line 25, by inserting the following:

“(b) Parties to a dispute arising under this act, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) A declarant may agree with the association to do so only after the period of declarant control has expired; and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.”;

Also on page 15, in line 26, by striking “(b)” and inserting “(c)”; after line 28, by inserting the following:

“(d) This section shall take effect on and after January 1, 2011.”;

Also on page 15, in line 29, before “The” by inserting “(a)”; after line 36, by inserting the following:

“(b) This section shall take effect on and after January 1, 2011.”;

Also on page 15, in line 40, before “This” by inserting “(a)”;
 On page 16, after line 2, by inserting the following:

“(b) This section shall take effect on and after January 1, 2011.”;

Also on page 16, in line 3, before “K.S.A.” by inserting “On and after January 1, 2011.”; in line 4, by striking “23” and inserting “22”; in line 7, by striking “that”; in line 40, before “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 17, in line 6, before “As” by inserting “(a)”; also in line 6, by striking “act” and inserting “section”; in line 7, by striking “(a)” and inserting “(1)”; in line 8, by striking “(b)” and inserting “(2)”; in line 12, by striking all before “On” and inserting “(b)”; after line 19, by inserting the following:

“(c) The provisions of this section shall expire on July 1, 2011.

Sec. 26. K.S.A. 2009 Supp. 12-1750 is hereby amended to read as follows: 12-1750. As used in this act:

(a) “Structure” means any building, wall or other structure.

(b) “Enforcing officer” means the building inspector or other officer designated by ordinance and charged with the administration of the provisions of this act.

(c) “Abandoned property” means any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding ~~180~~ 90 days.

(d) “Organization” means any nonprofit corporation organized under the laws of this state and which has among its purposes the improvement of housing.

(e) “Rehabilitation” means the process of improving the property into compliance with applicable fire, housing and building codes.

(f) “Parties in interest” means any owner or owners of record, judgment creditor, tax purchaser or other party having any legal or equitable title or interest in the property.

(g) “Last known address” includes the address where the property is located, or the address as listed in the tax records.

Sec. 27. K.S.A. 2009 Supp. 12-1756a is hereby amended to read as follows: 12-1756a.

(a) An organization may file a petition with the district court for an order for temporary possession of property if:

(1) The property meets the definition of abandoned as set forth in K.S.A. 12-1750, and amendments thereto;

(2) the organization intends to rehabilitate the property and use the property as housing; and

(3) the organization has sent notice to the enforcing officer and the parties in interest of the property, by certified or registered mail, mailed to their last known address and posted on the property at least 20 days but not more than 60 days before the date the petition is filed, of the organization’s intent to file a petition for possession under K.S.A. 12-1750 through 12-1756e, and amendments thereto.

(b) The proceeding shall be commenced by filing a verified petition in the district court in the county in which the property is located. The petition shall state that the conditions specified in subsection (a) exist. All parties in interest of the property shall be named as defendants in the petition. Summons shall be issued and service shall be made pursuant to K.S.A. 60-303, and amendments thereto. Service may be made by publication if the organization with due diligence is unable to make service of summons upon a defendant pursuant to subsection (a)(3) of K.S.A. 60-307, and amendments thereto.

(c) Any defendant may file as part of such defendant’s answer, as an affirmative defense, a plan for the rehabilitation of the property and evidence of capacity and resources necessary to complete rehabilitation of the property. The court shall grant the defendant 90 days to bring the property into compliance with applicable fire, housing and building codes and to pay all delinquent ad valorem property tax. For good cause shown, the court may extend the ninety-day compliance period *for an additional 90 days*. If the property is brought into such compliance within the ninety-day period or extension of time thereof, the petition shall be dismissed. If the defendant fails to bring the property into such compliance within the

ninety-day period or extension of time thereof, or if the defendant's plan is otherwise insufficient, the defendant's affirmative defense shall be stricken.

(d) At the hearing on the organization's petition, the organization shall submit to the court a plan for the rehabilitation of the property and present evidence that the organization has adequate resources to rehabilitate and thereafter manage the property. For the purpose of developing such a plan, representatives of the organization may be permitted entry onto the property by the court at such times and on such terms as the court may deem appropriate.

(e) The court shall make its own determination as to whether the property is in fact abandoned consistent with the terms of K.S.A. 12-1750 through 12-1756e, and amendments thereto.

(f) If the court approves the petition, the court shall enter an order approving the rehabilitation plan and granting temporary possession of the property to the organization. The organization, subject to court approval, may enter into leases or other agreements in relation to the property. Whether the court approves or denies the petition, the organization shall provide the governing body a copy of the order within 30 days of the organization's receipt or knowledge of such order.

Sec. 28. K.S.A. 2009 Supp. 12-1756g is hereby amended to read as follows: 12-1756g. Any person who purchases a house from an organization which has rehabilitated such house pursuant to K.S.A. 12-1750 et seq., and amendments thereto, shall agree to occupy such house for at least ~~three years~~ *two years* following the date of taking title to such property.

Sec. 29. K.S.A. 19-26,103 is hereby amended to read as follows: As used in K.S.A. 19-26,103 through 19-26,113:

(a) "County" means ~~Wyandotte~~ *any county, Kansas*.

(b) "Board" means the board of trustees of the ~~Wyandotte~~ county land bank.

(c) "Bank" means the ~~Wyandotte~~ county land bank established pursuant to this act.

Sec. 30. K.S.A. 19-26,104 is hereby amended to read as follows: (a) The board of county commissioners of ~~Wyandotte county~~ may establish a county land bank by adoption of a resolution.

(b) The bank shall be governed by a board of trustees. The board of county commissioners of ~~Wyandotte county~~ may appoint the board. Commissioners may serve on or as the board of trustees. Vacancies on the board shall be filled by appointment for the unexpired term.

(c) The board of county commissioners may advance operating funds to the bank to pay expenses of the board of trustees and the bank. Members of the board of trustees shall receive no compensation, but shall be paid their actual and necessary expenses in attending meetings and in carrying out their duties as members of the board.

(d) The bank may be dissolved by resolution of the board of county commissioners. In such case, all property of the bank shall be transferred to and held by the board of county commissioners of the county and may be disposed of as otherwise provided by law.

Sec. 31. K.S.A. 19-26,103 and 19-26,104 and K.S.A. 2009 Supp. 12-1750, 12-1756a and 12-1756g are hereby repealed.";

Also on page 17, in line 20, before "K.S.A." where it appears for the first time by inserting "On January 1, 2011,"; in line 23, by striking "January 1, 2011, and";

And by renumbering the remaining sections accordingly;

In the title, in line 15, after "K.S.A." by inserting "19-26,103, 19-26,104,"; in line 16, before "repealing" where it appears for the first time by inserting "K.S.A. 2009 Supp. 12-1750, 12-1756a and 12-1756g and";

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

ROGER P. REITZ

TERRIE HUNTINGTON

KELLY KULTALA

Conferees on part of Senate

SHARON SCHWARTZ

MITCH HOLMES

DELIA GARCIA

Conferees on part of House

Senator Reitz moved the Senate adopt the Conference Committee Report on **HB 2472**.
On roll call, the vote was: Yeas 35, Nays 5, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Abrams, Haley, Pilcher-Cook, Pyle, Vratil.
The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2501**, 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 2, after line 2, by inserting the following:

“Sec. 2. K.S.A. 2009 Supp. 40-2118 is hereby amended to read as follows: 40-2118. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) “Administering carrier” means the insurer or third-party administrator designated in K.S.A. 40-2120, and amendments thereto.

(b) “Association” means the Kansas health insurance association established in K.S.A. 40-2119, and amendments thereto.

(c) “Board” means the board of directors of the association.

(d) “Church plan” means a plan as defined under section 3(33) of the Employee Retirement Income Security Act of 1974.

(e) “Commissioner” means the commissioner of insurance.

(f) “Creditable coverage” means with respect to an individual, coverage of the individual under any of the following:

(1) A group health plan;

(2) health insurance coverage;

(3) part A or part B of Title XVIII of the Social Security Act;

(4) title XIX of the Social Security Act, other than coverage consisting solely of benefit under Section 1928;

(5) chapter 55 of Title 10, United States Code;

(6) a medical care program of the Indian Health Service or of a tribal organization;

(7) a state health benefit risk pool;

(8) a health plan offered under Chapter 89 of Title 5, United States Code;

(9) a public health plan as defined under regulations promulgated by the secretary of health and human services; ~~and~~

(10) a health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(d)); and

(11) *A state children’s health insurance program established pursuant to title XXI of the Social Security Act.*

(g) “Dependent” means a resident spouse or resident unmarried child under the age of 19 years, a child who is a student under the age of 23 years and who is financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent.

(h) “Excess loss” means the total dollar amount by which claims expense incurred for any issuer of a medicare supplement policy or certificate delivered or issued for delivery to persons in this state eligible for medicare by reason of disability and who are under age 65 exceeds 65% of the premium earned by such issuer during a calendar year.

(i) “Federally defined eligible individual” means an individual:

(1) For whom, as of the date the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and whose most recent prior coverage was under a group health plan, government plan or church plan;

(2) who is not eligible for coverage under a group health plan, Part A or B of Title XVII of the Social Security Act, or a state plan under Title XIX of the Social Security Act, or any successor program, and who does not have any other health insurance coverage;

(3) with respect to whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud; and

(4) who ~~had been~~ *if* offered the option of continuation coverage under COBRA or under a similar program, ~~who~~ elected such continuation coverage, and ~~who~~ has exhausted such continuation coverage.

(j) “Federally defined eligible individuals for FTAA” means an individual who is:

(1) Legally domiciled in this state; and

(2) eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986.

(k) “FTAA” means federal trade adjustment assistance under the federal trade adjustment assistance reform act of 2002, public law 107-210.

(l) “Governmental plan” means a plan as defined under section 3(32) of the Employee Retirement Income Security Act of 1974 and any plan maintained for its employees by the government of the United States or by any agency or instrumentality of such government.

(m) “Group health plan” means an employee benefit plan as defined by section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides any hospital, surgical or medical expense benefits to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement or otherwise.

(n) “Health insurance” means any hospital or medical expense policy, health, hospital or medical service corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by an employer or any certificate issued under any such policies, contracts or plans. “Health insurance” does not include policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(o) “Health maintenance organization” means any organization granted a certificate of authority under the provisions of the health maintenance organization act.

(p) “Insurance arrangement” means any plan, program, contract or any other arrangement under which one or more employers, unions or other organizations provide to their employees or members, either directly or indirectly through a group-funded pool, trust or third-party administrator, health care services or benefits other than through an insurer.

(q) “Insurer” means any insurance company, fraternal benefit society, health maintenance organization and nonprofit hospital and medical service corporation authorized to transact health insurance business in this state.

(r) “Medicaid” means the medical assistance program operated by the state under title XIX of the federal social security act.

(s) “Medicare” means coverage under both parts A and B of title XVIII of the federal social security act, 42 USC 1395.

(t) “Medicare supplement policy” means a group or individual policy of accident and sickness insurance or a subscriber contract of hospitals and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal social security act (42 USC 1395 et seq.) or an issued policy under a demonstration project specified in 42 USC 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare.

(u) “Member” means all insurers and insurance arrangements participating in the association.

(v) “Plan” means the Kansas uninsurable health insurance plan created pursuant to this act.

(w) "Plan of operation" means the plan to create and operate the Kansas uninsurable health insurance plan, including articles, bylaws and operating rules, adopted by the board pursuant to K.S.A. 40-2119, and amendments thereto.

Sec. 3. K.S.A. 2009 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group which is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" mean the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, ~~2009~~ 2009, or any later version promulgated by the NAIC as may be adopted by the commissioner under K.S.A. 2009 Supp. 40-2c29, and amendments thereto.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

(1) An insurer's capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

(o) "Commissioner" means the commissioner of insurance.

Sec. 4. K.S.A. 40-2259 is hereby amended to read as follows: 40-2259. (a) As used in this section, "genetic screening or testing" means a laboratory test of a person's genes or chromosomes for abnormalities, defects or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects or deficiencies, and not an indirect manifestation of genetic disorders.

(b) An insurance company, health maintenance organization, nonprofit medical and hospital, dental, optometric or pharmacy ~~corporations~~ corporation, or a group subject to K.S.A. 12-2616 et seq., and amendments thereto, *offering group policies and certificates of coverage or individual policies providing hospital, medical or surgical expense benefits*, shall not:

(1) Require or request directly or indirectly any individual or a member of the individual's family to obtain a genetic test;

(2) require or request directly or indirectly any individual to reveal whether the individual or a member of the individual's family has obtained a genetic test or the results of the test, if obtained by the individual or a member of the individual's family;

(3) condition the provision of insurance coverage or health care benefits on whether an individual or a member of the individual's family has obtained a genetic test or the results of the test, if obtained by the individual or a member of the individual's family; ~~or~~

(4) consider in the determination of rates or any other aspect of insurance coverage or health care benefits provided to an individual whether an individual or a member of the individual's family has obtained a genetic test or the results of the test, if obtained by the individual or a member of the individual's family;

(5) *require any individual, as a condition of enrollment or continued enrollment, to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual on the basis of whether the individual or a member of the individual's family has obtained a genetic test or the results of such test; or*

(6) *adjust premium or contribution amounts on the basis of whether the individual or a member of the individual's family has obtained a genetic test or the result of such test.*

(c) Subsection (b) does not apply to an insurer writing life insurance, disability income insurance or long-term care insurance coverage.

(d) An insurer writing life insurance, disability income insurance or long-term care insurance coverage that obtains information under paragraphs (1) or (2) of subsection (b), shall not:

(1) Use the information contrary to paragraphs (3) or (4) of subsection (b) in writing a type of insurance coverage other than life for the individual or a member of the individual's family; or

(2) provide for rates or any other aspect of coverage that is not reasonably related to the risk involved.

New Sec. 5. (a) (1) Notwithstanding any other law, rule or regulation, an insurer that uses credit information shall, upon written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by an extraordinary life circumstance.

(2) As used in this section "extraordinary life circumstance" means:

(A) Catastrophic event, as declared by the federal or any state government;

(B) serious illness or injury to the consumer or such consumer's immediate family member;

(C) the death of a spouse, child or parent of the insured;

(D) divorce or involuntary interruption of legally-owed alimony or support payments;

(E) identity theft;

(F) temporary loss of employment for a period of three months or more, if it results from involuntary termination;

(G) overseas military deployment; or

(H) other events as determined by the insurer.

(b) If a consumer submits a request for an exception under subsection (a), an insurer may, in its sole discretion:

(1) Require the consumer to provide reasonable written and independently verifiable documentation of the event;

(2) require the consumer to demonstrate that the event had a direct and meaningful impact on the consumer's credit information; and

(3) require such request be made no more than 60 days from the date of the application for insurance or the policy renewal.

(c) An insurer shall not be deemed to be out of compliance with any law, rule or regulation relating to underwriting, rating or rate filing as a result of granting an exception under this section. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

(d) The insurer shall provide notice to consumers that reasonable exceptions are available and information about how the consumer may inquire further.

(e)(1) Within 30 days of the insurer's receipt of sufficient documentation of an extraordinary life circumstance as the insurer may request under subsection (b), the insurer shall inform the consumer of the outcome of their request for a reasonable exception.

(2) The insurer may grant an exception despite the consumer not providing the initial request for an exception in writing or grant an exception where the consumer asks for consideration of repeated circumstances or the insurer has considered this circumstance previously.

(3) The insurer shall inform the consumer of the outcome of their request in writing.

(f) This section shall be part of and supplemental to the Kansas insurance score act.

Sec. 6. K.S.A. 2009 Supp. 40-5103 is hereby amended to read as follows: 40-5103. As used in this act:

(a) "Adverse action" means any of the following in connection with the underwriting of personal insurance:

(1) A denial or cancellation of coverage;

~~(2) anything other than the best possible rate; or~~

~~(2)~~ (2) a reduction or other adverse or unfavorable change in the terms of coverage of any insurance regardless of whether such insurance is in existence or has been applied for.

(b) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(c) "Agent" shall have the meaning ascribed to it in subsection (k) of K.S.A. 2009 Supp. 40-4902, and amendments thereto, unless the context requires otherwise.

(d) "Applicant" means an individual who has applied to an insurer to be covered by a personal insurance policy.

(e) "Commissioner" means the commissioner of insurance and any authorized designee of the commissioner.

(f) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy. "Consumer" also includes an applicant for a personal insurance policy.

(g) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(h) "Credit information" means any credit related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Credit information shall not include any information which is not credit related, regardless of whether such information is contained in a credit report or in an application or is used to calculate an insurance score.

(i) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(j) "Department" means the insurance department established by K.S.A. 40-102 and amendments thereto.

(k) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based, in whole or in part, on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

(l) "Personal insurance" means private passenger automobile, homeowners, motorcycle, mobile homeowners and non-commercial dwelling fire insurance policies and boat, personal water craft, snowmobile and recreational vehicle policies. For the strict purposes of this act, personal insurance shall also include individually underwritten policies of farmowners.

Sec. 7. K.S.A. 2009 Supp. 40-5104 is hereby amended to read as follows: 40-5104. No insurer authorized to do business in the state of Kansas which uses credit information to underwrite or rate risks, shall:

(a) Use an insurance score that is calculated using income, address, zip code, race, religion, color, sex, disability, national origin, ancestry or marital status of the consumer as a factor.

(b) Without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (a), refuse to quote, deny, cancel or refuse to renew any policy of personal insurance solely on the basis of credit information.

(c) Without consideration of any other applicable factor independent of credit information, base an insured's renewal rates for personal insurance solely upon credit information.

(d) Without consideration of any other applicable factor independent of credit information, take an adverse action against a consumer solely because such consumer does not have a credit card account.

(e) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer does one of the following:

(1) Treat the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or

(2) exclude the use of credit information as a factor and use only other underwriting criteria.

(f) Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date the personal insurance policy is first written or notice of renewal is issued.

~~(g) (1) Except as provided in paragraphs (2) and (3), use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report.~~

~~(2) The insurer shall:~~

(A) Re-underwrite and re-rate the consumer's personal insurance policy, at the annual renewal of such policy, based upon a current credit report or insurance score for such consumer, if requested by the consumer. Such consumer's current credit report or insurance score shall be used if the result of the re-underwrite and re-rate reduces the consumer's rate. Such consumer's current credit report or insurance score shall not be used to increase the consumer's rate. The insurer shall not be found to be in violation of rate filings by adjusting an insured's rate in accordance with this subparagraph. Nothing in this subparagraph shall require an insurer to recalculate a consumer's insurance score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period.

(B) Have the discretion to obtain current credit information upon any renewal before the 36 months, if consistent with such insurer's underwriting guidelines.

~~(3) (2) No insurer shall be required to obtain current credit information for an insured, if:~~

(A) The insured is in the most favorably-priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to order such report, if consistent with such insurer's underwriting guidelines;

(B) credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal, if consistent with such insurer's underwriting guidelines; or

(C) The insurer re-evaluates the insured beginning no later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

(h) Use any of the following as a negative factor against a consumer in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

(1) Any credit inquiry not initiated by the consumer or any inquiry requested by the consumer for such consumer's own credit information;

(2) any inquiry relating to insurance coverage, if so identified on a consumer's credit report;

(3) any collection account with a medical industry code, if so identified on the consumer's credit report; or

(4) any additional lender inquiry beyond the first such inquiry related to the same loan purpose, if coded by the consumer reporting agency on the consumer's credit report as being from the given loan industry and made within 30 days of one another.”;

And by renumbering the remaining sections accordingly;

Also on page 2, in line 3, by striking “40-3512 is” and inserting “40-2259 and 40-3512 and K.S.A. 2009 Supp. 40-2c01, 40-2118, 40-5103 and 40-5104 are”;

In the title, in line 13, after the semicolon by inserting “relating to health insurance and creditable coverage plans; relating to risk-based capital requirements; relating to genetic testing by insurance and health entities; relating to the use of credit information;”; also in line 13, by striking “40-3512” and inserting “40-2259 and 40-3512 and K.S.A. 2009 Supp. 40-2c01, 40-2118, 40-5103 and 40-5104”; also in line 14, by striking “section” and inserting “sections”;

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

RUTH TEICHMAN

KARIN BROWNLEE

CHRIS STEINEGER

Conferees on part of Senate

CLARK SHULTZ

VIRGIL PECK, JR.

DALE SWENSON

Conferees on part of House

Senator Teichman moved the Senate adopt the Conference Committee Report on **HB 2501**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2585**, submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as SENATE Substitute for HOUSE Bill No. 2585, as follows:

On page 1, in line 43, by striking “controversy” and inserting “proceeding”;

On page 2, in line 2, by striking “exercising due diligence” and inserting “a showing of reasonable effort”; also in line 2, after “by” by inserting “readily available”;

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

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

LANCE KINZER
JEFF WHITHAM
JANICE L. PAULS
Conferees on part of House

Senator Owens moved the Senate adopt the Conference Committee Report on **S Sub for HB 2585**.

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

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

Nays: Barnett.

The Conference Committee report was adopted.

REPORT ON ENGROSSED BILLS

H Sub for SB 25 reported correctly engrossed March 30, 2010.

Also, **SB 531** correctly re-engrossed March 30, 2010.

REPORT ON ENROLLED BILLS

House Sub for SB 316 reported correctly enrolled, properly signed and presented to the Governor on March 30, 2010.

SR 1855, SR 1856, SR 1857, SR 1858, SR 1859, SR 1860, SR 1861, SR 1862, SR 1863, SR 1864 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 30, 2010.

COMMITTEE OF THE WHOLE

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

On emergency motion of Senator D. Schmidt, **HB 2310** was moved to the top of the calendar under the heading of General Orders.

On motion of Senator McGinn the following report was adopted:

The committee report on **HB 2310** recommending a **Senate Sub for HB 2310** be adopted, and the substitute bill be passed.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **S Sub for HB 2310** was advanced to Final Action and roll call.

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.

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

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

Nays: Huelskamp, Pilcher-Cook, Pyle.
The substitute bill passed.

On motion of Senator D. Schmidt, the Senate recessed until 8:00 p.m.

EVENING SESSION

The Senate met pursuant to recess with President Morris in the chair.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 585, An act concerning state officers; relating to salaries and compensation; amending K.S.A. 46-1102, 75-3120f, 75-3212 and 75-3223 and K.S.A. 2009 Supp. 40-102, 46-137a, 46-137b, 75-3101, 75-3103, 75-3104, 75-3108, 75-3110, 75-3120g, 75-3120h, 75-3120k and 75-7427 and repealing the existing sections, by Ways and Means.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 30**, 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 3, in line 20, by striking "2008" and inserting "2009"; in line 37, by striking "2008" and inserting "2009";

On page 1, in the title, in line 14, by striking "2008" and inserting "2009";

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

KEVIN YODER
RAY MERRICK
BILL FEUERBORN
Conferees on part of House

JOHN VRATIL
CAROLYN MCGINN
LAURA KELLY
Conferees on part of Senate

Senator Emler moved the Senate adopt the Conference Committee Report on **SB 30**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 362**, 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, in line 20, by striking "Subject to the provisions of subsection (c), all" and inserting "All"; in line 29, by striking "May 1" and inserting "the third Friday in May"; in line 31, by striking "May 15" and inserting "the 14th calendar day following the third Friday in May";

On page 2, by striking all in lines 21 through 35; in line 36, by striking “(d)” and inserting “(c)”; in line 41, by striking “Subject to the provisions of subsection (c), written” and inserting “Written”; in line 43, by striking “May 1” and inserting “the third Friday in May”;
 On page 3, in line 2, by striking “May 15” and inserting “the 14th calendar day following the third Friday in May”; by striking all in lines 28 through 35;

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

JOE MCLELAND
 CLAY AURAND
 HAROLD LANE
Conferees on part of House

JEAN SCHODORF
 JOHN VRATIL
 ANTHONY HENSLEY
Conferees on part of Senate

Senator Schodorf moved the Senate adopt the Conference Committee Report on **SB 362**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 369**, 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 3, in line 5, by striking “allow” and inserting “electronically make copies of public records by allowing”; in line 6, after “device” by inserting “provided by such person”;

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
 DEREK SCHMIDT
 LAURA KELLY
Conferees on part of Senate

Senator Owens moved the Senate adopt the Conference Committee Report on **H Sub for SB 369**.

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

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

The Conference Committee report was adopted.

MESSAGE FROM THE HOUSE

The House nonconcur in Senate amendments to **Senate Substitute for HB 2310**, requests a conference and appoints Representatives Bethell, Hill and Williams as conferees on the part of the House.

The House adopts the conference committee report on **SB 62**.

The House adopts the conference committee report on **House Substitute for SB 83**.

The House adopts the conference committee report on **House Substitute for SB 262**.

The House adopts the conference committee report on **House Substitute for SB 269**.

The House adopts the conference committee report on **SB 359**.

The House adopts the conference committee report on **House Substitute for SB 377**.

The House adopts the conference committee report on **House Substitute for SB 449**.

The House adopts the conference committee report on **House Substitute for SB 537**.

ORIGINAL MOTION

On motion of Senator Owens, the Senate acceded to the request of the House for a conference on **SB 368**.

The Vice President appointed Senators Owens, Vratil and Kelly as conferees on the part of the Senate.

On motion of Senator Owens, the Senate acceded to the request of the House for a conference on **S Sub for HB 2226**.

The Vice President appointed Senators Owens, D. Schmidt and Haley as conferees on the part of the Senate.

On motion of Senator Barnett, the Senate acceded to the request of the House for a conference on **S Sub for SB 2356**.

The Vice President appointed Senators Barnett, V. Schmidt and Kelly as conferees on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 62**, 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, following line 18, by inserting the following:

“New Section 1. (a) A physician or other health care professional who is otherwise authorized by law to provide medical treatment to a pregnant woman shall take or cause to be taken, during the first trimester of pregnancy, a routine opt-out screening for HIV infection. When the physician or other health care professional determines certain pregnant women to be at high risk for acquiring HIV infection, such women shall be administered a repeat screening during the third trimester or at the time of labor and delivery. When a pregnant woman’s HIV status is unknown for any reason at the time of labor and delivery, such woman shall be screened for HIV infection as soon as possible within medical standards. When an HIV rapid test kit is used for screening, a confirmatory sample shall be submitted for serological testing which meets the standards recognized by the United States public health service for the detection of HIV to a laboratory approved by the secretary of health and environment for such serological tests. A pregnant woman shall have the right to refuse screening under this subsection at any time. Before any screening is performed under this subsection, the pregnant woman shall be informed in writing of the provisions of this subsection and the purposes and benefits of the screening, and the pregnant woman shall sign a form provided by the department of health and environment to authorize or opt-out of the screening. The form shall contain the following wording: “I test all of my pregnant patients for HIV as part of the panel of routine tests to alert me to any conditions that can have a very serious effect on your pregnancy and your baby. You will be tested for HIV unless you tell me not to.”

(b) When the mother’s HIV status is unknown because of refusal to take such screening during the pregnancy or any other reasons, such mother’s newborn child shall be screened with an HIV test as soon as possible within medical standards to determine if prophylaxis

is needed. A mother's or a guardian's consent is not required to screen such newborn child, except that this subsection shall not apply to any newborn child whose parents object to the test as being in conflict with their religious tenets and practices. Documentation of a mother's HIV status shall be recorded in both the mother's and newborn's medical records. The mother of the child shall be informed in writing of the provisions of this subsection and of the purposes and benefits of the screening and shall sign a form stating that the mother has received the information.

(c) The secretary of health and environment is hereby authorized to adopt rules and regulations, within six months from the effective date of this section, establishing guidelines for routine HIV infection screening for pregnant women and each newborn child where the HIV status of the mother is unknown at the time of birth. These rules and regulations shall be based on the recommendations and best practices established by the United States centers for disease control and prevention and public health service task force recommendations for use of antiretroviral drugs in pregnant HIV infected women for maternal health and interventions to reduce perinatal HIV transmission in the United States.

(d) As used in this section, physician, HIV and HIV infection have the meanings defined in K.S.A. 65-6001, and amendment thereto.

(e) This section shall be effective on and after July 1, 2010.;

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

"Sec. 4. On and after July 1, 2010, K.S.A. 65-6504 is hereby amended to read as follows: 65-6504. (a) On or after September 1, 1992, it shall be unlawful for any person to engage in the practice of speech-language pathology or audiology in the state of Kansas unless such person has been issued a valid license pursuant to this act or is specifically exempted from the provisions of this act. It shall be unlawful for any person to hold oneself out to the public as a "speech pathologist," "speech therapist," "speech correctionist," "speech clinician," "language pathologist," "voice therapist," "voice pathologist," "logopedist," "communicologist," "aphasiologist," "phoniatrist," "audiologist," "audiometrist," "hearing therapist," "hearing clinician," "hearing aid audiologist," or any variation, unless such person is licensed under this act as a speech-language pathologist or audiologist.

(b) No person licensed under this act shall be authorized to engage in the practice of dispensing and fitting hearing aids as defined under K.S.A. 74-5807 and amendments thereto unless such person is also licensed or holds a certificate of endorsement under the hearing aid act to engage in the practice of dispensing and fitting hearing aids.

(c) Persons licensed under this act to engage in the practice of speech-language pathology or audiology shall not be deemed to be engaged in the practice of the healing arts when practicing under and in accordance with this act.

(d) *Persons licensed under this act to engage in the practice of audiology with doctorate degrees shall use the appropriate words or letters, such as "AuD," "PhD," "EdD" and "ScD," when using the letters or term "Dr." or "Doctor" to identify themselves.*

Sec. 5. On and after July 1, 2010, K.S.A. 65-6505 is hereby amended to read as follows: 65-6505. (a) Speech-language pathologists or audiologists shall meet the following qualifications for licensure under this act:

~~(a)~~ (1) *Except as otherwise provided in subsection (b), possession of at least a master's degree or equivalent in speech-language pathology or audiology from an educational institution with standards consistent with those of the state universities of Kansas approved by the secretary pursuant to rules and regulations;*

~~(b)~~ (2) *completion of supervised clinical practicum experiences from an educational institution or its cooperating programs the content of which shall be consistent with the standards of the state universities of Kansas and delineated in the rules and regulations;*

~~(c)~~ (3) *except as otherwise provided in subsection (c), completion of a postgraduate professional experience pursuant to rules and regulations; and*

~~(d)~~ (4) *passage of an examination in speech-language pathology or audiology pursuant to rules and regulations.*

(b) *Any individual seeking licensure as an audiologist on or after January 1, 2012, shall possess at least a doctorate degree or equivalent in audiology from an educational institution with standards consistent with those of the state universities of Kansas approved by the secretary pursuant to rules and regulations. Any individual who possesses at least a master's*

degree or equivalent in audiology prior to January 1, 2012, shall be deemed to have met the educational requirement of subsection (a)(1) for licensure as an audiologist.

(c) Any applicant who possesses an audiology clinical doctoral degree shall be exempt from the requirements in subsection (a)(3).;

Also on page 3, following line 4, by inserting the following:

“Sec. 7. On and after July 1, 2010, K.S.A. 65-6504 and 65-6505 are hereby repealed.”

And by renumbering sections accordingly;

On page 1, in the title, by striking all in line 13; in line 14, by striking all preceding the semicolon and inserting “to screening of diseases; concerning licensure of audiologists”; in line 15, following “amending” by inserting “K.S.A. 65-6504 and 65-6505 and”; in line 16, by striking “section” and inserting “sections”;

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

BRENDA LANDWEHR

DAVID CRUM

GERALDINE FLAHARTY

Conferees on part of House

JIM BARNETT

VICKI SCHMIDT

LAURA KELLY

Conferees on part of Senate

Senator Barnett moved the Senate adopt the Conference Committee Report on **SB 62**.

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

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

Nays: Pyle.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 83**, 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 as House Substitute for Senate Bill No. 83, as follows:

On page 1, in lines 15 and 21, preceding “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 3, in lines 4 and 26, preceding “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 4, in lines 17 and 27, preceding “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 5, in lines 12 and 33, preceding “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 6, in line 29, preceding “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 7, in line 21, preceding “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 8, in lines 13 and 26, preceding “K.S.A.” by inserting “On and after January 1, 2011.”; in line 34, by striking “Nothing” and inserting “On and after January 1, 2011, nothing”; in line 37, by striking “required” and inserting “require”; in line 43, preceding “K.S.A.” by inserting “On and after January 1, 2011.”;

On page 10, following line 14, by inserting the following:

“Sec. 15. K.S.A. 2009 Supp. 65-2910 is hereby amended to read as follows: 65-2910.

(a) The license of every licensed physical therapist and the certification of every certified physical therapist assistant shall expire on the date established by rules and regulations of the board which may provide renewal throughout the year on a continuing basis. In each

case in which a license or certificate is renewed for a period of time of less than one year, the board may prorate the amount of the fee established under K.S.A. 65-2911 and amendments thereto. The request for renewal shall be on a form provided by the board and shall be accompanied by the renewal fee established under K.S.A. 65-2911 and amendments thereto which shall be paid not later than the expiration date of the license or certificate.

(b) The board shall require every licensed physical therapist or certified physical therapist assistant as a condition of renewal to submit with the application for a renewal evidence of satisfactory completion of a program of continuing education required by the board. The board shall establish the requirements for each such program of continuing education by rules and regulations. In establishing such requirements the board shall consider any existing programs of continuing education currently being offered to licensed physical therapists or certified physical therapist assistants.

(c) At least 30 days before the expiration of the license of a physical therapist or the certificate of a physical therapist assistant, the board shall notify the licensee or certificate holder of the expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If the licensee or certificate holder fails to pay the renewal fee by the date of expiration, the licensee or certificate holder shall be given a second notice that the license or certificate has expired and the license or certificate may be renewed only if the renewal fee and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, the license or certificate shall be canceled for failure to renew and shall be reissued only after the physical therapist or physical therapist assistant has been reinstated under subsection (d).

(d) Any licensee or certificate holder who allows the license or certificate to be canceled by failing to renew may be reinstated upon recommendation of the board, upon payment of the reinstatement fee and upon submitting evidence of satisfactory completion of any applicable reeducation and continuing education requirements established by the board. The board shall adopt rules and regulations establishing appropriate reeducation and continuing education requirements for reinstatement of persons whose licenses or certificates have been canceled for failure to renew.

(e) (1) There is hereby created the designation of inactive license. The board is authorized to issue an inactive license to any physical therapist who makes written application for a license as a physical therapist on a form provided by the board and remits the fee established pursuant to K.S.A. 65-2911, and amendments thereto. The board may issue an inactive license only to a person who meets all the requirements for a license to practice as a physical therapist and who does not actively practice as a physical therapist in this state. An inactive license shall not entitle the holder to render professional services as a physical therapist. The provisions of subsections (c) and (d) relating to expiration, renewal and reinstatement of a license shall be applicable to an inactive license issued under this subsection. Each inactive licensee may apply to engage in active practice by providing to the board proof that a policy of professional liability insurance will be maintained in compliance with K.S.A. 2009 Supp. 65-2920, and amendments thereto, and rules and regulations adopted by the board.

(2) *For the licensee whose license has been inactive for less than two years, the board shall adopt rules and regulations establishing appropriate continuing education requirements for exempt licensees to become licensed to regularly practice physical therapy within Kansas. Any licensee whose license has been inactive for more than two years may be required to complete such additional testing, training or education as the board may deem necessary to establish the licensee's present ability to practice with reasonable skill and safety.*

(f) (1) *There is hereby created a designation of exempt license. The board is authorized to issue an exempt license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an exempt license established pursuant to K.S.A. 65-2911, and amendments thereto. The board may issue an exempt license to a person who is not regularly engaged in the practice of physical therapy in Kansas and who does not hold oneself out to the public as being professionally engaged in such practice. An exempt license shall entitle the holder to all privileges attendant to the practice of physical therapy for which such license is issued. Each exempt license may be renewed subject to the*

provisions of this section. Each exempt licensee shall be subject to all provisions of the physical therapy act, except as otherwise provided in this subsection. The holder of an exempt license shall be required to submit evidence of satisfactory completion of a program of continuing education required by this section. Each exempt licensee may apply for a license to regularly engage in the practice of physical therapy upon filing a written application with the board. The request shall be on a form provided by the board and shall be accompanied by the license fee established pursuant to K.S.A. 65-2911, and amendments thereto.

(2) For the licensee whose license has been exempt for less than two years, the board shall adopt rules and regulations establishing appropriate continuing education requirements for exempt licensees to become licensed to regularly practice physical therapy within Kansas. Any licensee whose license has been exempt for more than two years and who has not been in the active practice of physical therapy or engaged in a formal educational program since the license has been exempt may be required to complete such additional testing, training or education as the board may deem necessary to establish the licensee's present ability to practice with reasonable skill and safety.

(3) Nothing in this subsection shall be construed to prohibit a person holding an exempt license from serving as a paid employee or unpaid volunteer of: (A) A local health department as defined by K.S.A. 65-241, and amendments thereto, or (B) an indigent health care clinic as defined by K.S.A. 75-6102, and amendments thereto.

(4) A person who practices under an exempt license shall not be deemed to be rendering professional service as a physical therapist in this state for the purposes of K.S.A. 2009 Supp. 65-2920, and amendments thereto.

(g) (1) There is hereby created a designation of federally active license. The board is authorized to issue a federally active license to any licensee who makes written application for such license on a form provided by the board and remits the same fee required for a license established under K.S.A. 65-2911, and amendments thereto. The board may issue a federally active license only to a person who meets all the requirements for a license to practice physical therapy in Kansas and who practices that branch of physical therapy solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies. A person issued a federally active license may engage in limited practice outside of the course of federal employment consistent with the scope of practice of exempt licenses under subsection (f), except that the scope of practice of a federally active licensee shall be limited to providing direct patient care services gratuitously or providing supervision, direction or consultation for no compensation except that nothing in this subsection (g)(1) shall prohibit a person licensed to practice physical therapy issued a federally active license from receiving payment for subsistence allowances or actual and necessary expenses incurred in providing such services; and rendering professional services as a charitable health care provider as defined in K.S.A. 75-6102, and amendments thereto.

(2) The provisions of subsections (a), (b), and (d) of this section relating to continuing education, expiration and renewal of a license shall be applicable to a federally active license issued under this subsection.

(3) A person who practices under a federally active license shall not be deemed to be rendering professional service as a physical therapist in this state for the purposes of K.S.A. 2009 Supp. 65-2920, and amendments thereto.

Sec. 16. K.S.A. 2009 Supp. 65-2911 is hereby amended to read as follows: 65-2911. (a) The board may adopt such rules and regulations as necessary to carry out the purposes of this act. The executive director of the board shall keep a record of all proceedings under this act and a roster of all persons licensed or certified under the act. The roster shall show the name, address, date and number of the original license or certificate, and the renewal thereof.

(b) (1) The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:

Application based upon certificate of prior examination, not more than	\$80
Application based on examination, not more than	100
Exempt license fee, not more than	80
Annual renewal fee, not more than	70

<i>Exempt license renewal fee, not more than</i>	70
Late renewal fee, not more than	75
Reinstatement fee, not more than	80
Certified copy of license or certificate, not more than	15
Duplicate certificate	15
Temporary permit	25
<i>Written verification of license</i>	25

(2) The board shall charge and collect in advance fees for any examination administered by the board under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto as fixed by the board by rules and regulations in an amount equal to the cost to the board of the examination. If the examination is not administered by the board, the board may require that fees paid for any examination under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto be paid directly to the examination service by the person taking the examination.

(3) The fees fixed by the board by rules and regulations under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto and in effect immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(c) The board shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from such 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 president of the board or by a person or persons designated by the president of the board.”;

And by renumbering sections accordingly;

Also on page 10, in line 15, preceding “K.S.A.” by inserting “On and after January 1, 2011,”;

On page 12, following line 21, by inserting the following:

“Sec. 18. K.S.A. 2009 Supp. 65-2910 and 65-2911 are hereby repealed.”;

Also on page 12, in line 22, preceding “K.S.A.” by inserting “On and after January 1, 2011,”; in line 26, by striking “January 1, 2011, and”;

On page 1, in the title, in line 9, following “concerning” by inserting “the state board of healing arts; relating to”; also in line 9, by striking “licensure” and inserting “concerning physical therapists”; in line 11, preceding “65-2913” by inserting “65-2910, 65-2911,”;

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

BRENDA LANDWEHR
DAVID CRUM
GERALDINE FLAHARTY
Conferees on part of House

JIM BARNETT
VICKI SCHMIDT
LAURA KELLY
Conferees on part of Senate

Senator Barnett moved the Senate adopt the Conference Committee Report on **H Sub for SB 83**.

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

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huelskamp, Huntington, Kelly, Kelsey, Kultala, Lee, Lynn, Marshall, Masterson, McGinn, Morris, Ostmeyer, Owens, Petersen,

Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 262**, 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 as HOUSE Substitute for Senate Bill No. 262, as follows:

On page 22, in line 12, after "systems," by inserting "first responder systems,";

On page 28, in line 33, by striking "or" and inserting a comma; in line 34, before the period by inserting "or first responders";

On page 31, in line 41, before "medical" where it appears for the last time by inserting "emergency"; in line 42, after "systems," by inserting "first responder systems,";

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

BRENDA LANDWEHR
DAVID CRUM
GERALDINE FLAHARTY
Conferees on part of House

PETE BRUNGARDT
ROGER P. REITZ
OLETHA FAUST-GOUDEAU
Conferees on part of Senate

Senator Brungardt moved the Senate adopt the Conference Committee Report on **H Sub for SB 262**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 269**, 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 as HOUSE Substitute for SENATE Bill No. 269, as follows:

On page 1, by striking all in lines 13 through 36 and inserting the following:

"Section 1. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the truth in musical performance advertising act. Sections 1 through 5, and amendments thereto, shall be part of and supplemental to the Kansas consumer protection act.

Sec. 2. The following words and phrases when used in the truth in musical performance advertising act, shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) "Recording group" means a vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a disk, tape or other phono-record, in which the sounds are embodied.

Sec. 3. It shall be unlawful for any person to advertise or conduct a live musical performance or production in this state through the use of a false, deceptive or misleading affiliation, connection or association between a performing group and a recording group. This section does not apply if any of the following apply:

(a) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States patent and trademark office.

(b) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute.

(d) The advertising does not relate to a live musical performance or production taking place in this state.

(e) The performance or production is expressly authorized by the recording group.

(f) The newspaper, magazine, news wire service, television station or radio station which advertises or promotes the live musical performance or production and is not aware that such performance or production is using a false, deceptive or misleading affiliation, connection or association with another group.

Sec. 4. (a) Whenever the attorney general or a county or district attorney has reason to believe that any person is advertising or conducting or is about to advertise or conduct a live musical performance or production in violation of section 3, and amendments thereto, and that proceedings would be in the public interest, the attorney general or county or district attorney may bring an action against the person to restrain by temporary or permanent injunction that practice.

(b) Whenever any court issues a permanent injunction to restrain and prevent violations of the truth in musical performance advertising act as authorized in subsection (a), the court may direct that the defendant restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any violation of the truth in musical performance advertising act, under terms and conditions to be established by the court.

(c) Any person who violates the truth in musical performance advertising act shall be liable for a civil penalty as provided in subsection (a) of K.S.A. 50-636, and amendments thereto, which civil penalty shall be in addition to any other relief which may be granted. Each performance or production declared unlawful shall constitute a separate violation.

Sec. 5. It shall be an affirmative defense to a violation of the truth in musical performance advertising act if the person described in section 3, and amendments thereto, has a written contract with the performing or recording group, that states that:

(a) The performing group is an authorized registrant pursuant to subsection (a) of section 3, and amendments thereto; or

(b) at least one member of the performing group was a member of the recording group pursuant to subsection (b) of section 3, and amendments thereto.

Sec. 6. K.S.A. 50-676 is hereby amended to read as follows: 50-676. As used in ~~this act~~ *K.S.A. 50-676 through 50-679, and amendments thereto:*

(a) "Elder person" means a person who is 60 years of age or older.

(b) "Disabled person" means a person who has physical or mental impairment, or both, which substantially limits one or more of such person's major life activities.

(c) "Immediate family member" means parent, child, stepchild or spouse.

~~(d)~~ (d) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(e) "Member of the military" means a member of the armed forces or national guard on active duty or a member of an active reserve unit in the armed forces or national guard.

~~(f)~~ (f) "Physical or mental impairment" means the following:

(1) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss substantially affecting one or more of the following body systems: Neurological; musculo-

skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or

(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation and emotional illness.

(g) "Protected consumer" means:

(1) An elder person;

(2) a disabled person;

(3) a veteran;

(4) the surviving spouse of a veteran; and

(5) an immediate family member of a member of the military.

(h) "Substantially limits" means:

(1) Unable to perform a major life activity that the average person in the general population can perform; or

(2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity. Minor temporary ailments or injuries shall not be considered physical or mental impairments which substantially limit a person's major life activities. Minor temporary ailments include, but are not limited to, colds, influenza or sprains or minor injuries.

(i) "Veteran" means a person who has served in the armed forces of the United States of America and separated from the armed forces under honorable conditions.

Sec. 7. K.S.A. 50-677 is hereby amended to read as follows: 50-677. If any person is found to have violated any provision of the Kansas consumer protection act, and such violation is committed against ~~elder or disabled persons~~ a protected consumer, in addition to any civil penalty otherwise provided by law, the court may impose an additional civil penalty not to exceed \$10,000 for each such violation.

Sec. 8. K.S.A. 50-678 is hereby amended to read as follows: 50-678. In determining whether to impose a civil penalty as provided in ~~this act~~ K.S.A. 50-676 through 50-679, and amendments thereto, and the amount of such civil penalty, the court shall consider the extent to which one or more of the following factors are present:

(a) Whether the defendant's conduct was in disregard of the rights of the ~~elder or disabled person~~ protected consumer;

(b) whether the defendant knew or should have known that the defendant's conduct was directed to an ~~elder or disabled person~~ a protected consumer;

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

(d) whether the defendant's conduct caused an ~~elder or disabled person~~ a protected consumer to suffer any of the following:

(1) Mental or emotional anguish;

(2) loss of or encumbrance upon a primary residence of the ~~elder or disabled person~~ protected consumer;

(3) loss of or encumbrance upon the ~~elder or disabled person's~~ protected consumer's principal employment or principal source of income;

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

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

(6) loss of assets essential to the health and welfare of the ~~elder or disabled person~~ protected consumer; or

(e) any other factors the court deems appropriate.

Sec. 9. K.S.A. 50-679 is hereby amended to read as follows: 50-679. ~~An elder or disabled person~~ A *protected consumer* who suffers damage or injury as a result of a violation of the Kansas consumer protection act has a cause of action to recover actual damages, punitive damages, if appropriate, and reasonable attorney fees. Restitution ordered pursuant to this section has priority over a civil penalty imposed pursuant to K.S.A. 50-677, *and amendments thereto*.

Sec. 10. K.S.A. 50-679a is hereby amended to read as follows: 50-679a. The provisions of K.S.A. 50-676 through 50-679, *and amendments thereto*, shall be part of and supplemental to the consumer protection act.

Sec. 11. K.S.A. 50-676, 50-677, 50-678, 50-679 and 50-679a are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.”;

In the title, in line 9, by striking all after “concerning”; by striking all in line 10 and inserting “the Kansas consumer protection act; relating to advertising and conducting certain live musical performances or productions; certain restrictions, enforcement and penalties; enhanced civil penalties for certain victims; amending K.S.A. 50-676, 50-677, 50-678, 50-679 and 50-679a and repealing the existing sections.”;

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
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

Senator Owens moved the Senate adopt the Conference Committee Report on **H Sub for SB 269**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 359**, 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 3, in line 8, by striking “\$25,000” and inserting “\$36,000”; in line 12, by striking “\$25,000” and inserting “\$36,000”; in line 15, after “72-978” by inserting “or K.S.A. 2009 Supp. 72-998”;

On page 4, in line 40, by striking “(a)” and inserting “(b)”;

On page 6, after line 40, by inserting the following:

“(6) The provisions of this subsection (f) shall expire on June 30, 2013.”;

On page 7, in line 38, by striking “72-988” and inserting “72-998”;

In the title, in line 16, by striking “72-”; in line 17, by striking “988” and inserting “72-998”;

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

CLAY AURAND
DEENA HORST
VALDENIA WINN
Conferees on part of House

JEAN SCHODORF
JOHN VRATIL
ANTHONY HENSLEY
Conferees on part of Senate

Senator Schodorf moved the Senate adopt the Conference Committee Report on **SB 359**.

On roll call, the vote was: Yeas 29, Nays 11, Present and Passing 0, Absent or Not Voting 0.

Yeas: Apple, Barnett, Brownlee, Brungardt, Colyer, Donovan, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, Kultala, Lynn, Marshall, Masterson, McGinn, Morris, Petersen, Pilcher-Cook, Reitz, Schmidt V, Schodorf, Steineger, Vratil, Wagle.

Nays: Abrams, Bruce, Huelskamp, Lee, Ostmeyer, Owens, Pyle, Schmidt D, Taddiken, Teichman, Umbarger.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **Senate Substitute for Substitute for HB 2509**, 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 of the Whole amendments, as follows:

On page 1, in line 20, after "where" by inserting "such offense resulted in a conviction and"; in line 25, by striking "knowing" and inserting "intentional";

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

Senator Owens moved the Senate adopt the Conference Committee Report on **S Sub for Sub HB 2509**.

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

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

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: Having previously, and most reluctantly, voted "Present But Passing" on **S Sub for Sub HB 2509** (concerning a \$150,000 minimum civil suit damage threshold for victims of child pornography), I am now pleased, and relieved, to be able to strongly support the product of the Judiciary Conference Committee. My only concern in the original bill, which has herein been alleviated, was for those teens choosing to exchange

arguably pornographic photos, by a method commonly known as “sexting” wherein electronic images are produced and shared (or by other means), and later be sued by an undoubtably “former” partner. With the basis in **S Sub for Sub for HB 2509** now being a crime under *existing* law (which a “Romeo and Juliet” age proximity does contemplate as a defense) for the *civil* (\$150,000 +) suit, I am satisfied with this necessary and timely measure crafted in compromise by the great legal minds, and mine, in the Conference Committee.
— DAVID HALEY

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2528**, 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 2, in line 10, by striking “one year” and inserting “two years”;

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

THOMAS OWENS
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

LANCE KINZER
JEFF WHITHAM
JANICE PAULS
Conferees on part of House

Senator Owens moved the Senate adopt the Conference Committee Report on **S Sub for HB 2528**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2554**, 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 3, in line 37, by striking all after “thereto”; in line 38, by striking all before the period;

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

KARIN BROWNLEE
JULIA LYNN
TOM HOLLAND
Conferees on part of Senate

LANA GORDON
OWEN DONOHUE
LISA BENLON
Conferees on part of House

Senator Brownlee moved the Senate adopt the Conference Committee Report on **HB 2554**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2605**, 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 of the Whole amendments, as follows:

On page 2, in line 26, after the comma by inserting “unless the municipality has an agreement with the laboratory providing services that sets a restitution amount to be paid by the person that is directly related to the cost of laboratory services,”;

On page 3, in line 38, by striking “\$100” and inserting “\$200”; in line 42, after “custody” by inserting “, unless the person can prove to the court that the person: (1) Has paid such fees in connection with a prior conviction or adjudication; and (2) did not submit specimens of blood or an oral or other biological sample authorized by the Kansas bureau of investigation to the Kansas bureau of investigation for the current offense of conviction or adjudication”;

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

THOMAS OWENS
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

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

Senator Owens moved the Senate adopt the Conference Committee Report on **HB 2605**.

On roll call, the vote was: Yeas 38, Nays 2, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Faust-Goudeau, Haley.

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2656**, 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 72, in line 33, by striking “and” and inserting a comma; also in line 33, before the period, by inserting “, and days on which the office of the clerk of the court is not accessible”;

On page 73, in line 11, by striking “or” and inserting a comma; also in line 11, before “and” where it appears for the last time by inserting “or days on which the office of the clerk of the court is not accessible.”;

On page 79, in line 9, by striking “and” and inserting a comma; also in line 9, before “from” by inserting “and days on which the office of the clerk of the court is not accessible.”;

On page 255, in line 1, after “action” by inserting a comma; in line 40, after “known,” by inserting “and”;

On page 279, in line 30, by striking “15” and inserting “14”;

On page 286, in line 31, by striking “five” and inserting “seven”;

On page 307, in line 14, by striking “and 60-260”;

On page 325, in line 30, after “59-2947,” by inserting “59-2947, as amended by section 11 of 2010 House Bill No. 2364,”; in line 31, after “59-3052,” by inserting “59-3052, as amended by section 12 of 2010 House Bill No. 2364,”;

On page 326, in line 7, after “2229,” by inserting “38-2229, as amended by section 3 of 2010 House Bill No. 2364,”; also in line 7, after “38-2343,” by inserting “38-2343, as amended by section 8 of 2010 House Bill No. 2364,”; in line 8, after “60-206,” by inserting “60-206, as amended by section 14 of 2010 House Bill No. 2364,”;

In the title, in line 42, after “K.S.A.” by inserting “59-2947, as amended by section 11 of 2010 House Bill No. 2364, 59-3052, as amended by section 12 of 2010 House Bill No. 2364,”; also in line 42, after “60-258b” by inserting “and K.S.A. 2009 Supp. 38-2229, as amended by section 3 of 2010 House Bill No. 2364, 38-2343, as amended by section 8 of 2010 House Bill No. 2364, and 60-206, as amended by section 14 of 2010 House Bill No. 2364”;

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

THOMAS C. OWENS

DEREK SCHMIDT

DAVID HALEY

Conferees on part of Senate

LANCE KINZER

JEFF WHITHAM

JANICE L. PAULS

Conferees on part of House

Senator Owens moved the Senate adopt the Conference Committee Report on **HB 2656**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2668**, 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 20, in line 14, by striking “232” and inserting “229”; in line 16, by striking “233” and inserting “230”;

On page 21, in line 14, by striking “196” and inserting “193”; in line 16, by striking “205” and inserting “202”; in line 18, by striking “205” and inserting “202”;

On page 25, in line 17, by striking “288” and inserting “285”;

On page 40, in line 27, by striking “232,”; in line 28, by striking “233 and 234” and inserting “229, 230 and 231”;

On page 50, in line 34, by striking “287” and inserting “284”;

On page 56, in line 32, by striking “250” and inserting “247”;

On page 96, in line 4, by striking “189 or 190” and inserting “186 or 187”;

On page 106, in line 7, by striking “257” and inserting “254”;

On page 115, in line 24, by striking “184” and inserting “181”; in line 26, by striking “182” and inserting “179”;

On page 125, in line 42, by striking “189” and inserting “186”; also in line 42, by striking “190” and inserting “187”;

On page 126, in line 12, by striking “189” and inserting “186”; also in line 12, by striking “190” and inserting “187”; in line 16, by striking “189” and inserting “186”; in line 17, by striking “190” and inserting “187”; in line 29, by striking “189, 190, 192,.”; in line 30, by striking “193 or 196” and inserting “186, 187, 189, 190 or 193”;

On page 131, in line 26, by striking “201 through 204” and inserting “198 through 201”;

On page 142, in line 14, by striking “217 through 223” and inserting “214 through 220”;

On page 147, in line 15, by striking “226 through 231” and inserting “223 through 228”;

On page 152, in line 5, by striking “226” and inserting “223”; in line 16, by striking “226” and inserting “223”; in line 27, by striking “228” and inserting “225”; in line 28, by striking “226” and inserting “223”;

On page 157, in line 35, by striking “242” and inserting “239”;

On page 158, in line 20, by striking “244 through 272” and inserting “241 through 269”;

On page 159, in line 29, by striking “244 through 259” and inserting “241 through 256”; in line 30, by striking “274 through 289” and inserting “271 through 286”;

On page 160, in line 25, by striking “287” and inserting “284”; in line 35, by striking “274” and inserting “271”;

On page 161, in line 28, by striking “252” and inserting “249”; in line 31, by striking “245” and inserting “242”;

On page 162, in line 20, by striking “180” and inserting “177”; in line 43, by striking “245” and inserting “242”;

On page 163, in line 30, by striking “249” and inserting “246”;

On page 164, in line 8, by striking “249” and inserting “246”; in line 21, by striking “308” and inserting “305”; in line 25, by striking “308” and inserting “305”;

On page 165, in line 43, by striking “308” and inserting “305”;

On page 166, in line 8, by striking “308” and inserting “305”; in line 13, by striking “289” and inserting “286”; in line 16, by striking “308” and inserting “305”; in line 24, by striking “308” and inserting “305”;

On page 172, in line 12, by striking “252” and inserting “249”;

On page 175, in line 39, by striking “289” and inserting “286”; in line 42, by striking “288” and inserting “285”; in line 43, by striking “289” and inserting “286”;

On page 176, in line 3, by striking “288” and inserting “285”; in line 4, by striking “289” and inserting “286”;

On page 184, in line 34, by striking “261 and 265” and inserting “258 and 262”;

On page 185, in line 13, by striking “267” and inserting “264”; in line 31, by striking “267” and inserting “264”;

On page 187, in line 5, by striking “261” and inserting “258”; in line 8, by striking “260” and inserting “257”; in line 9, by striking “260” and inserting “257”; in line 20, by striking “267” and inserting “264”; in line 34, by striking “267” and inserting “264”; in line 37, by striking “266” and inserting “263”; in line 42, by striking “266” and inserting “263”;

On page 188, in line 1, by striking “260” and inserting “257”; in line 6, by striking “263, 265, 266, 267 and 268” and inserting “260, 262, 263, 264 and 265”; in line 7, by striking “260” and inserting “257”; in line 16, by striking “260”; in line 17, by striking “262, 267, 268, 271 and 272” and inserting “257, 259, 264, 265, 268 and 269”; in line 29, by striking “263, 266, 267 and”; in line 30, by striking “268” and inserting “260, 263, 264 and 265”;

On page 189, in line 5, by striking “260, 262, 267,.”; in line 6, by striking “268, 271 and 272” and inserting “257, 259, 264, 265, 268 and 269”; in line 9, by striking “263, 266, 267 and”; in line 10, by striking “268” and inserting “260, 263, 264 and 265”;

On page 190, in line 4, by striking “266” and inserting “263”;

On page 191, in line 17, by striking “260” and inserting “257”;

On page 193, in line 5, by striking “233” and inserting “230”; in line 17, by striking “269” and inserting “266”; in line 40, by striking “269” and inserting “266”;

On page 194, in line 22, by striking “285 through 308” and inserting “282 through 305”; in line 39, by striking “269 or”; in line 40, by striking “270” and inserting “266 or 267”;

On page 197, in line 20, by striking “255” and inserting “252”; in line 23, by striking “245” and inserting “242”; in line 30, by striking “245” and inserting “242”;

On page 200, in line 9, by striking “274” and inserting “271”;

On page 202, in line 13, by striking “273” and inserting “270”; in line 17, by striking “273” and inserting “270”; in line 27, by striking “273” and inserting “270”; in line 30, by striking “273” and inserting “270”; in line 41, by striking “273” and inserting “270”;

On page 203, in line 1, by striking “273” and inserting “270”;

On page 204, in line 11, by striking “281” and inserting “278”; in line 14, by striking “280” and inserting “277”;

On page 205, in line 29, by striking “274” and inserting “271”; in line 32, by striking “278” and inserting “275”; in line 39, by striking “279” and inserting “276”;

On page 206, in line 1, by striking “258” and inserting “255”; in line 3, by striking “258” and inserting “255”; in line 38, by striking “285 through 308” and inserting “282 through 305” in line 42, by striking “285 through 308” and inserting “282 through 305”;

On page 207, in line 5, by striking “285 through 308” and inserting “282 through 305”; in line 18, by striking “285 through 308” and inserting “282 through 305”;

On page 208, in line 8, by striking “288” and inserting “285”; in line 9, by striking “289” and inserting “286”;

On page 211, in line 8, by striking “226” and inserting “223”; also in line 8, by striking “230” and inserting “227”; in line 11, by striking “291” and inserting “288”; in line 15, by striking “291” and inserting “288”; in line 20, by striking “226” and inserting “223”; also in line 20, by striking “230” and inserting “227”;

On page 213, in line 37, by striking “308” and inserting “305”;

On page 217, in line 30, by striking “288” and inserting “285”; in line 39, by striking “299” and inserting “296”;

On page 218, in line 37, by striking “285 through 308” and inserting “282 through 305”; On page 219, in line 7, by striking “305” and inserting “302”; in line 12, by striking “260, 261, 262, 265, 267, 268, 271 and 272” and inserting “257, 258, 259, 262, 264, 265, 268 and 269”; in line 16, by striking “233” and inserting “230”; in line 19, by striking “269” and inserting “266”; in line 21, by striking “270” and inserting “267”; in line 23, by striking “288” and inserting “285”;

On page 220, in line 11, by striking “289” and inserting “286”;

On page 221, in line 36, by striking “299” and inserting “296”;

On page 222, in line 37, by striking “294” and inserting “291”;

On page 223, in line 9, by striking “189” and inserting “186”; in line 11, by striking “197” and inserting “194”;

On page 224, in line 11, by striking “294” and inserting “291”;

On page 225, in line 39, by striking “308” and inserting “305”; in line 40, by striking “308” and inserting “305”;

On page 226, in line 2, by striking “308” and inserting “305”;

On page 227, in line 9, by striking “301” and inserting “298”;

On page 232, in line 22, by striking “299”; in line 23, by striking “or 300” and inserting “296 or 297”; in line 37, by striking “299 through 302” and inserting “296 through 299”;

On page 233, in line 9, by striking “299” and inserting “296”; in line 11, by striking “299” and inserting “296”; in line 34, by striking “251” and inserting “248”; in line 37, by striking “249” and inserting “246”; in line 40, by striking “249” and inserting “246”;

On page 239, in line 14, by striking “297” and inserting “294”; in line 27, by striking “251” and inserting “248”; in line 40, by striking “247” and inserting “244”;

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

THOMAS C. OWENS

DEREK SCHMIDT

DAVID HALEY

Conferees on part of Senate

LANCE KINZER

JEFF WHITHAM

JANICE L. PAULS

Conferees on part of House

Senator Owens moved the Senate adopt the Conference Committee Report on **HB 2668**.
On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The Conference Committee report was adopted.

CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

Senator Huelskamp moved the Senate concur in house amendments to **H Sub for Sub SB 514**.

Citing Rule 26, Senator Hensley made a substitute motion to postpone to day certain, Wednesday, April 28, 2010 at 10:00 a.m.

On roll call, the vote was: Yeas 22, Nays 18, Present and Passing 0, Absent or Not Voting 0.

Yeas: Bruce, Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Huntington, Kelly, Kultala, Lee, McGinn, Morris, Owens, Reitz, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Barnett, Brownlee, Colyer, Donovan, Holland, Huelskamp, Kelsey, Lynn, Marshall, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt D, Wagle.

The motion carried.

MESSAGE FROM THE HOUSE

The House adopts the conference committee report on **Senate Substitute for HB 2039**.

The House adopts the conference committee report on **Senate Substitute for HB 2432**.

The House adopts the conference committee report on **HB 2472**.

The House adopts the conference committee report on **HB 2501**.

The House adopts the conference committee report on **Senate Substitute for HB 2585**.

The House adopts the conference committee report on **SB 430**.

The House adopts the conference committee report on **Substitute for SB 353**.

The House adopts the conference committee report on **House Substitute for SB 381**.

ORIGINAL MOTION

On motion of Senator Barnett, the Senate acceded to the request of the House for a conference on **S Sub for HB 2310**.

The President appointed Senators Barnett, V. Schmidt and Kelly as conferees on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **Substitute for SB 353**, submits the following report:

The House recedes from all of its amendments to the bill;

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

Senator Owens moved the Senate adopt the Conference Committee Report on **Sub for SB 353**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 377**, 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 as House Substitute for Senate Bill No. 377, as follows:

On page 1, in line 19, by striking “a retainage bond,”; in line 22, by striking all before “security” and inserting “Alternate”; also in line 22, before “performance” by inserting “a”; also in line 22, by striking “and” and inserting “bond or a”; in line 23, by striking “bonds” and inserting “bond”;

On page 2, in line 10, by striking “, architect”; also in line 10, by striking “general”; also in line 10, by striking “determine” and inserting “determines”; in line 14, by striking “general”; in line 16, by striking “and architect”; in line 18, by striking “the” and inserting “all remaining”; in line 19, after “due” by inserting “to a contractor”; in line 20, before “subcontractor” by inserting “contractor or”; in line 21, by striking “under its subcontract”; in line 22, by striking “subcontract” and inserting “work”; in line 24, by striking all after “(d)”; by striking all in line 25; in line 26, by striking all before the period and inserting “An owner may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of a contractor”; following line 28, by inserting:

“(e) A contractor may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of a subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as part of the regular payment cycle.

(f) A subcontractor may withhold not more than 150% of the value of incomplete work that is the responsibility of another subcontractor, provided that the incomplete work is due to the fault of such other subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as a part of the regular payment cycle.”;

And by relettering remaining subsections accordingly;

Also on page 2, in line 31, by striking “general”; in line 33, by striking “one may be accepted. However”; in line 34, by striking “general”;

On page 3, in line 16, by striking “a retainage bond,”; in line 19, by striking “Provided however, alternate” and inserting “Alternate”; also in line 19, before “performance” by inserting “a”; also in line 19, by striking “and” and inserting “bond or a”; in line 20, by striking “bonds” and inserting “bond”;

On page 4, in line 16, by striking “, architect”; also in line 16, by striking “general”; also in line 16, by striking “determine” and inserting “determines”; in line 20, by striking “general”; in line 22, by striking “and architect”; in line 24, by striking all after “(c)”; by striking all in line 25; in line 26, by striking all before the period and inserting “An owner may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of a contractor”; following line 28, by inserting:

“(c) A contractor may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of a subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as part of the regular payment cycle.

(d) A subcontractor may withhold not more than 150% of the value of incomplete work that is the responsibility of another subcontractor, provided that the incomplete work is due to the fault of such other subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as a part of the regular payment cycle.”;

And by relettering remaining subsections accordingly;

Also on page 4, in line 29, by striking "general"; in line 31, by striking "general"; in line 32, by striking "1" and inserting "3"; in line 33, by striking "one may be accepted. However"; in line 34, by striking "general"; in line 36, by striking "1" and inserting "3"; in line 38, by striking "the" and inserting "all remaining"; in line 41, before "subcontractor" by inserting "contractor or"; in line 42, by striking "under its subcontract"; in line 43, by striking "subcontract" and inserting "work";

On page 5, by striking all in lines 19 through 43;

On page 6, by striking all in lines 1 through 43;

On page 7, by striking all in lines 1 through 43;

On page 8, by striking all in lines 1 through 43;

On page 9, by striking all in lines 1 through 43;

On page 10, by striking all in lines 1 through 43;

On page 11, by striking all in lines 1 through 43;

On page 12, by striking all in lines 1 through 43;

On page 13, by striking all in lines 1 through 23;

And by renumbering remaining sections accordingly;

Also on page 13, by striking lines 26 and 27;

In the title, in line 11, by striking all after the semicolon where it first appears; in line 12, by striking all before "amending"; in line 13, by striking the comma where it first appears and inserting "and"; also in line 13, by striking "60-1103, 60-1110 and 60-1111";

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

STEVEN R. BRUNK

JOHN C. GRANGE

LOUIS E. RUIZ

Conferees on part of House

KARIN BROWNLEE

JOHN VRATIL

TOM HOLLAND

Conferees on part of Senate

Senator Brownlee moved the Senate adopt the Conference Committee Report on **H Sub for SB 377**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **HOUSE Substitute for SB 381**, 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 follows:

On page 1, after line 14, by inserting the following:

"New Section 1. The provisions of this act are to be construed and applied retroactively.";

And by renumbering the remaining sections accordingly;

Also on page 1, in line 30, by striking "(3)" and inserting "(b)"; also in line 30, by striking "merely"; also in line 30, by striking "par-"; in line 31, by striking "agraph (2)" and inserting "subsection (a)(1)"; by striking all in lines 34 and 35;

On page 3, in line 13, by striking "degree" and inserting "use"; also in line 13, by striking "or"; in line 14, by striking "threat thereof"; also in line 14, by striking "man" and inserting "person"; in line 21, after "of" by inserting "any"; in line 24, after "of" by inserting "any";

in line 29, after "of" by inserting "deadly"; also in line 29, by striking "which is likely to cause death or great"; in line 30, by striking "bodily harm to the assailant"; in line 33, after "of" by inserting "such"; in line 34, after "of" by inserting "such";

On page 4, in line 1, before "force" by inserting "deadly"; also in line 1, by striking "likely to cause death or great bodily harm"; in line 2, by striking "use of"; in line 4, by striking "use of"; in line 20, after "of" by inserting "deadly"; also in line 20, by striking "likely to cause death or great"; in line 21, by striking "bodily harm"; also in line 21, by striking "use"; in line 22, by striking "of"; in line 37, by striking "meet force"; in line 38, by striking "with the use of force" and inserting "use any force which such person would be justified in using under article 32 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto";

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
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

Senator Owens moved the Senate adopt the Conference Committee Report on **H Sub for SB 381**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 430**, 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 11, by striking all in lines 34 and 35, and by inserting the following:

"Sec. 6. K.S.A. 12-1,104 is hereby amended to read as follows: 12-1,104. (a) Every taxpayer receiving earnings which are taxable under the provisions of this act shall file a return on or before ~~July 1 in the year 1983~~ *April 15 following the taxable year*, with the county clerk of the county in which the gross earnings has acquired situs ~~and on or before April 15 of each year thereafter with the director of taxation of the state department of revenue~~. Such return shall contain such information and be made upon forms prescribed ~~and provided by the director of taxation~~ *and provided by the county clerk*. ~~On or before June 30 of each year, the director of taxation shall certify to the county clerk of each county the amount of taxable earnings received by each taxpayer during the taxable year of the taxpayer ending in the preceding calendar year.~~ The county clerk shall compute the tax due and payable on such taxable earnings of each taxpayer and shall certify such amount to the county treasurer. The director of taxation shall ~~include forms prescribe to the county clerk the form~~ for the making of such return and a current listing of each taxing subdivision imposing a tax on gross earnings derived from money, notes and other evidence of debt for which the listing has been received pursuant to subsection (d) of K.S.A. 12-1,101 by July 15 of the year preceding the year of imposition of the tax ~~with each state income tax return distributed by the state department of revenue.~~

(b) A return listing the gross earnings of every resident conservatee which are taxable pursuant to this act shall be filed by the conservator of such conservatee. The return of

every resident minor shall be filed by the minor's father, if living and of sound mind, but if such father is not living or is an incapacitated person, by the minor's mother or if neither the father or mother is living, by the person having possession or control of the minor's property.

A return listing the gross earnings of a resident trustee or cotrustee of a revocable trust created by a resident settlor which are taxable pursuant to this act shall be filed by the resident settlor. A return listing the gross earnings of a resident trustee or cotrustee of an irrevocable or testamentary trust created by a resident settlor or a resident decedent which are taxable pursuant to this act shall be filed by any beneficiary residing in this state who receives earnings from such trust, to the extent of such earnings, otherwise a return listing such gross earnings shall be filed by the resident trustee to the extent that such earnings are not distributed. A nonresident beneficiary shall not be obligated to file a return listing earnings taxable pursuant to this act nor shall the trustee be obligated to file a return listing the same to the extent they were distributed to a nonresident beneficiary. Where a resident trustee or cotrustee is acting under a revocable, irrevocable or testamentary trust of a nonresident settlor or nonresident decedent, the trustee shall not be required to file a return listing earnings taxable pursuant to this act, but any beneficiary of such trust, residing in this state, who receives or is entitled to receive such earnings from such trust shall be required to file a return. Any resident of this state including the settlor of a revocable trust who receives or is entitled to receive earnings taxable pursuant to this act from a trust, not having a situs in this state, shall file a return listing such resident's share of such earnings.

For the purposes of this act, a settlor of a revocable trust shall be deemed to be entitled to the gross earnings on money, notes and other evidence of debt of such trust whether or not such settlor actually receives the same and a beneficiary shall be deemed to be entitled to a share of such earnings if all or a specific part or percentage of the net income of the trust must be distributed to such beneficiary or if the beneficiary may withdraw all or a specific part of the net income. If such beneficiary may receive earnings only on the exercise of discretion by the trustee or on the occurrence of an event outside of the beneficiary's sole control such beneficiary shall not be deemed to have received the earnings and shall file a return listing only earnings actually received. If earnings of a trust which are taxable pursuant to this act are accumulated and subsequently distributed in a different calendar year than the year in which received by the trust and if the same are reported as income under the revenue laws of Kansas and regulations promulgated thereunder, and if a return listing such earnings has not been filed by the trustees in the year in which earned, then a return listing such earnings shall be filed by such beneficiary in the year in which the same are reported under the revenue laws of Kansas, but otherwise a return listing the same shall not be filed. Where the beneficiary of any trust is required to file a return listing earnings which are taxable pursuant to this act and which are held in trust, such beneficiary for purposes of this act shall be deemed to have received or to be entitled to receive such beneficiary's pro rata share of the earnings without specific allocation, unless the trust provides otherwise, and based upon the proportion which the beneficiary's share of the earnings bears to the total earnings of the trust. A return listing gross earnings taxable under this act which belong to the estate of a resident decedent shall be filed by the executor or administrator. If the decedent is a nonresident, such executor or administrator shall not be required to file a return listing such gross earnings.

A return listing the gross earnings of persons, companies or corporations which are taxable pursuant to this act, whose assets are in the hands of receivers shall be filed by such receivers and a return listing the gross earnings belonging to a corporation, and subject to this act, shall be filed by some person designated for that purpose by such corporation.

A return listing the gross earnings which are taxable pursuant to this act which belong to a corporation, association or a partnership shall be listed by an agent or partner. Unless subject to tax by reason of K.S.A. 12-1,103, *and amendments thereto*, no return listing the gross earnings from money, notes and other evidence of debt collected or received by any agent or representative of any person, company, or corporation, which is to be transmitted immediately to such person, company or corporation, shall be filed by such agent or representative, but such agent or representative shall, upon request, *shall* state under oath the

amount of such money or credits and ~~to whom the same has~~ *the person, company or corporation to whom such money or credits have* been or is to be transmitted.

Taxes levied pursuant to this act shall be paid by the person or fiduciary required to file such return.

Sec. 7. K.S.A. 2009 Supp. 79-2971 is hereby amended to read as follows: 79-2971. (a) Any individual who is responsible for collection or payment of excise taxes imposed under the provisions of K.S.A. 12-1692 et seq., 12-1696 et seq., 41-501 et seq., 79-3301 et seq., 79-3370 et seq., 79-3401 et seq., 79-3490 et seq., 79-34,108 et seq., 79-3817 et seq., 79-4101 et seq. or 79-41a01, and amendments thereto, or for control, receipt, custody or disposal of funds due and owing under such acts who willfully fails to collect such tax, or account for and pay over such tax, or attempts in any manner to evade or defeat such tax or the payment thereof shall be personally liable for the total amount of the tax evaded, or not collected, or not accounted for and paid over, together with any interest and penalty imposed thereon. The provisions of this section shall apply regardless of the: (1) Relationship with the taxpayer held by such individual; (2) form under which the taxpayer conducts business, whether a sole proprietorship, partnership or corporation; or (3) dissolution of the business. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

(b) A notice of assessment issued to a responsible individual shall be considered to be a proceeding for the collection of the tax liability of the business. If the liability of the business is determined in a proceeding that has become final, any notice of assessment to a responsible individual must be issued within three years after the proceeding against the business became final.

(c) Within 60 days after the mailing of a notice of assessment to a responsible individual, the person assessed may request an informal conference with the secretary of revenue under K.S.A. 79-3226, and amendments thereto, for a determination of whether such person is a responsible individual under subsection (a), and for a determination of the tax liability of the business.

(d) If a notice of assessment and a warrant are issued to a responsible individual pursuant to a jeopardy provision of chapter 79 of the Kansas Statutes Annotated, the person assessed may request that the informal conference held pursuant to subsection (c) be expedited. When such a request is made, the secretary shall schedule the conference to be held within 21 days after receipt of the request and shall issue a written final determination within 21 days after the close of the conference.

Sec. 8. K.S.A. 2009 Supp. 79-3298 is hereby amended to read as follows: 79-3298. (a) Every employer, payer, person or organization deducting and withholding tax shall remit the taxes and file returns in accordance with the following provisions:

(1) Whenever the total amount withheld exceeds \$100,000 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld in accordance with the following schedule: Each calendar month shall be divided into four remittance periods that end on the 7th, 15th, 21st and the last day of such month. If at the end of any one or all of such remittance periods the total undeposited taxes equal or exceed \$667, the taxes shall be remitted within three banking days. Saturdays, Sundays and legal holidays shall not be treated as banking days.

(2) Whenever the total amount withheld exceeds \$8,000 but does not exceed \$100,000 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the first 15 days of any month on or before the 25th day of the month. The employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the remainder of that month on or before the 10th day of the following month.

(3) Whenever the total amount withheld exceeds \$1,200 but does not exceed \$8,000 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld during any month on or before the 15th day of the following month.

(4) Whenever the total amount withheld exceeds \$200 but does not exceed \$1,200 in any calendar year, the employer, payer, person or organization deducting and withholding

tax shall remit the taxes withheld in any calendar quarter on or before the 25th day of the first month following the end of that calendar quarter.

(5) Whenever the total amount withheld does not exceed \$200 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld during that year on or before January 25 of the following year.

(b) Each remittance required under the provisions of subsection (a) shall be accompanied by a Kansas withholding tax remittance form *and shall be filed in the manner* prescribed ~~and furnished~~ by the director, *including electronic filing*.

(c) Every employer, payer, person or organization deducting and withholding tax and making remittances pursuant to subsection (a) shall file a return on a form *or in the format and shall file in the manner* prescribed ~~and furnished~~ by the director, *including electronic filing*, for each calendar year on or before the last day of February of the following year.

(d) The excess of any remittance over the actual taxes withheld in any withholding period shall be credited against the liability for following withholding periods until exhausted. A refund shall be allowed in accordance with K.S.A. 79-32,105, and amendments thereto, where an overpayment cannot be adjusted by an offset against the liability for a subsequent withholding period.

(e) For purposes of determining filing requirements, determinations of amounts withheld during a calendar year by employers, payers, persons or organizations deducting and withholding tax shall be made by the director upon the basis of amounts withheld by those employers, payers, persons or organizations during the preceding calendar year or by estimates in cases of employers, payers, persons or organizations having no previous withholding histories. The director is hereby authorized to modify the filing schedule for any employer, payer, person or organization deducting and withholding tax when it is apparent that the original determination was inaccurate.

(f) Whenever the director has cause to believe that money withheld by an employer, payer, person or organization deducting and withholding tax pursuant to this act may be converted, diverted, lost, or otherwise not timely paid in accordance with this section, the director shall have the power to require returns and payment from any such employer, payer, person or organization at any time at more frequent intervals than prescribed by this section in order to secure full payment to the state of all amounts withheld by such employer, payer, person or organization in accordance with this act.

Sec. 9. K.S.A. 2009 Supp. 79-32,100c is hereby amended to read as follows: 79-32,100c.

(a) If an employer, payer, person or organization deducting and withholding tax fails to deduct and withhold the tax as required under this act, and thereafter, the income tax against which the tax may be credited is paid, the tax required to be deducted and withheld shall not be collected from the employer, payer, person or organization. The payment of such tax does not, however, operate to relieve the employer, payer, person or organization from liability for penalties, interest or additions to the tax applicable with respect to such failure to deduct and withhold. The employer, payer, person or organization shall not be relieved under this provision from liability for payment of the tax required to be withheld unless it can be shown that the income tax against which the tax required to be withheld under this act may be credited has been paid.

(b) Every agent or other person having control, receipt, custody or disposal of, or paying the wages of an employee or group of employees employed by one or more employers, is for the purpose of this act designated to be an employer. In the case of the corporation, the officers and board of directors are likewise considered employers. Employers of classes named in this section shall be subject to all the provisions of law including penalties as is their principal. Any employer who willfully fails to collect the tax imposed by the Kansas withholding tax act or truthfully account for any pay over such tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall be subject to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to other penalties provided by law. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

Sec. 10. K.S.A. 79-32,107 is hereby amended to read as follows: 79-32,107. (a) All penalties and interest prescribed by K.S.A. 79-3228, and amendments thereto, for noncompliance with the income tax laws of Kansas shall be applicable for noncompliance with the

provisions of the Kansas withholding and declaration of estimated tax act relating to withholding tax which shall be enforced in the same manner as the Kansas income tax act. A penalty at the same rate per annum prescribed by subsection (b) of K.S.A. 79-2968, and amendments thereto, for interest upon delinquent or unpaid taxes shall be applied and added to a taxpayer's amount of underpayment of estimated tax due from the date the estimated tax payment was due until the same is paid or until the 15th day of the fourth month following the close of the taxable year for which such estimated tax is a credit, whichever date is earlier, but such penalty shall not be added if the total amount thereof does not exceed \$1. For purposes of this subsection, the amount of underpayment of estimated tax shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 90% of the tax shown on the return for the taxable year or, if no return was filed, 90% of the tax for such year, over the amount, if any, of the installment paid on or before the last date prescribed for payment. Amounts due from any employer on account of withholding or from any taxpayer for estimated tax may be collected by the director in the manner provided for the collection of state income tax in K.S.A. 79-3235, and amendments thereto. For purposes of this subsection, "underpayment of tax" means the difference between the amount of tax actually paid and the amount of tax which would have been required to be paid to avoid penalty pursuant to subsection (b) or (c).

(b) No penalty or interest shall be imposed upon any individual with respect to any underpayment of any installment if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year;

(2) zero if no return was required to be filed or if the tax liability on the individual's return was less than \$200 for the preceding taxable year;

(3) an amount equal to 66 $\frac{2}{3}$ %, in the case of individuals referred to in subsection (b) of K.S.A. 79-32,102, and amendments thereto, and 90%, in the case of all other individuals, of the tax for the taxable year computed by placing on an annualized basis, pursuant to rules and regulations adopted by the secretary of revenue, the taxable income for the months in the taxable year ending before the month in which the installment is required to be made.

(c) No penalty or interest shall be imposed upon any corporation with respect to any underpayment of any installment of estimated tax if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year, or zero if no return was required to be filed, or if the tax liability on the corporation's return was less than \$500 for the preceding taxable year; or

(2) (A) an amount equal to 90% of the tax for the taxable year computed by placing on an annualized basis the taxable income: (i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month; (ii) for the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month; (iii) for the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month; and (iv) for the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this subsection (2), the taxable income shall be placed on an annualized basis by (i) multiplying by 12 the taxable income referred to in subsection (2)(A), and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or 11, as the case may be) referred to in subsection (2)(A).

(d) If the employer, in violation of the provisions of this act, fails to deduct and withhold under this chapter, and thereafter the tax against which such withholding may be credited is paid, the amount otherwise required to be deducted and withheld shall not be collected from the employer, ~~but~~. This subsection shall in no case relieve the employer from liability

for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Any person required to collect, truthfully account for, and pay over any tax imposed by this act, who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to the other penalties of this section be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

(f) In case of failure by any employer required by subsection (b) of K.S.A. 79-3298, and amendments thereto, to remit any amount of withheld taxes by the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 15% of the amount of the underpayment. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be withheld and remitted over the amount, if any, remitted on or before the date prescribed therefor. The failure to remit for any withholding period shall be deemed not to continue beyond the last date prescribed for filing the annual return as required by subsection (d) of K.S.A. 79-3298, and amendments thereto. Penalty and interest as prescribed by K.S.A. 79-3228, and amendments thereto, shall not begin to accrue under subsection (a) of this section on the amount of any such underpayment until the due date of the annual return for the calendar year in which such failure to remit occurs.

(g) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (a), (e), or (f) of this section was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of said penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

Sec. 11. K.S.A. 2009 Supp. 79-3607 is hereby amended to read as follows: 79-3607. (a) Retailers shall make returns to the director at the times prescribed by this section *in the manner prescribed by the director, including electronic filing*, upon forms *or format* prescribed ~~and furnished~~ by the director stating: (1) The name and address of the retailer; (2) the total amount of gross sales of all tangible personal property and taxable services rendered by the retailer during the period for which the return is made; (3) the total amount received during the period for which the return is made on charge and time sales of tangible personal property made and taxable services rendered prior to the period for which the return is made; (4) deductions allowed by law from such total amount of gross sales and from total amount received during the period for which the return is made on such charge and time sales; (5) receipts during the period for which the return is made from the total amount of sales of tangible personal property and taxable services rendered during such period in the course of such business, after deductions allowed by law have been made; (6) receipts during the period for which the return is made from charge and time sales of tangible personal property made and taxable services rendered prior to such period in the course of such business, after deductions allowed by law have been made; (7) gross receipts during the period for which the return is made from sales of tangible personal property and taxable services rendered in the course of such business upon the basis of which the tax is imposed. The return shall include such other pertinent information as the director may require. In making such return, the retailer shall determine the market value of any consideration, other than money, received in connection with the sale of any tangible personal property in the course of the business and shall include such value in the return. Such value shall be subject to review and revision by the director as hereinafter provided. Refunds made by the retailer during the period for which the return is made on account of tangible personal property returned to the retailer shall be allowed as a deduction under subdivision (4) of this section in case the retailer has theretofore included the receipts from such sale in a return made by such retailer and paid taxes therein imposed by this act. The retailer shall, at the time of making such return, pay to the director the amount of tax herein imposed, except as otherwise provided in this section. The director may extend the time for making returns and paying the tax required by this act for any period not to exceed 60 days under such rules

and regulations as the secretary of revenue may prescribe. When the total tax for which any retailer is liable under this act, does not exceed the sum of \$80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year. When the total tax liability does not exceed \$3,200 in any calendar year, the retailer shall file returns quarterly on or before the 25th day of the month following the end of each calendar quarter. When the total tax liability exceeds \$3,200 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. When the total tax liability exceeds \$32,000 in any calendar year, the retailer shall be required to pay the sales tax liability for the first 15 days of each month to the director on or before the 25th day of that month. Any such payment shall accompany the return filed for the preceding month. A retailer will be considered to have complied with the requirements to pay the first 15 days' liability for any month if, on or before the 25th day of that month, the retailer paid 90% of the liability for that fifteen-day period, or 50% of such retailer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs computed at the rate applicable in the month in which the fifteen-day period occurs, and, in either case, paid any underpayment with the payment required on or before the 25th day of the following month. Such retailers shall pay their sales tax liabilities for the remainder of each such month at the time of filing the return for such month. Determinations of amounts of liability in a calendar year for purposes of determining filing requirements shall be made by the director upon the basis of amounts of liability by those retailers during the preceding calendar year or by estimates in cases of retailers having no previous sales tax histories. The director is hereby authorized to modify the filing schedule for any retailer when it is apparent that the original determination was inaccurate.

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

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

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

Sec. 12. K.S.A. 2009 Supp. 79-3609 is hereby amended to read as follows: 79-3609. (a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption, except as follows: (1) A retailer is relieved of liability for tax otherwise applicable if the retailer obtains a fully completed exemption certificate or captures the relevant data elements required by the director within 90 days subsequent to the date of the sale; or (2) if the retailer has not obtained an exemption certificate or all relevant data elements, the retailer, within 120 days subsequent to a request for substantiation by the director, either may ~~prove that the transaction was not subject to tax by other means or~~ obtain a fully completed exemption certificate from the purchaser, taken in good faith ~~which meets the requirements specified in this subsection, or obtain other information establishing that the transaction was not subject to tax.~~ Otherwise, the sales shall be deemed to be taxable sales under this act. *The seller shall obtain an exemption*

certificate that claims an exemption that was authorized pursuant to Kansas law on the date of the transaction in the jurisdiction where the transaction is sourced pursuant to law, could be applicable to the item being purchased and is reasonable for the purchaser's type of business. If the seller obtains an exemption certificate or other information as described in this subsection, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, and it must be established that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. For any refund or credit claim filed after June 15, 2009, no refund or credit shall be allowed by the director after one year from the due date of the return for the reporting period as provided by K.S.A. 79-3607, and amendments thereto, unless before the expiration of such period a claim therefor is filed by the taxpayer, and, except as otherwise provided in K.S.A. 2009 Supp. 79-3694, and amendments thereto, no suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing such claim satisfying the requirements specified by K.S.A. 2009 Supp. 79-3693, and amendments thereto, therefor with the director. A refund claim shall not be deemed filed unless such claim is complete as required by K.S.A. 2009 Supp. 79-3693, and amendments thereto. For all mailed returns, including refund claims, each return or refund claim shall be presumed to have been filed with the department on the postmark date of such return or refund claim or if such date is illegible, the date three days prior to the date such return or refund claim is received.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) Interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the filing date of the return claiming the refund, except that no interest shall be allowed on any such refund if the same is paid within 120 days after the filing date of the return claiming the refund or the date of payment, whichever is later, provided that such return or refund claim satisfies the requirements specified by K.S.A. 2009 Supp. 79-3693, and amendments thereto, at the time the return or refund claim is received.

(e) Notwithstanding any other provision of this section or the provisions of the Kansas compensating tax act:

(1) (A) Any claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act which is without dispute shall be allowed, but, with respect to any claim exceeding \$10,000, the refund associated therewith shall not be paid until after 510 days from the date such claim was filed and shall not include interest from such date. As used in this subparagraph, a claim for refund without dispute shall not include any claim the basis for which is a judicial or quasi-judicial interpretation of such subsection occurring after the effective date of this act.

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers'

sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to any refund exceeding \$50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606 pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled *In re appeal of Water District No. 1 of Johnson County* shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to Water District No. 1 of Johnson county.

Sec. 13. K.S.A. 2009 Supp. 79-3643 is hereby amended to read as follows: 79-3643. (a) Any individual who is responsible for collection or payment of sales or compensating tax or control, receipt, custody or disposal of funds due and owing under the Kansas retailers' sales and compensating tax acts who willfully fails to collect such tax, or account for and pay over such tax, or attempts in any manner to evade or defeat such tax or the payment thereof shall be personally liable for the total amount of the tax evaded, or not collected, or not accounted for and paid over, together with any interest and penalty imposed thereon. The provisions of this section shall apply regardless of the: (1) Relationship with the retailer held by such individual; (2) form under which the retailer conducts business, whether a sole proprietorship, partnership or corporation; or (3) dissolution of the business. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

(b) A notice of assessment issued to a responsible individual shall be considered to be a proceeding for the collection of the tax liability of the business. If the liability of the business is determined in a proceeding that has become final, any notice of assessment against a responsible individual must be issued within three years after the proceeding against the business has become final.

(c) Within 60 days after the mailing of a notice of assessment against a responsible individual, the person assessed may request an informal conference with the secretary of revenue under K.S.A. 79-3226, and amendments thereto, for a determination of whether such person is a responsible individual under subsection (a) and for a determination of the tax liability of the business.

(d) If notice of assessment and warrant are issued to a responsible individual pursuant to K.S.A. 79-3610, and amendments thereto, or any other jeopardy provision of chapter 79 of the Kansas Statutes Annotated, the person assessed may request that the informal conference held pursuant to subsection (c) be expedited. When such a request is made, the secretary shall schedule the conference to be held within 21 days after receipt of the request and shall issue a written final determination within 21 days after the close of the conference.

(e) The provisions of this section shall be deemed to be supplemental to the Kansas retailers' sales and compensating tax acts.

Sec. 14. K.S.A. 2009 Supp. 79-3651 is hereby amended to read as follows: 79-3651. (a) For the purpose of the proper administration of the Kansas retailers' sales tax act and to prevent evasion of the tax imposed thereunder, it shall be presumed that all gross receipts from the sale of tangible personal property or enumerated services are subject to tax until the contrary is established. The burden of proving that a sale is not subject to tax is upon the seller unless the seller takes from the purchaser an exemption certificate to the effect that the property or service purchased is not subject to tax.

(b) An exemption certificate shall relieve the seller from collecting and remitting tax if the seller has obtained the required identifying information as determined by the director, from the purchaser and the reason for claiming the exemption at the time of purchase and has maintained proper records of exempt transactions pursuant to subsection (a) of K.S.A. 79-3609, and amendments thereto and provided them to the director when requested, except that no such relief from liability shall apply to a seller who: Fraudulently fails to collect the tax; solicits purchasers to participate in the unlawful claim of an exemption; accepts an exemption certificate claiming an entity based exemption when the subject of

the transaction is actually received by the purchaser at a location operated by the seller and the director provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred. The purchaser improperly claiming an exemption shall remain liable for the nonpayment of tax.

(c) The exemption certificate shall be substantially in such form as the director may prescribe. The seller shall use the standard form for claiming an exemption electronically as adopted by the director. A seller may require a purchaser to provide a copy of the purchaser's sales tax registration certificate with a resale certificate as a condition for honoring the purchaser's resale exemption claim, except that in the case of drop shipment sales into this state, the third party vendor may claim a resale exemption based on an exemption certificate provided by its customer, re-seller, or any other information acceptable to the secretary available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer, re-seller, is registered to collect and remit sales and use tax in this state. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used. A seller is relieved of liability for the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. Such blanket certificate need not be renewed or updated by the seller for exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subsection, a recurring business relationship exists when a period of no more than 12 months elapses between sales transactions.

(d) To lawfully present a resale exemption certificate the purchaser must be engaged in the business of selling property or services of the same kind that is purchased, hold a registration certificate, except as otherwise permitted in subsection (c) for drop shipment sales into this state, and at the time of purchase, either intend to resell the property in the regular course of business or be unable to ascertain whether the property will be resold or used for some other purpose. A resale exemption certificate may be used for resale of services to tangible personal property and not for services to real property.

(e) Any person who issues a resale certificate or other exemption certificate in order to unlawfully avoid payment of tax for business or personal gain shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition, if the director determines that a person issued a resale certificate in order to unlawfully avoid payment of tax for business or personal gain, the director shall increase any penalty that is due from the person under K.S.A. 79-3615, and amendments thereto, by \$250 or 10 times the tax due, whichever is greater, on each transaction where the misuse of a resale certificate occurred.

(f) Exemption certificates issued by an entity claiming a specific exemption under K.S.A. 79-3606, and amendments thereto, based on the status of the entity shall bear the name, address of the entity and identification number issued to the entity pursuant to K.S.A. 2009 Supp. 79-3692, and amendments thereto, ~~and indicate the subsection under which the exemption is being claimed.~~ Such certificate shall be signed by an ~~officer, office manager or other administrator~~ *authorized person* of the nonprofit entity, if in paper form, and contain the tax identification number of the entity. The certificate shall be substantially in such form as the director may prescribe. ~~A seller may require that payments be made on an exempt entity's check, warrant, voucher or is charged to the entity's account shall relieve the seller from collecting and remitting the tax if it is taken in good faith as a condition for honoring the entity's exemption claim.~~

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

Sec. 15. K.S.A. 2009 Supp. 79-3666 is hereby amended to read as follows: 79-3666. State sales tax rate changes must take effect on the first day of a calendar quarter. The secretary shall make a reasonable effort to provide sellers with as much advance notice as

practicable of any rate changes, legislative change in the tax base and amendments to sales and use tax rules and regulations. Failure of a seller to receive such notice or failure of the secretary to provide such notice to a seller or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use tax or otherwise comply with any such legislative, rule or regulatory changes. *Whenever there is less than 30 days between the effective date of any amendments to K.S.A. 79-3603 and 79-3703, which make a change in the retailers' sales tax or compensating use tax rate and the date such rate change takes effect as provided by this section, the seller shall be relieved from liability for failing to collect tax at the changed rate if:*

- (a) *The seller collected tax at the immediately preceding rate during such time period; and*
- (b) *the seller's failure to collect at the changed rate does not extend beyond 30 days after such effective date.*

When the seller fraudulently failed to collect at the new sales tax rate or solicits purchasers based on the immediately preceding effective rate, such relief from liability does not apply to such seller.

Sec. 16. K.S.A. 2009 Supp. 79-3672 is hereby amended to read as follows: 79-3672. (a) (1) Notwithstanding the provisions of K.S.A. 2009 Supp. 79-3670 and amendments thereto, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients:

~~(2) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.~~

~~(3) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.~~

~~(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a), the seller shall collect the tax according to subsection (a)(5) of K.S.A. 2009 Supp. 79-3670 and amendments thereto. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.~~

~~(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller: the following provisions apply to sales of "advertising and promotional direct mail":~~

~~(1) A purchaser of "advertising and promotional direct mail" may provide the seller with either:~~

- ~~(A) A direct pay permit;~~
- ~~(B) an exemption certificate, or other statement approved, authorized or accepted by the secretary, claiming "direct mail"; or~~
- ~~(C) information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients.~~

~~(2) If the purchaser provides the permit, certificate or statement referred to in subsections (a)(1)(A) or (a)(1)(B), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving "advertising and promotional direct mail" to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to the recipients and shall report and pay any applicable tax due.~~

~~(3) If the purchaser provides the seller information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of~~

“advertising and promotional direct mail” where the seller has sourced the sale according to the delivery information provided by the purchaser.

(4) *If the purchaser does not provide the seller with any of the items listed in subsections (a)(1)(A), (a)(1)(B) or (a)(1)(C), the sale shall be sourced according to subsection (a)(5) of K.S.A. 2009 Supp. 79-3670, and amendments thereto.*

(b) *Notwithstanding the provisions of K.S.A. 2009 Supp. 79-3670, and amendments thereto, the following provisions apply to sales of “other direct mail”:*

(1) *Except as otherwise provided in this subsection, sales of “other direct mail” are sourced in accordance with subsection (a)(3) of K.S.A. 2009 Supp. 79-3670, and amendments thereto.*

(2) *A purchaser of “other direct mail” may provide the seller with either:*

(A) *A direct pay permit; or*

(B) *an exemption certificate, or other statement approved, authorized or accepted by the secretary, claiming “direct mail.”*

(3) *If the purchaser provides the permit, certificate or statement referred to in subsection (b)(2)(A) or (b)(2)(B), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving “other direct mail” to which the permit, certificate or statement apply. Notwithstanding subsection (b)(1) the sale shall be sourced to the jurisdictions to which the “other direct mail” is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.*

(c) *For purposes of this section:*

(1) *“Advertising and promotional direct mail” means:*

(A) *Printed material that meets the definition of “direct mail”; and*

(B) *the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word “product” means tangible personal property, a product transferred electronically or a service;*

(2) *“other direct mail” means any direct mail that is not “advertising and promotional direct mail” regardless of whether “advertising and promotional direct mail” is included in the same mailing. The term includes, but is not limited to:*

(A) *Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account and payroll advices;*

(B) *any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and*

(C) *other non-promotional direct mail delivered to existing or former shareholders, customers, employees or agents including, but not limited to, newsletters and informational pieces.*

“Other direct mail” does not include the development of billing information or the provision of any data processing service that is more than incidental.

(d) (1) (A) *This section applies to a transaction characterized as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of “direct mail”.*

(B) *This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether “advertising and promotional direct mail” is included in the same mailing.*

(2) *If a transaction is a “bundled transaction” that includes advertising and promotional direct mail, this section shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of “advertising and promotional direct mail.”*

(3) *Nothing in this section shall limit any purchaser’s:*

(A) *Obligation for sales or use tax to any state to which the direct mail is delivered;*

(B) *right, if any, to a credit for sales or use taxes legally due and paid to other jurisdictions; or*

(C) *right, if any, to a refund of sales or use taxes overpaid to any jurisdiction.*

(4) *This section applies for purposes of uniformly sourcing direct mail transactions.*

New Sec. 17. *For any tax established pursuant to law which is administered by the Kansas department of revenue, any taxpayer having a delinquent tax liability and entering*

into an agreement with the department providing for an installment payment plan allowing the pay off of such liability in a time period in excess of 90 days from the date when such agreement is entered into shall be assessed a service fee of \$10. The secretary of revenue shall remit all moneys received by or for the secretary from such fees and collected 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 to the credit of the recovery fund for enforcement actions and attorney fees. The secretary of revenue shall remit the first \$350,000 of delinquent taxes, including penalties and interest, collected during any fiscal year for income tax or any other tax that would otherwise be deposited 100% in the state general fund, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the recovery fund for enforcement actions and attorney fees. All expenditures from the recovery fund for enforcement actions and attorney fees 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 revenue or by a person or persons designated by the secretary.

Sec. 18. K.S.A. 12-1,104 and 79-32,107 and K.S.A. 2009 Supp. 74-50,154, 74-8133, 74-99c09, 79-2971, 79-3298, 79-32,100c, 79-32,211, 79-32,264, 79-3607, 79-3609, 79-3643, 79-3651, 79-3666 and 79-3672 are hereby repealed.”;

And by renumbering section 7 as section 19;

On page 1, in the title, in line 12, by striking “income”; also in line 12, by striking all after “to” and inserting “income tax credits, limitations; intangibles tax, filing procedure; electronic filing of returns, reports or other documents; willful failure to collect taxes or to commit other violations; streamlined sales and use tax agreement conformity; establishing service fee for taxpayers on installment payment plans for delinquent tax liability;”; in line 13, after “amending” by inserting “K.S.A. 12-1,104 and 79-32,107 and”; also in line 13, by striking “79-”; in line 14, by striking “32,211 and 79-32,264” and inserting “79-2971, 79-3298, 79-32,100c, 79-32,211, 79-32,264, 79-3607, 79-3609, 79-3643, 79-3651, 79-3666 and 79-3672”;

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

RICHARD CARLSON

JEFF KING

JULIE MENGHINI

Conferees on part of House

LESLIE DONOVAN

DEREK SCHMIDT

TOM HOLLAND

Conferees on part of Senate

Senator Donovan moved the Senate adopt the Conference Committee Report on **SB 430**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 449**, 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 as House Substitute for Senate Bill No. 449, as follows:

On page 2, in line 43, by striking “inspection of” and inserting “an inspector certified by a nationally-recognized code organization to inspect”;

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

BRENDA LANDWEHR
DAVID CRUM
GERALDINE FLAHARTY
Conferees on part of House

JIM BARNETT
VICKI SCHMIDT
LAURA KELLY
Conferees on part of Senate

Senator Barnett moved the Senate adopt the Conference Committee Report on **H Sub for SB 449**.

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

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

The Conference Committee report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 537**, 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 2, in line 2, by striking “may” and inserting “shall”; in line 3, by striking “, including” and inserting “and may award the prevailing party”; in line 8, by striking “\$500 or actual damages” and inserting “actual and liquidated damages up to \$10,000 or, if actual damages exceed \$10,000, all actual damages.”; in line 11, after “claims” by inserting “, or future liens or claims against persons specified by the court.”;

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
DEREK SCHMIDT
DAVID HALEY
Conferees on part of Senate

Senator Owens moved the Senate adopt the Conference Committee Report on **SB 537**.

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

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

The Conference Committee report was adopted.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

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

SENATE RESOLUTION No. 1865—

A RESOLUTION memorializing the 75th Anniversary of “Black Sunday,” April 14, 1935, during the Dust Bowl in Kansas.

WHEREAS, In the 1930’s in Kansas, as well as other states in the Midwest, there occurred a series of devastating dust storms that swept the Plains that became known as the “Dust Bowl”; and

WHEREAS, The worst of these storms took place on April 14, 1935, a day that became known as “Black Sunday,” when the sky was completely darkened with a massive, fast-moving cloud of dust that traveled hundreds of miles and left the land, including thousands of acres of farmland, devastated; and

WHEREAS, These dust storms were largely the result of poor irrigation and farming techniques and were aggravated by drought; and

WHEREAS, Southwest Kansas was one of the areas most effected by the Dust Bowl, which caused large numbers of people to migrate West due to the resulting drought and famine; and

WHEREAS, The impact of the Dust Bowl effected the entire nation, and lead to the United States Congress passing the Soil Conservation Act of 1936: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we remember April 14, 1935, known as “Black Sunday,” and commemorate the 75th anniversary of this tragic event, which had a significant impact on the State of Kansas and forever changed the way farmers work the land; and that we salute the intestinal fortitude of those Kansas farmers and families who withstood this unprecedented devastating force of nature, vividly described as being of near plague proportion, and vow not now nor ever to allow the people of Kansas to be compelled to forget our fellow Kansans’ sacrifices; and

Be it further resolved: That the Secretary of the Senate be directed to send 18 enrolled copies of this resolution to Senator Haley, two each to be distributed to the Kansas Farm Bureau; Kansas Corn Growers Association; Kansas Association of Wheat Growers; Farm Credit Associations of Kansas; Kansas Agricultural Alliance; Kansas Seed Industry Association; Kansas Livestock Association; Kansas Grain & Feed; and Kansas 4-H; and one enrolled copy to be sent to Senator Haley, whose grandfather, Simon Alexander Haley, taught college-level Agriculture and would reference the Kansas Dust Bowl as an example of survival and perseverance.

On emergency motion of Senator Haley SR 1865 was adopted unanimously.

MESSAGE FROM THE HOUSE

The House adopts the conference committee report on **Senate Substitute for HB 2115**.

The House adopts the conference committee report on **HB 2605**.

INTRODUCTION OF ORIGINAL MOTION AND SENATE RESOLUTIONS

Mary Pilcher-Cook, citing Senate Rule 11, submitted in writing a motion to withdraw SCR 1626 from the Committee on Judiciary and be placed on the calendar under the heading of General Orders.

Motion Pursuant to Senate Rule 11 Committee Action on Bills and Resolutions

Comes now Kansas State Senator Mary Pilcher-Cook of the 10th Kansas State Senate District and moves pursuant to Rule 11 of the Rules of the Kansas State Senate that Senate Concurrent Resolution 1626, A Proposition to amend the constitution of the state of Kansas by adding a new article 16 thereto, concerning health care, which would preserve the freedom of Kansans to provide for their health care, having been referred to the Senate Judiciary Committee, be withdrawn from that Committee and placed upon the Kansas State Senate calendar for the 28th day of April, 2010, under the heading of General Orders subsequent to adoption of the motion by the body.

In support of this motion, Kansas State Senator Mary Pilcher-Cook, states the following:

At this late date in the session, in addition to the federal health care bill recently becoming new law on Sunday, March 21, 2010, there is a fresh urgency to preserving the freedom of Kansas citizens so they are not forced into a governmental health care system they do not

support or want, and which would greatly diminish their liberty as to their health care decisions.

Given that a primary duty of a state legislator is to protect the liberty of the state's citizens, and whereas the Senate Judiciary Committee failed to bring SCR 1626 out of committee on a 4-4 tie vote before the federal health care legislation was passed into law, the significance and importance of preserving Kansans' freedom in regards to health care has been elevated, and the appropriate next action is that of referring SCR 1626 to the Committee of the Whole on General Orders.

Whereas the vote in the Senate Judiciary Committee was on March 18, 2010, significant circumstances have changed regarding Kansas health care issues as of March 21, evidencing the need for Kansas citizens' protection of health care freedom. Due to the federal health care bill becoming law and because of the public outcry by Kansas citizens, it is incumbent upon this body to allow forty senators an opportunity to vote on SCR 1626, particularly when the Kansas House vote two days later on March 22, 2010 was a bipartisan vote of 75-47, which was clearly an overwhelming majority in favor of the legislation with only four Republicans out of seventy-three voting against the measure.

On February 9, 2010, testimony was presented before joint Kansas House and Senate health committees where there was only one opponent. The Senate health committee passed the measure out without a recommendation. On March 11, 2010, testimony was presented before a Senate Judiciary subcommittee. The majority and minority reports, in addition to the committee action, reflected numerous tie votes.

Our country was founded on principles of liberty and freedom — not command and control government — and it recognized citizens have a right to pursue health care in the way they see fit. A state constitutional amendment is most appropriate because as it protects the liberty of Kansas citizens against federal government unconstitutional mandates, it also ensures that future lawmakers can never infringe upon protected rights. A state constitution is the organic law of the state, reflecting the most fundamental values shared by our citizens—and as such, a state constitutional amendment will give Kansas the strongest protection in defense of excessive governmental power.

The weight and value of the Kansas Health Care Freedom Amendment is apparent when there are 39 other states working on some form of this legislation in order to protect their citizens, with 2 states already enacting a law and 2 states (AZ and OK) having a proposed constitutional amendment on the 2010 ballot.

Whereas today in Massachusetts, after having passed a health insurance mandate, one-third of the people still don't have coverage and state health insurance rates are 40 percent higher than other states. Massachusetts legislators expect a \$2 to \$4 billion shortfall over the next decade, so instead of addressing escalating health care costs, the state-model of the federal health care bill has not only caused prices to skyrocket, but has degraded the efficiency and quality of health care in Massachusetts with longer waits and a shortage of medical health care providers.

The Kansas Health Care Freedom Amendment will not block federal health care reform as long as the new federal law does not require a mandate to purchase health insurance or forbid patients from paying directly for their medical services. Rather, it challenges those provisions of the law that are unconstitutional. The people of Kansas, if they choose to do so, can still participate in any federal or state governmental health plan — they just can't be forced to participate in any health care system.

Mandating that individuals must have health insurance would be an exceptional violation of individual liberties. By its nature it would have to be enforced, and to enforce it, the government would have to inflict penalties for noncompliance — unpaid penalties would lead to collection agencies, garnishment of wages and ultimately jail time, as we have seen in the federal health law. This is jail time for simply being born and refusing to buy a service, which begs the question: what service or product would government force us to buy next. If there are no rights of liberty and equality given to man as a matter of moral principle,

then any one of us is subject to being enslaved to the man who has the most power, or to the man whose self-interest and force of self-expression is greater than ours.

It is incumbent upon Kansas state legislators today to protect the liberty of the people of Kansas in regards to their health care. The proposed constitutional amendment is neutral to health care reforms — we can still reform health care to contain costs and make it more accessible to all — but we need to protect the liberty of the people of Kansas first.

This body passed the State Sovereignty resolution yesterday, 36 to 4, and we are now sending a warning message to the federal government that it needs to recognize the limited nature of its powers. The next step is the application of state sovereignty to the subject of health care. Through the tenth amendment and state sovereignty, the state senators who vote to withdraw SCR 1626 from the Judiciary Committee would be resolving to preserve the liberty of the citizens in the great state of Kansas in regards to their health care decisions.

Therefore I beseech this body to support my motion to withdraw Senate Concurrent Resolution 1626 from the Kansas State Senate Judiciary Committee and have it placed upon the Kansas State Senate calendar for the 28th day of April, 2010, under the heading of General Orders subsequent to adoption of the motion by the body.

Respectfully,

Mary Pilcher-Cook

On motion of Senator D. Schmidt and pursuant to **HCR 5037** the Senate adjourned until 10:00 a.m., Wednesday, April 28, 2010.

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



CORRECTION OF THE JOURNAL

Correct the Journal of the Senate for March 29, 2010, page 1294, under the heading of “Conference Committee Report” to show the House Conferees on S Sub for HB 2115 to be Neufeld, A. Brown and Loganbill.