

# Journal of the Senate

SIXTY-FIRST DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Friday, May 7, 2010—11:00 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,

Having spent two years as administrative assistant to the House Majority Leader, one year as administrative assistant to the Senate President, and 29 years as Chaplain of the Senate, I have watched our Senators struggling to take care of our state's necessities while balancing the budget. I have to admit that this year has been the most difficult for that project.

While this is the major goal at this point, Senators must take care of multiple resolutions, act on bills passed by the House, wait on decisions by conference committees, deal with the Governor's vetoes, take care of other bills awaiting action, participate in debates during General Orders, etc. etc.

Not to mention messages from constituents on both sides of issues. I realize, Lord, that constituents are deeply concerned about their needs. I happen to be a constituent and feel very strongly about certain issues, but help us to treat our legislators with the respect and courtesy which we all deserve.

Since You are God who sees every sparrow that falls, and have numbered the hairs on our head, I turn to You for wisdom, for answers, and for mercy.

I pray in the Name of Jesus Christ,

AMEN

The Pledge of Allegiance was led by President Stephen Morris.

## COMMUNICATIONS FROM STATE OFFICERS

JOHNSON COUNTY KANSAS  
DEPARTMENT OF RECORDS  
AND TAX ADMINISTRATION

May 6, 2010

John A. Bartolac, Chairman of the Kansas Electronic Recording Commission, submitted an update to the Kansas Electronic Recording Standards as modified at the April 6, 2010 annual meeting of the Kansas Electronic Recording Commission.

The delivery of this updated document is in compliance with the Kansas Uniform Real Property Electronic Recording Act.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

**INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

Senators Schodorf, Abrams, Hensley, Huelskamp, Marshall, Owens, Steineger, Teichman, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

**SENATE RESOLUTION No. 1882—**

A RESOLUTION congratulating and commending Ron Nitcher.

WHEREAS, Ron Nitcher will be retiring on July 1, 2010, after serving the State of Kansas for 16 years through his outstanding efforts at the Kansas State Department of Education. Prior to his service at the Department of Education, Ron served for 11 years at the Kansas Insurance Department and five years at the State Department of Administration, for a total of 32 years of dedicated service to the State of Kansas; and

WHEREAS, Ron graduated from Lawrence High School in 1973. He attended the University of Kansas and graduated from Emporia State University with a Bachelor of Science degree in Business in May of 1977. He was an excellent student, having been named to the Dean's Honor Roll and the President's Honor Roll. Ron was an accounting honor student, graduating in the top 10% of his class; and

WHEREAS, Ron served at the State Department of Administration as a Central Accountant in the Division of Accounts and Reports from 1978 to 1983. He then served as a Controller at the Kansas Insurance Department from 1983 to 1994, where he was responsible for supervising accounting, budgeting, internal auditing and many other duties. In 1994, he joined the Department of Education as the Director of Fiscal Services and Operations; and

WHEREAS, At the Department of Education, Ron prepared and justified the Department's annual budget request, covering approximately 70 state and federal programs. He worked with other state departments and the Kansas Legislative Committees on Appropriations and Ways and Means and their subcommittees, as well as the United States Department of Education. He oversaw grants and financial reporting, managed daily operations of a highly complex computerized accounting and procurement system, managed the facilities and print shop of the Department of Education and supervised all financial and management responsibilities and ensured compliance with all federal and state laws, regulations and guidelines, in addition to many other responsibilities; and

WHEREAS, Ron has been an invaluable source of information for the staff of the Office of the Revisor of Statutes in the drafting of legislation concerning both school finance and relating to budget matters for the Department of Education. He has also been invaluable in his assistance and as a source of information for the staff of the Kansas Legislative Research Department; and

WHEREAS, Ron has always been known for his dedication to his job, rarely taking time off from work. He could almost always be found working one, if not both days, every weekend. His integrity, professionalism and kindness have been appreciated by everyone with whom he has worked at the Department of Education, as well as at the Department of Administration and the Insurance Department; and

WHEREAS, Ron is more than just a colleague or co-worker. Ron is a dear friend to all who have had the privilege of working with him. Ron will be sorely missed by all when he leaves in July to begin his retirement; and

WHEREAS, Ron plans on enjoying his retirement through riding his motorcycle, camping with his pop-up trailer, playing and collecting mandolins and enjoying all types of music, as well as spending time with his family, including his wife, Cindy, his daughter and son-in-law, Jennifer and Kerry Romero and their children, Mira, Mason, Austin and Anthony, and his daughter Madison: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend Ron Nitcher for his 32 years of devoted service to the State of Kansas and extend our best wishes for his continued success and happiness in the future; and

*Be it further resolved:* That the Secretary of the Senate be directed to send five enrolled copies of this resolution to: Kansas State Department of Education, c/o Ron Nitcher, 120 SE 10th Avenue, Topeka, KS 66612-1182.

On emergency motion of Senator Schodorf **SR 1882** was adopted unanimously.

**REPORT ON ENGROSSED BILLS**

**SB 434** reported correctly re-engrossed May 6, 2010.

**SB 306; SCR 1631** reported correctly engrossed May 7, 2010.

**REPORT ON ENROLLED BILLS**

**SB 54; H Sub for Sub SB 214** reported correctly enrolled, properly signed and presented to the Governor on May 7, 2010.

**SR 1875, SR 1876, SR 1877, SR 1878, SR 1879, SR 1880, SR 1881** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on May 7, 2010.

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

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**AFTERNOON-SESSION**

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

**MESSAGE FROM THE HOUSE**

The House adopts the conference committee report on **HB 2554**.

The House adopts the conference committee report on **SB 452**.

**ORIGINAL MOTION**

Senator D. Schmidt moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 452; S Sub for HB 2506; HB 2660**.

**CONFERENCE COMMITTEE REPORT**

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

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

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

By striking all on pages 2 through 4;

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

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

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

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

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

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

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

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

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

distributor for sale at wholesale in this state and shall be paid by the distributor who purchases the alcoholic liquor or cereal malt beverage for sale at wholesale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

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

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

(g) No farm winery or winery outlet shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) who intends to carry on the business authorized by the license as agent of another;

(9) who at the time of application for renewal of any license issued under this act would not be eligible for the license upon a first application, except as provided by subsection (a)(12);

(10) who is the holder of a valid and existing license issued under article 27 of chapter 41 of the Kansas Statutes Annotated unless the person agrees to and does surrender the license to the officer issuing the same upon the issuance to the person of a license under this act, except that a retailer licensed pursuant to K.S.A. 41-2702, and amendments thereto, shall be eligible to receive a retailer's license under the Kansas liquor control act;

(11) who does not own the premises for which a license is sought, or does not, *at the time of application*, have a written lease thereon ~~for at least 3/4 of the period for which the license is to be issued;~~

(12) whose spouse would be ineligible to receive a license under this act for any reason other than citizenship, residence requirements or age, except that this subsection (a)(12) shall not apply in determining eligibility for a renewal license;

(13) whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act; or

(14) who does not provide any data or information required by K.S.A. 2009 Supp. 41-311b, and amendments thereto.

(b) No retailer's license shall be issued to:

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

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

(3) a person who has a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under this act, *except that the spouse of an applicant for a retailer's license may own and hold a farm winery license, microbrewery license, or both, if the spouse does not hold a retailer's license issued under this act;*

(4) a person who has a beneficial interest in any other retail establishment licensed under this act, except that the spouse of a licensee may own and hold a retailer's license for another retail establishment;

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

(6) a corporation; or

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

(c) No manufacturer's license shall be issued to:

(1) A corporation, if any officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a manufacturer's license for any reason other than citizenship and residence requirements;

(2) a copartnership, unless all of the copartners shall have been residents of this state for at least five years immediately preceding the date of application and unless all the members of the copartnership would be eligible to receive a manufacturer's license under this act;

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

(4) an individual who is not a resident of this state;

(5) an individual who has not been a resident of this state for at least five years immediately preceding the date of application; or

(6) a person who has a beneficial interest in a distributor, retailer, farm winery or microbrewery licensed under this act, *except as provided in K.S.A. 41-305, and amendments thereto.*

(d) No distributor's license shall be issued to:

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

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

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

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

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

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

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

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

(3) person who has a beneficial interest in a manufacturer or distributor licensed under this act ~~or a person who currently has a beneficial interest in a farm winery~~, *except as provided in K.S.A. 41-305, and amendments thereto*;

(4) person, copartnership or association which has a beneficial interest in any retailer licensed under this act or under K.S.A. 41-2702, and amendments thereto, *except that the spouse of an applicant for a microbrewery or farm winery license may own and hold a*



*retailer's license if the spouse does not hold a microbrewery or farm winery license issued under this act;*

- (5) copartnership, unless all of the copartners are qualified to obtain a license;
  - (6) corporation, unless stockholders owning in the aggregate 50% or more of the stock of the corporation would be eligible to receive such license and all other stockholders would be eligible to receive such license except for reason of citizenship or residency; or
  - (7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.
- (g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4), (d)(3), (f)(1), (f)(2) and K.S.A. 2009 Supp. 41-311b, and amendments thereto, shall not apply in determining eligibility for the 10th, or a subsequent, consecutive renewal of a license if the applicant has appointed a citizen of the United States who is a resident of Kansas as the applicant's agent and filed with the director a duly authenticated copy of a duly executed power of attorney, authorizing the agent to accept service of process from the director and the courts of this state and to exercise full authority, control and responsibility for the conduct of all business and transactions within the state relative to alcoholic liquor and the business licensed. The agent must be satisfactory to and approved by the director, except that the director shall not approve as an agent any person who:
- (1) Has been convicted of a felony under the laws of this state, any other state or the United States;
  - (2) has had a license issued under the alcoholic liquor or cereal malt beverage laws of this or any other state revoked for cause, except that a person may be appointed as an agent if the person's license was revoked for the conviction of a misdemeanor and 10 years have lapsed since the date of the revocation;
  - (3) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;
  - (4) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes; or
  - (5) is less than 21 years of age.

Sec. 8. K.S.A. 2009 Supp. 41-317 is hereby amended to read as follows: 41-317. (a) Applications for all licenses under this act shall be ~~upon forms prescribed and furnished by the director and shall be filed with the director in duplicate~~ *completed and submitted to the director in a manner prescribed by the director.* Each application shall be accompanied by ~~a state registration applicant shall submit an application fee of \$50 for each initial application and \$10 for each renewal application to defray the cost of preparing and furnishing standard forms incident to the administration of this act and the cost of processing the application.~~ Each application shall also be accompanied by a deposit of a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount of the license fee required to be paid for the kind of license applied for, which license fee shall be returned to the applicant if the application is denied. All registration fees shall be remitted by the director to the state treasurer in accordance with the provisions of K.S.A. ~~75-4215, and amendments thereto.~~ Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. All license fees received by the director, including fees received for licenses to manufacture beer, regardless of its alcoholic content, shall be paid into the state treasury by the director and shall be credited to the state general fund.

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

- (1) *The full amount of the license fee required to be paid for the kind of license specified in the application; or*
  - (2) *one-half of the full amount of the license fee required to be paid for the kind of license specified in the application.*
- (c) *If the applicant elects to pay only one-half of the license fee pursuant to subsection (b)(2), the remaining one-half of the license fee plus 10% of such remaining balance shall be*

due and payable one year from the date of issuance of the license. Notwithstanding any other provision of law, failure to pay the full amount due under this paragraph on the date it is due shall result in the automatic cancellation of such license for the remainder of the license term. The director may, at the director's sole discretion and after examination of the circumstances, extend the date payment is due pursuant to this paragraph for not more than 30 days beyond the date such payment is originally due.

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

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

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

~~(b)~~ (g) Every applicant for a manufacturer's, distributor's, nonbeverage user's, microbrewery, farm winery, retailer's or special order shipping license shall file with the application a joint and several bond on a form prescribed by the director and executed by good and sufficient corporate sureties licensed to do business within the state of Kansas to the director, in the following amounts:

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

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

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

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

~~A refund shall be made of that portion of the license fee paid for any period in which the licensee shall be prevented from operating under such license in accordance with the~~

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

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

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

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

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

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

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

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

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

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

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

addition, an applicant for and a holder of a special order shipping license, as a condition of receiving and holding a valid license, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) "Restaurant" means:

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

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

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

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

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

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

Sec. 12. K.S.A. 41-2605 is hereby amended to read as follows: 41-2605. The director shall issue ~~an annual~~ a license to each applicant for licensure which qualifies under this act. Such license shall be issued in the name of the corporation, *municipal corporation*, partners, trustees, association officers or individual applying.

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

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

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

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

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

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

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

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

~~(g)~~ (g) All ~~application~~ fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and

amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

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

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

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

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

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

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

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

~~(c)~~ (c) In addition to the fee provided by ~~subsection (a)~~ *subsections (a) and (b)*, any city where the licensed premises of a club or drinking establishment are located or, if such licensed premises are not located in a city, the board of county commissioners of the county where the licensed premises are located may levy and collect ~~an annual~~ *a biennial* occupation

or license tax from the licensee in an amount equal to not less than ~~\$100~~ \$200 nor more than ~~\$250~~ \$500.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



*second year of the license term as a result of the cancellation of the license upon the request of the licensee for voluntary reasons.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) No microbrewery shall:

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

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

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

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

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

And by renumbering the remaining sections accordingly;

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

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

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

MELVIN NEUFELD  
MIKE KIEGERL  
JUDITH LOGANBILL  
*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 **SB 452**.

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 2506**, 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. 2506, as follows:

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

By striking all on pages 2 through 10;

On page 11, by striking all in lines 1 through 18 and inserting the following:

“Section 1. K.S.A. 2009 Supp. 38-2364 is hereby amended to read as follows: 38-2364.

(a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

(1) Impose one or more juvenile sentences under K.S.A. 2009 Supp. 38-2361, and amendments thereto; and

(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the juvenile offender not violate the provisions of the juvenile sentence and not commit a new offense.

(b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated ~~the one or more~~ conditions of the juvenile sentence or is alleged to have committed a new offense, the court, without notice, may revoke the stay and ~~probation juvenile sentence~~ and direct that the juvenile offender be immediately taken into custody and delivered to the secretary of corrections pursuant to K.S.A. 21-4621, and amendments thereto. The court shall notify the juvenile offender and such juvenile offender's attorney of record, in writing

by personal service, as provided in K.S.A. 60-303, and amendments thereto, or certified mail, return receipt requested, of the reasons alleged to exist for revocation of the stay of execution of the adult sentence. If the juvenile offender challenges the reasons, the court shall hold a hearing on the issue at which the juvenile offender is entitled to be heard and represented by counsel. After the hearing, if the court finds by ~~substantial~~ *a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence have been violated*, the court shall revoke the juvenile sentence and order the imposition of the adult sentence previously ordered pursuant to subsection (a)(2) *or, upon agreement of the county or district attorney and the juvenile offender's attorney of record, the court may modify the adult sentence previously ordered pursuant to subsection (a)(2)*. Upon such finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the department of corrections, is with the adult court. The juvenile offender shall be credited for time served in a juvenile correctional or detention facility on the juvenile sentence as service on any authorized adult sanction.

(c) Upon becoming 18 years of age, any juvenile who has been sentenced pursuant to subsection (a) and is serving the juvenile sentence, may move for a court hearing to review the sentence. If the sentence is continued, the court shall set a date of further review in no later than 36 months.

Sec. 2. K.S.A. 2009 Supp. 38-2365 is hereby amended to read as follows: 38-2365. (a) When a juvenile offender has been placed in the custody of the commissioner, the commissioner shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any party who believes that the amount of time elapsed without placement has exceeded a reasonable time may file a motion for review with the court. In determining what is a reasonable amount of time, matters considered by the court shall include, but not be limited to, the nature of the underlying offense, efforts made for placement of the juvenile offender and the availability of a suitable placement. The commissioner shall notify the court ~~and the juvenile offender's~~ *the juvenile's attorney of record and the juvenile's parent*, in writing, of the initial placement and any subsequent change of placement as soon as the placement has been accomplished. The notice to the juvenile offender's parent shall be sent to such parent's last known address or addresses. The court shall have no power to direct a specific placement by the commissioner, but may make recommendations to the commissioner. The commissioner may place the juvenile offender in an institution operated by the commissioner, a youth residential facility or any other appropriate placement. If the court has recommended an out-of-home placement, the commissioner may not return the juvenile offender to the home from which removed without first notifying the court of the plan.

(b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and present a permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family or, if reintegration is not a viable alternative, for other permanent placement of the juvenile. Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, of a child or violated a law of another state which prohibits such murder or manslaughter of a child;

(2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child;

(3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the subject of this proceeding or another child;

(4) the parent has subjected the juvenile who is the subject of this proceeding or another child to aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

(5) the parental rights of the parent to another child have been terminated involuntarily;

or

(6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2009 Supp. 38-2202, and amendments thereto.

(c) If the juvenile is placed in the custody of the commissioner, the plan shall be prepared and submitted by the commissioner. If the juvenile is placed in the custody of a facility or person other than the commissioner, the plan shall be prepared and submitted by a court services officer. If the permanency goal is reintegration into the family, the permanency plan shall include measurable objectives and time schedules for reintegration.

(d) During the time a juvenile remains in the custody of the commissioner, the commissioner shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court may request the foster parent to submit to the court, at least every six months, a report in regard to the juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court social file. The court shall review the plan submitted by the commissioner and the report, if any, submitted by the foster parent and determine whether reasonable efforts and progress have been made to achieve the goals of the permanency plan. If the court determines that progress is inadequate or that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

(e) When the commissioner has custody of the juvenile, a permanency hearing shall be held no more than 12 months after the juvenile is first placed outside such juvenile's home and at least every 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. The court may appoint a *guardian ad litem* to represent the juvenile offender at the permanency hearing. At each hearing, the court shall make a written finding whether reasonable efforts have been made to accomplish the permanency goal and whether continued out-of-home placement is necessary for the juvenile's safety.

(f) Whenever a hearing is required under subsection (e), the court shall notify all interested parties of the hearing date, the commissioner, foster parent and preadoptive parent or relatives providing care for the juvenile and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the persons receiving notice an opportunity to be heard, the court shall determine whether the juvenile's needs are being adequately met; whether services set out in the permanency plan necessary for the safe return of the juvenile have been made available to the parent with whom reintegration is planned; and whether reasonable efforts and progress have been made to achieve the goals of the permanency plan.

(g) If the court finds reintegration continues to be a viable alternative, the court shall determine whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be accomplished as approved by the court, the court shall be informed and shall schedule a hearing pursuant to subsection (h). No such hearing is required when the parent voluntarily relinquishes parental rights or ~~agrees~~ agrees to appointment of a permanent guardian.

(h) When the court finds any of the following conditions exist, the county or district attorney or the county or district attorney's designee shall file a petition alleging the juvenile to be a child in need of care and requesting termination of parental rights pursuant to the Kansas code for care of children: (1) The court determines that reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile;

(2) the goal of the permanency plan is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate; or

(3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last 22 months, excluding trial home visits and juvenile in runaway status.

Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

(i) A petition to terminate parental rights is not required to be filed if one of the following exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

(2) services set out in the case plan necessary for the safe return of the juvenile have not been made available to the parent with whom reintegration is planned; or

(3) there are one or more documented reasons why such filing would not be in the best interests of the juvenile. Documented reasons may include, but are not limited to: The juvenile has close emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or older and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or compelling foreign policy reasons precluding termination of parental rights.

Sec. 3. K.S.A. 2009 Supp. 38-2373 is hereby amended to read as follows: 38-2373. (a) *Actions by the court.* (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk of the court shall forthwith notify the commissioner of the commitment and provide the commissioner with a certified copy of the complaint, the journal entry of the adjudication and sentencing. The court shall provide those items from the social file which could relate to a rehabilitative program. If the court wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the recommendation shall be included in the sentence. After the court has received notice of the juvenile correctional facility designated as provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver the juvenile offender to the facility at the time designated by the commissioner.

(2) When a juvenile offender is residing in a juvenile correctional facility and is required to go back to court for any reason, the county demanding the juvenile's presence shall be responsible for transportation, detention, custody and control of such offender. In these cases, the county sheriff shall be responsible for all transportation, detention, custody and control of such offender.

(b) *Actions by the commissioner.* (1) Within three days after receiving notice of commitment as provided in subsection (a), the commissioner shall notify the committing court of the facility to which the juvenile offender should be conveyed, and when to effect the immediate transfer of ~~study~~ custody and control to the juvenile justice authority. The date of admission shall be no more than five days after the notice to the committing court. Until received at the designated facility, the continuing detention, custody, and control of and transport for a juvenile offender sentenced to a direct commitment to a juvenile correctional facility shall be the responsibility of the committing county.

(2) Except as provided by K.S.A. 2009 Supp. 38-2332, and amendments thereto, the commissioner may make any temporary out-of-home placement the commissioner deems appropriate pending placement of the juvenile offender in a juvenile correctional facility, and the commissioner shall notify the court, local law enforcement agency and school district in which the juvenile will be residing if the juvenile is still required to attend a secondary school of that placement.

(c) *Transfers.* During the time a juvenile offender remains committed to a juvenile correctional facility, the commissioner may transfer the juvenile offender from one juvenile correctional facility to another.

Sec. 4. K.S.A. 2009 Supp. 38-2364, 38-2365 and 38-2373 are 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; in line 13, by striking all before “and” where it appears the second time and inserting “juvenile offenders; amending K.S.A. 2009 Supp. 38-2364, 38-2365 and 38-2373”;

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 2506**.

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, 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: Haley.

The Conference Committee report was adopted.

#### **CONFERENCE COMMITTEE REPORT**

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2660**, 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 3, following line 13, by inserting the following:

“New Sec. 2. (a) On and after January 1, 2012, any owner or lessee of one or more passenger vehicles, trucks of a gross weight of 20,000 pounds or less or motorcycles, who is a resident of the state of Kansas, and who submits satisfactory proof to the director of vehicles, in accordance with rules and regulations adopted by the secretary of revenue, that such person is a veteran of the Vietnam war, upon compliance with the provisions of this section, may be issued one distinctive license plate for each such passenger vehicle, truck or motorcycle designating such person as a veteran of the Vietnam war. Such license plates shall be issued for the same period of time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto.

(b) Any person who is a veteran of the Vietnam war may make application for such distinctive license plates, not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for the distinctive license plates shall furnish the director with proof as the director shall require that the applicant is a veteran of the Vietnam war. Application for the registration of a passenger vehicle, truck or motorcycle and issuance of the license plates under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(c) No registration or distinctive license plates issued under the authority of this section shall be transferable to any other person.

(d) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant has filed with the director a form as provided in subsection (b). If such form is not filed, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the distinctive license plates to the county treasurer of such person's residence.

New Sec. 3. (a) On and after January 1, 2012, any owner or lessee of one or more passenger vehicles, trucks registered for a gross weight of 20,000 pounds or less or motorcycles, who is a resident of Kansas, upon compliance with the provisions of this section,

may be issued one I'm pet friendly license plate for each such passenger vehicle, truck or motorcycle. Such license plates shall be issued for the same time as other license plates upon proper registration and payment of the regular license fee as provided in K.S.A. 8-143, and amendments thereto, and the presentation of the annual logo use authorization statement provided for in subsection (b).

(b) The college of veterinary medicine at Kansas state university may authorize the use of their I'm pet friendly logo to be affixed on license plates as provided by this section. Any royalty payment received pursuant to this section shall be paid to the college of veterinary medicine at Kansas state university and shall be used to support education regarding the spaying and neutering of dogs and cats in Kansas and veterinary student externships at animal shelters in Kansas. Any motor vehicle owner or lessee annually may apply to the college of veterinary medicine at Kansas state university for the use of such logo. Upon annual application and payment to the college of veterinary medicine at Kansas state university in an amount of not less than \$25 nor more than \$100 as a logo use royalty payment for each license plate to be issued, the college of veterinary medicine at Kansas state university shall issue to the motor vehicle owner or lessee, without further charge, a logo use authorization statement, which shall be presented by the motor vehicle owner or lessee at the time of registration.

(c) Any applicant for a license plate authorized by this section may make application for such plates not less than 60 days prior to such person's renewal of registration date, on a form prescribed and furnished by the director of vehicles, and any applicant for such license plates shall provide the annual logo use authorization statement provided for in subsection (b). Application for registration of a passenger vehicle, truck or motorcycle and issuance of the license plate under this section shall be made by the owner or lessee in a manner prescribed by the director of vehicles upon forms furnished by the director.

(d) No registration or license plate issued under this section shall be transferable to any other person.

(e) Renewals of registration under this section shall be made annually, upon payment of the fee prescribed in subsection (a), in the manner prescribed in subsection (b) of K.S.A. 8-132, and amendments thereto. No renewal of registration shall be made to any applicant until such applicant provides the annual logo use authorization statement provided for in subsection (b). If such logo use authorization statement is not presented at the time of registration, the applicant shall be required to comply with K.S.A. 8-143, and amendments thereto, and return the license plate to the county treasurer of such person's residence.

(f) The college of veterinary medicine at Kansas state university shall:

(1) Pay the initial cost of silk-screening for license plates authorized by this section; and  
 (2) provide to all the county treasurers a toll-free number where applicants can call the college of veterinary medicine at Kansas state university for information concerning the application process or the status of their license plate application.

(g) The college of veterinary medicine at Kansas state university, with approval of the director of vehicles and subject to the availability of materials and equipment, shall design a plate to be issued under the provisions of this section.”;

On page 22, by striking all in lines 39 through 43;

By striking all on page 23;

On page 24, by striking all in lines 1 through 22; before line 23, by inserting the following:  
 “Sec. 7. K.S.A. 2009 Supp. 8-1,141 is hereby amended to read as follows: 8-1,141. (a) Any new distinctive license plate authorized for issuance on and after July 1, 1994, shall be subject to the personalized license plate fee prescribed by subsection (c) of K.S.A. 8-132, and amendments thereto. This section shall not apply to any distinctive license plate authorized prior to July 1, 1994.

(b) The director of vehicles shall not issue any new distinctive license plate authorized for issuance on and after July 1, 1995, unless there is a guarantee of an initial issuance of at least 500 license plates.

(c) The provisions of this section shall not apply to distinctive license plates issued under the provisions of K.S.A. 8-1,145, or K.S.A. 2009 Supp. 8-177d or section 2, and amendments thereto.

(d) The provisions of subsection (a), shall not apply to distinctive license plates issued under the provisions of K.S.A. 8-1,146 or 8-1,148, and amendments thereto, or K.S.A. 2009 Supp. 8-1,153, 8-1,158 or 8-1,161, and amendments thereto.

(e) The provisions of subsection (f) shall not apply to distinctive license plates issued under the provisions of K.S.A. 2009 Supp. 8-1,160, and amendments thereto, except that the division shall delay the manufacturing and issuance of such distinctive license plate until the division has received not less than 1,000 orders for such plate, including payment of the personalized license plate fee required under subsection (a). Upon certification by the director of vehicles to the director of accounts and reports that not less than 1,000 paid orders for such plate have been received, the director of accounts and reports shall transfer \$40,000 from the state highway fund to the distinctive license plate fund.

(f) (1) Any person or organization sponsoring any distinctive license plate authorized by the legislature on and after July 1, 2004, shall submit to the division of vehicles a nonrefundable amount not to exceed \$20,000, to defray the division's cost for developing such distinctive license plate.

(2) All moneys received under this subsection shall be remitted by the secretary of revenue 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 distinctive license plate fund which is hereby created in the state treasury. All moneys credited to the distinctive license plate fund shall be used by the department of revenue only for the purpose associated with the development of distinctive license plates. All expenditures from the distinctive license plate application fee fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of revenue.

(g) (1) Except for educational institution license plates issued under K.S.A. 8-1,142, and amendments thereto, the director of vehicles shall discontinue the issuance of any distinctive license plate authorized prior to July 1, 2004, and which is subject to the provisions of subsection (b) if:

(A) Less than 500 license plates, including annual renewals, are issued for that distinctive license plate by July 1, 2006; and

(B) less than 250 license plates, including annual renewals, are issued for that distinctive license plate during any subsequent two-year period after July 1, 2006.

(2) The director of vehicles shall discontinue the issuance of any distinctive license plate authorized on and after July 1, 2004, if:

(A) Less than 500 plates, including annual renewals, are issued for that distinctive license plate by the end of the second year of sales; and

(B) less than 250 license plates, including annual renewals, are issued for that distinctive license plate during any subsequent two-year period.

Sec. 8. K.S.A. 2009 Supp. 8-1,147 is hereby amended to read as follows: 8-1,147. In the event of the death of any person issued distinctive license plates under the provisions of K.S.A. 8-161, 8-177a, 8-177c, 8-1,139, 8-1,140, 8-1,145; or 8-1,146 or K.S.A. 2009 Supp. 8-177d or section 2, and amendments thereto, the surviving spouse or other family member, if there is no surviving spouse, shall be entitled to possession of any such distinctive license plates. Such license plates shall not be displayed on any vehicle unless otherwise authorized by statute.

Sec. 9. K.S.A. 2009 Supp. 8-126, 8-145d, 8-197, 8-1,141 and 8-1,147 are hereby repealed.”;

And by renumbering sections accordingly;

In the title, in line 17, by striking all following “thereof;” by striking all in lines 18 and 19; in line 20, by striking “8-1598 and 8-1749a” and inserting “providing for certain distinctive license plates; amending K.S.A. 2009 Supp. 8-126, 8-145d, 8-197, 8-1,141 and 8-1,147”;



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

DWAYNE UMBARGER  
BOB MARSHALL  
KELLY KULTALA  
*Conferees on part of Senate*

GARY K. HAYZLETT  
JENE VICKREY  
MARGARET LONG  
*Conferees on part of House*

Senator Umbarger moved the Senate adopt the Conference Committee Report on **HB 2660**.

On roll call, the vote was: Yeas 36, Nays 4, Present and Passing 0, Absent or Not Voting 0.

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

The Conference Committee report was adopted.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I am changing my vote from Aye to No on **HB 2660** with some regret because I am a Vietnam Veteran and my son is a Boy Scout Eagle. But like the sales tax exemptions in this state the numbers of specialized license plates have grown way too numerous and out of control. With all due respect to both my fellow Vietnam Veterans and Boy Scouts, I regrettably vote No on **HB 2660**.

**INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

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

SENATE RESOLUTION No. 1883—

A RESOLUTION recognizing and supporting the freedom of Kansans to provide for their health care.

WHEREAS, A law or rule should not compel, directly or indirectly, any person, employer or health care provider to participate in any health care system or purchase health insurance; and

WHEREAS, A person or employer should have the ability to pay directly for lawful health care services and should not be required to pay penalties or fines for doing so; and

WHEREAS, Conversely, a health care provider should have the ability to accept direct payment for lawful health care services and should not be required to pay penalties or fines for doing so; and

WHEREAS, The purchase or sale of health care services should not be prohibited by law or rule: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That the leaders of the state of Kansas urge the federal government to respect the rights of Kansans to provide for their health care and urge Congress to repeal the health care reform act.

*Be it further resolved:* That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to the President of the United States, the President of the United States Senate, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, the Speaker of the United States House of Representatives, the Majority Leader of the United States House of Representatives, the Minority Leader of the United States House of Representatives and each member of the Kansas Congressional Delegation.

On motion of Senator Vratil **SR 1883** was passed over.

Senators Bruce, Hensley, D. Schmidt, Steineger and Umbarger introduced the following Senate resolution, which was read:

## SENATE RESOLUTION No. 1884—

A RESOLUTION commending Barb Hinton for her outstanding work as Legislative Post Auditor for the State of Kansas and congratulating her on her future endeavors.

WHEREAS, Barb Hinton began her career in the Legislative Division of Post Audit in 1977 as an editor, working her way up as an audit supervisor, audit manager and Deputy Post Auditor, until 1991, when she was named Legislative Post Auditor by the Legislative Post Audit Committee. She holds a Bachelor of Arts degree in English and Master of Science degree in Journalism from the University of Kansas; and

WHEREAS, During her tenure as Legislative Post Auditor, Barb has received numerous awards for her outstanding performance and leadership, including the David M. Walker Excellence in Government Performance and Accountability Award, presented by the National Intergovernmental Audit Forum. She also received the William R. Snodgrass Distinguished Leadership Award, presented by the National State Auditors Association and the Mike Harder Public Administrator of the Year Award, presented by the Kansas chapter of the American Society for Public Administration. Her division has also received awards, including twice winning the Excellence in Evaluation Award from the National Legislative Program Evaluation Society and winning numerous National Legislative Program Evaluation Society's Certificate of Recognition of Impact Awards; and

WHEREAS, In addition to her duties as Legislative Post Auditor, Barb's record of service to professional organizations has done much to advance the field of auditing. She is Chair of the Mid-America Intergovernmental Audit Forum and serves as an Executive Committee Member for the National Association of State Auditors, Comptrollers and Treasurers. In the past she has served as President of the National State Auditors Association, as an Executive Committee Member for the National Legislative Program Evaluation Society and as a member of the GAO's Governmental Auditing Standards Advisory Council. She has also worked as a professional consultant, peer reviewer or concurring reviewer for a number of states; and

WHEREAS, Barb's leadership has helped the State of Kansas make the most of its limited resources. She has implemented advanced and sophisticated techniques in her analysis of programs or operations that have saved millions of dollars for the state. By identifying areas where state programs could operate more efficiently and more effectively, and by boiling complex issues down to focused and concise reports, Barb's Legislative Post Audit Division has proven to be an essential component to the government of Kansas; and

WHEREAS, Barb has always been known for her integrity, dedication, professionalism and the streamlined organization of her division. She is well-respected by both fellow agency heads in Kansas and her audit peers in other states. She is well-loved by her co-workers and will be missed as she leaves in June, to begin her new position as Deputy Director for Performance Audits for the Washington State Auditor's Office: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we commend Barb Hinton for her outstanding performance as Legislative Post Auditor and congratulate her as she enters the next phase of her career. We extend our best wishes for her continued success and happiness in the future; and

*Be it further resolved:* That the Secretary of the Senate be directed to send five enrolled copies of this resolution to Senator Bruce, to be given to Barb and her family.

On emergency motion of Senator Bruce **SR 1884** was adopted unanimously.

**REFERRED TO COMMITTEE**

Vice President Vratil referred **SR 1883** to the **Committee of the Whole**.

**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 Emler in the chair.

On motion of Senator Emler the following report was adopted:

**Senate Sub for HB 2180** be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator V. Schmidt on page 4,

in line 24, after “fee” by inserting “, nonrefundable, except as provided in K.S.A. 2009 Supp. 74-8738, and amendments thereto.”

**Senate Sub for HB 2180** be further amended by Senator Masterson on page 15, before line 1, by inserting the following:

“Sec. 10. On and after July 1, 2010, K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, is hereby amended to read as follows: 21-4010. (a) No person shall smoke in an enclosed area or at a public meeting including, but not limited to:

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

and

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

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

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

- (1) The outdoor areas of any building or facility beyond the access points of such building or facility;
- (2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;
- (3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
- ~~(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;~~
- ~~(5) (4) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;~~
- ~~(6) (5) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;~~
- ~~(7) (6) tobacco shops;~~
- ~~(8) (7) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and~~
- ~~(9) (8) a private club in designated areas where minors are prohibited.~~

Sec. 11. On July 1, 2010, K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, is hereby repealed;”

And by renumbering remaining sections accordingly;

In the title, in line 11, after “amending”, by inserting “K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, and”

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 22, Nays 17, Present and Passing 1, Absent or Not Voting 0.

Yeas: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Huelskamp, Kelsey, Lynn, Masterson, McGinn, Ostmeier, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Taddiken, Wagle.

Nays: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Marshall, Morris, Owens, Steineger, Teichman, Umbarger, Vratil.

Present and Passing: Emler.

The motion carried and the amendment was adopted.

**Senate Sub for HB 2180** be further amended by Senator Huntington on page 14, in line 36, by striking “state infrastructure improvements” and inserting “expenditures for deferred maintenance of regents institutions pursuant to K.S.A. 2009 Supp. 76-7,101 et seq., and amendments thereto”

**Senate Sub for HB 2180** be further amended by Senator Kultala on page 8, in line 41, after the semicolon, by striking “and”;

On page 9, in line 12, by striking the period and inserting “; and

(5) a resolution of endorsement from the city governing body, if the proposed facility is within the corporate limits of a city, or from the county commission, if the proposed facility is located in the unincorporated area of the county.”;

Also on page 9, after line 42, by inserting the following:

“Sec. 6. K.S.A. 2009 Supp. 74-8742 is hereby amended to read as follows: 74-8742. (a) The executive director shall submit the proposed racetrack gaming facility management contract to the commission for the commission’s approval. *The commission shall not approve a management contract unless the commission determines that the proposed development consists of an investment in infrastructure of at least \$50,000,000 in the northeast and south central Kansas gaming zones, and of at least \$25,000,000 in the southeast Kansas gaming zone. The commission, in determining whether the minimum investment required by this subsection is met, shall not include any amounts derived from or financed by state or local retailers’ sales tax revenues.*

(b) Upon approval of the Kansas lottery commission, the executive director shall submit such contract to the Kansas racing and gaming commission for approval. The Kansas racing and gaming commission shall conduct such background investigations of the proposed racetrack gaming facility manager, and its officers, directors, employees, owners, agents and contractors, as determined in accordance with rules and regulations adopted by the Kansas racing and gaming commission. Upon completion of such investigations and approval of the background of the proposed racetrack gaming facility manager, and its officers, directors, employees, owners, agents and contractors, the Kansas racing and gaming commission shall vote to approve or reject the contract in whole. If the Kansas racing and gaming commission rejects the contract, the Kansas racing and gaming commission shall notify the executive director of the lottery and make recommendations regarding negotiation of the contract. The executive director may then resume negotiations with the proposed racetrack gaming facility manager.”;

And by renumbering remaining sections accordingly;

On page 15, in line 1, after “74-8741,” by inserting “74-8742,”;

In the title, in line 11, after “74-8741,” by inserting “74-8742,”;

**Senate Sub for HB 2180** be further amended by Senator Francisco on page 11, in line 16, after “facility” by inserting “located in the south central or southeast Kansas gaming zone”; by striking all in lines 39 through 43;

On page 12, by striking all in lines 1 through 6;

And by redesignating paragraphs accordingly;

Also on page 12, in line 7, by striking all after “facility”; in line 8, by striking all before “is”; in line 13, by striking all after “facility”; in line 14, by striking all before “is”; after line 35, by inserting the following:

“New Sec. 8. (a) Net electronic gaming machine income from a racetrack gaming facility located in the northeast Kansas gaming zone shall be distributed as follows:

(1) To the racetrack gaming facility manager, an amount equal to 25% of net electronic gaming machine income;

(2) 7% of net electronic gaming machine income shall be credited to the live horse racing purse supplement fund established by K.S.A. 2009 Supp. 74-8767, and amendments thereto, except that the amount of net electronic gaming machine income credited to the fund during any fiscal year from electronic gaming machines at a racetrack gaming facility shall not exceed an amount equal to the average of \$3,750 per electronic gaming machine at each location and any moneys in excess of such amount shall be distributed between the state and the racetrack gaming facility manager in accordance with the racetrack gaming facility management contract;

(3) 7% of net electronic gaming machine income shall be credited to the live greyhound racing purse supplement fund established by K.S.A. 2009 Supp. 74-8767, and amendments thereto, except that the amount of net electronic gaming machine income credited to the fund during any fiscal year from electronic gaming machines at a racetrack gaming facility shall not exceed an amount equal to the average of \$3,750 per electronic gaming machine at each location and any moneys in excess of such amount shall be distributed between the state and the racetrack gaming facility manager in accordance with the racetrack gaming facility management contract;

(4) (A) if the racetrack gaming facility is not located within a city, include a provision for payment of an amount equal to 3% of the net electronic gaming machine income to the county in which the racetrack gaming facility is located; or (B) if the racetrack gaming facility is located within a city, include provision for payment of an amount equal to 1.5% of the net electronic gaming machine income to the city in which the racetrack gaming facility is located and an amount equal to 1.5% of such revenues to the county in which such facility is located;

(5) 2% of net electronic gaming machine income shall be credited to the problem gambling and addictions grant fund established by K.S.A. 2009 Supp. 79-4805, and amendments thereto;

(6) 1% of net electronic gaming machine income shall be credited to the Kansas horse fair racing benefit fund established by K.S.A. 74-8838, and amendments thereto;

(7) 40% of net electronic gaming machine income shall be credited to the expanded lottery act revenues fund; and

(8) 15% of electronic gaming machine income shall be used for gaming expenses, subject to agreement between the Kansas lottery and the racetrack gaming facility manager.

(b) A racetrack gaming facility management contract may include provisions for a parimutuel licensee or any other entity to pay the parimutuel licensee’s expenses related to electronic gaming machines, as the executive director deems appropriate, subject to the requirements of subsection (a)(9).

(c) On and after January 1, 2013, net electronic gaming machine income from a racetrack gaming facility located in the northeast Kansas gaming zone shall be distributed as follows:

(1) To the racetrack gaming facility manager, an amount equal to not more than 58% of net electronic gaming machine income;

(2) 7% of net electronic gaming machine income shall be credited to the live horse racing purse supplement fund established by K.S.A. 2009 Supp. 74-8767, and amendments thereto;

(3) 7% of net electronic gaming machine income shall be credited to the live greyhound racing purse supplement fund established by K.S.A. 2009 Supp. 74-8767, and amendments thereto;

(4) (A) if the racetrack gaming facility is not located within a city, include a provision for payment of an amount equal to 3% of the net electronic gaming machine income to the county in which the racetrack gaming facility is located; or (B) if the racetrack gaming facility is located within a city, include provision for payment of an amount equal to 1.5% of the net electronic gaming machine income to the city in which the racetrack gaming facility is located and an amount equal to 1.5% of such revenues to the county in which such facility is located;

(5) 2% of net electronic gaming machine income shall be credited to the problem gambling and addictions grant fund established by K.S.A. 2009 Supp. 79-4805, and amendments thereto;

(6) 1% of net electronic gaming machine income shall be credited to the Kansas horse fair racing benefit fund established by K.S.A. 74-8838, and amendments thereto; and

(7) not less than 22% of net electronic gaming machine income shall be credited to the expanded lottery act revenues fund.

(d) On and after January 1, 2013, a racetrack gaming facility management contract may include provisions for a parimutuel licensee or any other entity to pay the parimutuel licensee's expenses related to electronic gaming machines, as the executive director deems appropriate.”;

And by renumbering the remaining sections accordingly

**Senate Sub for HB 2180** be further amended by Senator Hensley on page 15, before line 1, by inserting the following:

“Sec. 10. On and after July 1, 2010, K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, is hereby amended to read as follows: 21-4010. (a) No person shall smoke in an enclosed area or at a public meeting including, but not limited to:

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

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

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

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

- (1) The outdoor areas of any building or facility beyond the access points of such building or facility;
- (2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;
- (3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
- (4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, *except that, the provisions of this subsection shall expire on January 1, 2014;*

(5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;

(6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

(7) tobacco shops;

(8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and

(9) a private club in designated areas where minors are prohibited.

Sec. 11. On July 1, 2010, K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, is hereby repealed.;"

And by renumbering remaining sections accordingly;

In the title, in line 11, after "amending", by inserting "K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, and"

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 20, Nays 19, Present and Passing 0, Absent or Not Voting 1.

Yeas: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Marshall, Morris, Owens, Schmidt D, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Huelskamp, Kelsey, Lynn, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt V, Taddiken, Wagle.

Absent or Not Voting: McGinn.

The motion carried and the amendment was adopted.

**Senate Sub for HB 2180** be further amended by Senator V. Schmidt on page 4, in line 24, after "fee" by inserting ", nonrefundable, except as provided in K.S.A. 2009 Supp. 74-8738, and amendments thereto, and except in circumstances when a lottery facility management contract is disapproved by either the lottery gaming facility review board or the Kansas racing and gaming commission pursuant to K.S.A. 2009 Supp. 74-8736, and amendments thereto" and **Senate Sub for HB 2180** be passed as amended.

A motion by Senator Steineger to amend **Senate Substitute for HB 2180** failed and the following amendment was rejected: on page 6, in line 24, by striking "and"; in line 38, by striking the period and inserting the following: "; and

(20) include bid specifications prescribing that employees of any contractor or subcontractor performing construction, reconstruction or alteration work on the lottery gaming facility or any ancillary lottery gaming facility operations shall be paid in accordance with prevailing wages determined in accordance with wage areas, job classifications and wage rates determined under the federal Davis-Bacon act (40 U.S.C. 276a)."

On page 8, in line 41, after the semicolon, by striking "and";

On page 9, in line 12, by striking the period and inserting the following: "; and

(5) bid specifications prescribing that employees of any contractor or subcontractor performing construction, reconstruction or alteration work on the racetrack gaming facility shall be paid in accordance with prevailing wages determined in accordance with wage areas, job classifications and wage rates determined under the federal Davis-Bacon act (40 U.S.C. 276a)."

A motion by Senator Pilcher-Cook to amend **Senate Substitute for HB 2180** failed and the following amendment was rejected: on page 15, before line 1, by inserting the following:

"New Sec. 10. (a) No person shall knowingly or intentionally appear in a state of nudity in a lottery gaming facility or a racetrack gaming facility.

(b) "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.

(c) The Kansas lottery shall adopt rules and regulations to enforce this provision.";

And by renumbering remaining sections accordingly

Upon the showing of five hands a roll call vote was requested:

On roll call, the vote was: Yeas 14, Nays 19, Present and Passing 6, Absent or Not Voting 1.

Yeas: Abrams, Apple, Barnett, Brownlee, Colyer, Huelskamp, Kelsey, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Taddiken, Wagle.

Nays: Bruce, Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Huntington, Kelly, Kultala, Lee, Marshall, Morris, Owens, Reitz, Schmidt V, Steineger, Teichman, Umbarger, Vratil.

Present and Passing: Donovan, Emler, Holland, Lynn, Schmidt D, Schodorf.

Absent or Not Voting: McGinn.

The motion failed and the amendment was rejected.

A motion by Senator Hensley to amend **Senate Substitute for HB 2180** failed and the following amendment was rejected: on page 2, after line 19, by inserting the following:

“New Sec. 4. (a) The board of county commissioners of Sedgwick county shall not submit by resolution any question seeking voter approval related to lottery gaming facilities or operation of electronic gaming machines within Sedgwick county except as provided in subsection (b).

(b) The board of county commissioners of Sedgwick county shall submit upon presentation of a valid petition filed in accordance with subsection (c), to the qualified voters of the county a proposition to permit the operation of electronic gaming machines at an existing parimutuel racetrack within that county. The proposition shall be submitted to the voters at a special election to be held no later than 120 days after the effective date of this section.

(c) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the county election officer. The petition shall be signed by not less than 5,000 qualified voters of the county. The following shall appear on the petition: “We request an election to determine whether the operation of electronic gaming machines at parimutuel racetrack facilities by the Kansas lottery shall be permitted in Sedgwick county.”

(d) Upon the submission of a petition, the county election officer shall determine whether a sufficient number of qualified voters of the county have signed such petition. If the submitted petition calling for an election pursuant to this section is deemed valid, the county election officer shall cause the following proposition to be placed on the ballot at the election called for that purpose: “Shall the operation of electronic gaming machines at the Wichita Greyhound Park by the Kansas lottery be permitted in Sedgwick county?”

(e) If a majority of the votes cast and counted at such election is in favor of permitting the operation of such machines, the executive director may enter into a contract with the parimutuel racetrack facility licensee in Sedgwick county to operate such machines at its existing location in the county. If a majority of the votes cast and counted at an election under this section is against permitting the operation of electronic gaming machines in the county, the Kansas lottery shall not operate such machines in the county. The county election officer shall transmit a copy of the certification of the results of the election to the executive director and to the Kansas racing and gaming commission.

(f) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

(g) If in any election provided for by this section a majority of the votes cast and counted is against the proposition permitting the operation of electronic gaming machines in the county, another election submitting the same proposition shall not be held after the date of such election.

(h) This section shall be a part of and supplemental to the Kansas expanded lottery act.”; And by renumbering the remaining sections accordingly

A motion by Senator Teichman to amend **Senate Substitute for HB 2180** failed and the following amendment was rejected: page 15, before line 1, by inserting the following:

“Sec. 10. On and after July 1, 2010, K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, is hereby amended to read as follows: 21-4010. (a) No person shall smoke in an enclosed area or at a public meeting including, but not limited to:

- (1) Public places;
- (2) taxicabs and limousines;
- (3) restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;



(4) restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;

(5) access points of all buildings and facilities not exempted pursuant to subsection (d); and

(6) any place of employment.

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

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

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

(1) The outdoor areas of any building or facility beyond the access points of such building or facility;

(2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;

(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;

(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, *except that, the provisions of this subsection shall expire on July 1, 2015;*

(5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;

(6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

(7) tobacco shops;

(8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and

(9) a private club in designated areas where minors are prohibited.

Sec. 11. On July 1, 2010, K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, is hereby repealed.;"

And by renumbering remaining sections accordingly;

In the title, in line 11, after "amending", by inserting "K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, and"

Upon the showing a five hands a roll call vote was requested:

On roll call, the vote was: Yeas 19, Nays 19, Present and Passing 1, Absent or Not Voting 1.

Yeas: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Lee, Marshall, Morris, Owens, Schmidt D, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Huelskamp, Kelsey, Lynn, Masterson, Ostmeier, Petersen, Pilcher-Cook, Pyle, Reitz, Schmidt V, Taddiken, Wagle.

Present and Passing: Emler.

Absent or Not Voting: McGinn.

The motion failed and the amendment was rejected.

A motion by Senator Kelsey to amend **Senate Substitute for HB 2180** failed and the following amendment was rejected: on page 3, in line 37, by striking “and”;

On page 4, in line 3, by striking the period and inserting “; and

(3) the proposed lottery gaming facility is located not less than 10 miles from the border of any county where the proposition to permit a lottery gaming facility has been rejected in a county referendum on the issue.”

On motion of Senator Huelskamp **Senate Substitute for HB 2180** was passed over.

Upon returning to the bill Senator Huelskamp’s motion to amend **Senate Substitute for HB 2180** failed and the following amendment was rejected: page 15, before line 1, by inserting the following:

“Sec. 10. K.S.A. 21-3105 is hereby revived to read as follows: 21-3105. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

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

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

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

(4) All other crimes are misdemeanors.

Sec. 11. K.S.A. 21-4009 is hereby revived to read as follows: 21-4009. As used in this act: (a) “Public place” means enclosed indoor areas open to the public or used by the general public including but not limited to: Restaurants, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities.

(b) “Public meeting” includes all meetings open to the public.

(c) “Smoking” means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment.

Sec. 13. K.S.A. 21-4010 is hereby revived to read as follows: 21-4010. (a) No person shall smoke in a public place or at a public meeting except in designated smoking areas.

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

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

Sec. K.S.A. 21-4011 is hereby revived to read as follows: 21-4011. The proprietor or other person in charge of the premises of a public place shall post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law. The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.

Sec. 14. K.S.A. 21-4012 is hereby revived to read as follows: 21-4012. Any person found guilty of smoking in violation of this act is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act.

Sec. 15. K.S.A. 65-530 is hereby revived to read as follows: 65-530. (a) As used in this section:

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

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

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

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

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

Sec. 16. K.S.A. 21-4016 is hereby revived to read as follows: 21-4016. Prior to July 1, 1995, no person shall smoke in any area, room or hallway in the state capitol except in offices occupied as office space by state officers and employees which have been designated as smoking areas in accordance with K.S.A. 21-4009 *et seq.* and amendments thereto. On and after July 1, 1995, no person shall smoke in any area, room, hallway, or other place in the state capitol and no area of the state capitol shall be established as a designated smoking area under K.S.A. 21-4010 and amendments thereto.

Sec. 17. K.S.A. 21-4017 is hereby revived to read as follows: 21-4017. (a) As used in this section:

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

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

(b) On and after July 1, 1994, smoking in a medical care facility is hereby prohibited except that a smoking area may be established within a licensed long-term care unit of a medical care facility if such smoking area is well-ventilated. On and after July 1, 1994, the chief administrative officer of each medical care facility shall cause to be posted in conspicuous places signs stating that smoking in the medical care facility is prohibited by state law.

(c) Any person found guilty of smoking in violation of subsection (b) of this section is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by subsection (b) of this section, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of subsection (b) of this section.

Sec. 18. On and after January 1, 2014, K.S.A. 21-3105 is hereby amended to read as follows: 21-3105. A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is

authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

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

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

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

(4) All other crimes are misdemeanors.

Sec. 19. On and after January 1, 2014, K.S.A. 21-4009 is hereby amended to read as follows: 21-4009. As used in ~~this act~~ K.S.A. 21-4009 through 21-4014, and amendments thereto:

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

~~(a)~~ (b) "Bar" means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.

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

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

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

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

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

(h) "Outdoor recreational facility" means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

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

(j) "Private club" means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to

the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

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

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

(m) "Public place" means any enclosed ~~indoor~~ areas open to the public or used by the general public including, but not limited to: ~~Restaurants~~ Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, ~~medical care facilities~~, educational facilities, libraries, courtrooms, ~~state, county or municipal~~ public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a "public place" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

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

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

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

(p) "Substantial dues or membership fee requirements" means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a statewide ban on smoking.

Sec. 20. On and after January 1, 2014, K.S.A. 21-4010 is hereby amended to read as follows: 21-4010. (a) No person shall smoke in a ~~public place~~ an enclosed area or at a public meeting except in designated smoking areas: including, but not limited to:

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

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

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

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

(c) Notwithstanding any other provision of this section, K.S.A. 21-4011 or 21-4012, and amendments thereto, the proprietor or other person in charge of an adult care home, as

defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

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

(1) The outdoor areas of any building or facility beyond the access points of such building or facility;

(2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;

(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;

(4) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;

(5) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

(6) tobacco shops;

(7) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and

(8) a private club in designated areas where minors are prohibited.

Sec. 21. On and after January 1, 2014, K.S.A. 21-4011 is hereby amended to read as follows: 21-4011. The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall post or cause to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking is prohibited by state law. The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.

Sec. 22. On and after January 1, 2014, K.S.A. 21-4012 is hereby amended to read as follows: 21-4012. Any person found guilty of smoking in violation of this act is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act: (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.

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

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

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

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

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

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

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

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

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

New Sec. 23. On and after January 1, 2014, the director of alcoholic beverage control is hereby authorized to promulgate rules and regulations to insure any exemption from the statewide ban on smoking is bona fide and the entity seeking such exemption is not inappropriately seeking to circumvent the smoking ban created under this act.

Sec. 24. On and after January 1, 2014, K.S.A. 65-530 is hereby amended to read as follows: 65-530. (a) As used in this section:

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

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

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

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

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

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

New Sec. 25. On and after January 1, 2014, the amendments made to K.S.A. 21-4009 through 21-4012, and amendments thereto, and K.S.A. 21-4013 and 21-4014, and amendments thereto, shall constitute the Kansas indoor clean air act.":

And by renumbering sections accordingly;

Also on page 15, after line 2, by inserting the following:

"Sec. 27. K.S.A. 21-3105, as amended by section 1 of 2010 House Bill No. 2221, 21-4009, as amended by section 2 of 2010 House Bill No. 2221, 21-4010, as amended by section 3 of 2010 House Bill No. 2221, 21-4011, as amended by section 4 of 2010 House Bill No. 2221, 21-4012, as amended by section 5 of 2010 House Bill No. 2221, 21-4016, 21-4017, 65-530, as amended by section 7 of 2010 House Bill No. 2221, section 6 of 2010 House Bill No. 2221 and section 8 of 2010 House Bill No. 2221 are hereby repealed.

Sec. 28. On January 1, 2014, K.S.A. 21-3105, as revived by section 10, 21-4009, as revived by section 11, 21-4010, as revived by section 12, 21-4011, as revived by section 13, 21-4012,

as revived by section 14, 21-4016, as revived by section 16, 21-4017, as revived by section 17, and 65-530, as revived by section 15 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 12 and inserting the following: “concerning the Kansas expanded lottery act; relating to lottery and racetrack gaming facilities; relating to smoking; creating the Kansas agricultural opportunity act; reviving and amending K.S.A. 21-3105, 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and repealing the revived sections; also reviving K.S.A. 21-4016 and 21-4017; amending K.S.A. 2009 Supp. 74-8734, 74-8741, 74-8744, 74-8747, 74-8751 and 74-8768 and repealing the existing sections; also repealing K.S.A. 21-3105, as amended by section 1 of 2010 House Bill No. 2221, 21-4009, as amended by section 2 of 2010 House Bill No. 2221, 21-4010, as amended by section 3 of 2010 House Bill No. 2221, 21-4011, as amended by section 4 of 2010 House Bill No. 2221, 21-4012, as amended by section 5 of 2010 House Bill No. 2221, 21-4016, 21-4017, 65-530, as amended by section 7 of 2010 House Bill No. 2221, section 6 of 2010 House Bill No. 2221 and section 8 of 2010 House Bill No. 2221.”

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 12, Nays 21, Present and Passing 5, Absent or Not Voting 2.

Yeas: Abrams, Brownlee, Bruce, Huelskamp, Kelsey, Lynn, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Waggle.

Nays: Apple, Barnett, Brungardt, Colyer, Faust-Goudeau, Francisco, Hensley, Huntington, Kelly, Kultala, Lee, Marshall, Morris, Owens, Reitz, Schmidt V, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Present and Passing: Donovan, Emler, Haley, Holland, Steineger.

Absent or Not Voting: McGinn, Schmidt D.

The motion failed and the amendment was rejected.

Senators Hensley, Huntington, Masterson withdrew amendments on **S Sub for HB 2180**.

**S Sub for S Sub for Sub HB 2320** be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator V. Schmidt on page 1, in line 24, before the period, by inserting: “, but shall not include the Kansas soldiers’ home or the Kansas veterans’ home”

**S Sub for S Sub for Sub HB 2320** be further amended by Senator Lee on page 4, in line 10, after “quality” by inserting “care”

The bill was further amended by Senator Lee on page 6, in line 21, by striking all after “The”; by striking all in line 22; in line 23, by striking all before “person” and **S Sub for S Sub for Sub HB 2320** be passed as amended.

**S Sub for S Sub for HB 2650** be amended by adoption of the committee report recommending a substitute bill, be amended by motion of Senator D. Schmidt on page 48, in line 18, by striking “\$6,000,000” and inserting “\$8,000,000”

**S Sub for S Sub for HB 2650** be further amended by Senator Brownlee on page 2, in line 3, by striking “and”; in line 11, by striking the period and inserting “; and

(4) not more than one highway demonstration project for the purpose of evaluating the design-build concept which may include financing, design, construction and performance guarantee. Such demonstration project shall be conducted in Johnson or Wyandotte county. The secretary is authorized to procure such demonstration project in the same manner as engineering services are procured under K.S.A. 75-5801 et seq., and amendments thereto, and such demonstration project need not comply with the provisions of K.S.A. 68-410 or 75-430a, and amendments thereto, or any other applicable statute to the procurement of state highway construction contracts. The secretary of transportation shall provide a cost/benefit analysis of such demonstration project to the standing committees on transportation of the house of representatives and the senate on completion of such demonstration project.”

**S Sub for S Sub for HB 2650** be further amended by Senator Colyer on page 1, in line 43, before the period, by inserting: “, except for projects funded by build America bonds, no expansion and economic opportunity projects shall be selected prior to February 1, 2011” and **S Sub for S Sub for HB 2650** be passed as amended.

A motion by Senator Bruce to amend **S Sub for S Sub for HB 2650** failed and the following amendment was rejected: on page 49, in line 7, by striking “the” where it appears



for the second time and inserting “: (A) The”; in line 13, before the period by inserting “; and

(B) the issuance of such bonds is approved by resolution of the state finance council.

The approval by the state finance council required by this subsection is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto. Such approval may be given by the state finance council when the legislature is in session.”

A motion by Senator Brownlee to amend **S Sub for S Sub for HB 2650** failed and the following amendment was rejected: on page 2, in line 3, by striking “and”; in line 11, by striking the period and inserting “; and

(4) not more than two highway demonstration projects for the purpose of evaluating the design-build concept which may include financing, design, construction and performance guarantee. Such demonstration projects shall be conducted in Johnson or Wyandotte county. The secretary is authorized to procure such demonstration projects in the same manner as engineering services are procured under K.S.A. 75-5801 et seq., and amendments thereto, and such demonstration projects need not comply with the provisions of K.S.A. 68-410 or 75-430a, and

amendments thereto, or any other applicable statute to the procurement of state highway construction contracts. The secretary of transportation shall provide a cost/benefit analysis of such demonstration projects to the standing committees on transportation of the house of representatives and the senate on completion of each such demonstration project.”

A motion by Senator Ostmeyer to amend **S Sub for S Sub for HB 2650** failed and the following amendment was rejected: on page 3, by striking lines 31 through 43;

By striking all on pages 4 through 26;

On page 30, by striking all in lines 29 through 43;

By striking all on pages 31 and 32;

And by renumbering sections accordingly;

On page 62, in line 40, by striking all following “K.S.A.”; in line 41, by striking “8-234b,”<sup>∞</sup> line 42, by striking all following “Supp.”; in line 43, by striking “143j.”

On page 1, in the title, by striking all in line 14; in line 16, by striking “8-142, 8-143, 8-143j.”

#### 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 2180; S Sub for S Sub for Sub HB 2320; S Sub for S Sub for HB 2650** were advanced to Final Action and roll call.

**S Sub for HB 2180**, An act concerning the Kansas expanded lottery act; relating to racetrack gaming facilities; creating the Kansas agricultural opportunity act; amending K.S.A. 21-4010, as amended by section 3 of 2010 House Bill No. 2221, and K.S.A. 2009 Supp. 74-8734, 74-8741, 74- 8742, 74-8744, 74-8747, 74-8751 and 74-8768 and repealing the existing sections.

On roll call, the vote was: Yeas 19, Nays 20, Present and Passing 0, Absent or Not Voting 1.

Yeas: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Huntington, Kelly, Lee, Marshall, Morris, Owens, Reitz, Schmidt D, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Barnett, Brownlee, Bruce, Colyer, Donovan, Holland, Huelskamp, Kelsey, Kultala, Lynn, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt V, Taddiken, Wagle.

Absent or Not Voting: McGinn.

A constitutional majority having failed to vote in favor of the bill, **S Sub for HB 2180** did not pass.

#### EXPLANATION OF VOTE

MR. VICE PRESIDENT: It is my belief **S Sub for HB 2180** would have been vetoed if a total smoking ban were enacted immediately. If it were vetoed, smoking would continue indefinitely in casinos. A majority of my constituents made it quite clear, they wanted the

smoking ban to apply to casinos. By voting for amendment number 472, the prohibition against smoking will ultimately apply to state owned casinos, as it should, and the state will ultimately be treated the same as every other business.

Mr. Vice President I vote Aye. — JAY SCOTT EMLER

MR. VICE PRESIDENT: I really wanted to vote yes on this bill because the Woodlands was a great community partner in my district for almost 20 years. However, I believe that this bill in its current form jeopardizes the success of the existing casino project and of the proposed racetrack project in my district. — KELLY KULTALA

**S Sub for S Sub for Sub HB 2320**, An act providing for assessments on certain nursing facilities; prescribing powers, duties and functions for the Kansas health policy authority; creating the quality care assessment fund; providing for implementation and administration, by Committee on Ways and Means.

On roll call, the vote was: Yeas 30, Nays 9, Present and Passing 0, Absent or Not Voting 1.

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

Nays: Abrams, Barnett, Brownlee, Colyer, Huelskamp, Lynn, Masterson, Pilcher-Cook, Pyle.

Absent or Not Voting: McGinn.

The substitute bill passed, as amended.

#### EXPLANATION OF VOTE

MR. VICE PRESIDENT: I appreciate the work accomplished for the compromise on this bill as it closes much of the gap for many facilities. I am thankful that this compromise actually creates a positive for the nursing homes in my district. But it is not a perfect solution, and in fact, the gap between winners and losers is still significant. Fundamentally and philosophically it is what it is: a tax on our most vulnerable citizens. I am sickened by this approach to solve our economic problems. For this reason, Mr. Vice President I vote NO.  
— JULIA LYNN

**S Sub for S Sub for HB 2650**, 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, 8-143k, 8-234b, 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, 8-145, 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 and 79-34,142 and repealing the existing sections; also repealing K.S.A. 68-2314a.

On roll call, the vote was: Yeas 25, Nays 13, Present and Passing 1, Absent or Not Voting 1.

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

Nays: Abrams, Apple, Barnett, Bruce, Huelskamp, Kelsey, Lynn, Masterson, Ostmeyer, Pilcher-Cook, Pyle, Taddiken, Wagle.

Present and Passing: Brownlee.

Absent or Not Voting: McGinn.

The substitute bill passed, as amended.

#### EXPLANATION OF VOTE

MR. VICE PRESIDENT: I have struggled greatly with the question of how to vote on **HB 2650**. Proponents of this bill advocate it as a jobs project and claim it will create economic growth throughout the state. I believe, but only to an extent, they are correct in their assertions; and let me assert, I absolutely believe these are admirable goals which I have long supported. Our roads are our economic lifeline.

Despite my support for the intent of this legislation, passing a transportation plan at this time - in this manner - is ill advised. During the darkest hours of the worst financial crisis in two generations, we are raising taxes on struggling Kansans and increasing registration fees on large vehicles while simultaneously increasing Kansas' debt load to unprecedented levels in a deeply troubled economy. This additional burden is administered without adequate oversight and is assumed to be primarily paid for by a funding source that is tenuous at best given repeated executive and legislative pilfering of our highway dollars.

Until this body is willing to fulfill its fiduciary obligations to the people of this state and demonstrates a legitimate commitment to protecting the funding source for our highways, I cannot support such a measure. I vote no. — TERRY BRUCE

Senators request the record to show they concur with the "Explanation of Vote" offered by Senators Abrams, Apple and Ostmeyer on **HB 2650**.

MR. VICE PRESIDENT: When bills come across my desk for final action I always ask myself three questions: 1. "Is this legislation something that is within the scope of government's responsibility?" 2. "How much will it cost and what is the funding mechanism?" 3. Is it sustainable?" Mr. President, **S Sub for S Sub for HB 2650** does not completely pass my smell test. We are responsible for good roads and they are vital to our quality of life. However, this is not the time. My constituents are concerned with bread and butter issues. They are cutting back, putting off investments and major purchases, watching their consumption and working towards financial prosperity and independence. Mr. Vice President, it's time the State of Kansas do the same. That's why I vote NO on **S Sub for S Sub for HB 2650**. — JULIA LYNN.

Senator Abrams requests the record to show he concurs with the "Explanation of Vote" offered by Senator Lynn on **S Sub for S Sub for HB 2650**.

MR. VICE PRESIDENT: I vote no on **S Sub for S Sub for HB 2650**. Yesterday I supported a one cent sales tax to help partially fund the new Transportation Plan. To be fair to the Trucking industry and Farmers, the registration fee should have been removed from the bill. We will have more opportunities to fix this problem and get a bill that is fair and good for a struggling economy. — RALPH OSTMEYER

#### MESSAGE FROM THE HOUSE

The House adopts the conference committee report on **HB 2482**.

The House adopts the conference committee report on **HB 2486**.

The House concurs in Senate amendments to **HB 2595**.

On motion of Senator D. Schmidt the Senate adjourned until 11:00 a.m., Saturday, May 8, 2010.

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

