

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m. on January 31, 1985 in room 254-E of the Capitol.

All members were present except: Senator Vidricksen was excused.

Committee staff present:
Arden Ensley, Revisor of Statutes
Fred Carman, Assistant Revisor of Statutes Mary Torrence, Revisor's Office
Russell Mills, Legislative Research
Emalene Correll, Legislative Research
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

The Chairman announced that there are several proposals from the Revisor's Office before the Committee. If the Committee chooses to introduce them they will be printed tonight and tomorrow anyone who wants to may speak to them.

Atch. 1
The first proposal to be distributed was 5 RS 0598, concerning suspension or revocation of minor's driver's license for alcoholic beverage violations. Senator Morris moved that 5 RS 0598 be introduced as a Committee bill. 2d by Senator Anderson. Motion carried.

Atch. 2
The next proposal was 5 RS 0571, limitations on sales practices relating to alcoholic beverages. This is similar to one being introduced in the House. Senator Anderson moved that 5 RS 0571 be introduced as a Committee bill. 2d by Senator Walker. Senator Morris voted "no." Motion carried.

Atch. 3
The next proposal was 5 RS 0572, concerning restriction of driver's license after 2nd conviction of D.U.I. The Chairman said this had been requested by Senator Frey. Senator Morris moved that 5 RS 0572 be introduced as a Committee bill. 2d by Senator Martin. Motion carried.

Atch. 4
The fourth proposal, 5 RS 0593, concerning restriction, suspension or revocation of driver's license as condition of D.U.I. diversion, was discussed next. Senator Morris moved that 5 RS 0593 be introduced as a Committee bill. 2d by Senator Hoferer. Motion carried.

Atch. 5
Senator Morris said that he had requested another proposal. He said he felt if SCR1605 were going to be offered to the people he felt they should also be given the choice to vote on a constitutional amendment for prohibition of liquor, which is 5 RS 0558. There was much discussion between Committee and Staff. Senator Martin moved that 5 RS 0558 be introduced as a Committee resolution. 2d by Senator Anderson. Motion carried.

The meeting adjourned at 11:30 a.m.

SENATE BILL NO. 126

By

AN ACT concerning crimes and punishments; relating to penalties for certain crimes involving alcoholic beverages; amending K.S.A. 41-715 and K.S.A. 1984 Supp. 41-2721 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 41-715 is hereby amended to read as follows: 41-715. (a) No minor shall represent-that-he-is:

(1) Claim to be 21 or more years of age for the purpose of asking--for,--purchasing--or-receiving obtaining or attempting to obtain alcoholic liquor from any person except in cases authorized by law--No-minor-shall;

(2) attempt to purchase or purchase alcoholic liquor from any person--No-minor-shall; or

(3) possess or consume any alcoholic liquor.

(b) No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor. Any-person--violating--any--of the--provisions--of--this--section--shall--be--deemed-guilty-of-a misdemeanor,--and-upon-conviction-thereof-shall-be-punished--by--a fine---of--not--more--than--two--hundred--dollars--(\$200)--or--by imprisonment-for-not-to-exceed-thirty-(30)--days,--or--both--such fine-and-imprisonment-in-the-discretion-of-the-court.

(c) Violation of this section is a misdemeanor punishable by a fine not exceeding \$200 or imprisonment not exceeding 30 days, or both.

(d) Upon a conviction or adjudication of a violation of subsection (a), the court, in addition to any other penalty or

disposition provided by law, shall suspend the driver's license of the offender for one year. Upon suspension, the court shall require that the license be surrendered to the court. The court shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the court's order suspending the license. Upon expiration of the year's suspension, the licensee may apply to the division for return of the license. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior to expiration.

If the offender is not old enough to qualify for a driver's license, the court shall order that no driver's license be issued to the offender until one year after the offender reaches the age to qualify for a driver's license. Upon entering the order, the court shall transmit a copy of it to the division of vehicles of the department of revenue, which shall not issue any driver's license to the offender until one year after the offender reaches the age to qualify for such a license.

(e) Subsection (a) of this section shall not apply to the possession and consumption of alcoholic liquor by a person under 21 years of age when such possession and consumption is permitted, and such liquor is furnished, by the person's parent or legal guardian.

Sec. 2. K.S.A. 1984 Supp. 41-2721 is hereby amended to read as follows: 41-2721. (a) No person under 18 years of age shall:

(1) Claim to be 18 or more years of age for the purpose of obtaining or attempting to obtain any cereal malt beverage from any person;

(2) purchase or attempt to purchase any cereal malt beverage from any person; or

(3) possess or consume any cereal malt beverage.

(b) Any person who violates this section, upon adjudication

thereof, shall be deemed a juvenile offender under the Kansas juvenile offenders code.

(c) Upon an adjudication of a violation of this section, the court, in addition to any other penalty or disposition provided by law, shall suspend the driver's license of the offender for one year. Upon suspension, the court shall require that the license be surrendered to the court. The court shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the court's order suspending the license. Upon expiration of the year's suspension, the licensee may apply to the division for return of the license. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior to expiration.

If the offender is not old enough to qualify for a driver's license, the court shall order that no driver's license be issued to the offender until one year after the offender reaches the age to qualify for a driver's license. Upon entering the order, the court shall transmit a copy of it to the division of vehicles of the department of revenue, which shall not issue any driver's license to the offender until one year after the offender reaches the age to qualify for such a license.

(d) This section shall not apply to the possession and consumption of cereal malt beverage by a person under 18 years of age when such possession and consumption is permitted, and such beverage is furnished, by the person's parent or legal guardian.

(e) This section shall be part of and supplemental to article 27 of chapter 41 of the Kansas Statutes Annotated.

Sec. 3. K.S.A. 41-715 and K.S.A. 1984 Supp. 41-2721 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. 128

By

AN ACT concerning alcoholic beverages; prohibiting certain practices with relation to sales thereof; providing penalties for violations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) No club, or employee or agent of a club, shall:

- (1) Offer or serve any free drink to any person;
- (2) serve more than two drinks to one person at one time;
- (3) sell, offer to sell or serve to any person any drink at a price less than the price regularly charged for such drink during that calendar week, except at private functions not open to the general club membership;
- (4) sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general club membership;
- (5) sell, offer to sell or serve any drink to any person on any one day at a price less than that charged the general membership on that day, except at private functions not open to the general club membership;
- (6) sell, offer to sell or serve drinks by the pitcher or similar quantity, except to two or more persons at any one time;
- (7) increase the volume of alcoholic liquor contained in a drink or the size of a serving of cereal malt beverage without increasing proportionately the price regularly charged for the drink during that calendar week;
- (8) encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of drinks as prizes; or

(9) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (8).

(b) Every club shall maintain on the licensed premises a schedule of the prices charged for all drinks to be served and consumed on the licensed premises or in any room or part thereof. Such prices shall be effective for not less than one calendar week.

(c) Nothing in subsection (a) shall be construed to prohibit a club from:

- (1) Offering free food or entertainment at any time;
- (2) including a drink as part of a meal package; or
- (3) selling or delivering wine by the bottle or carafe if sold or delivered with a meal or to two or more persons.

(d) Violation of any provision of this section is a misdemeanor punishable as provided by K.S.A. 41-2633 and amendments thereto.

(e) Violation of any provision of this section shall be grounds for suspension or revocation of the club's license as provided by K.S.A. 41-2609 and amendments thereto and for imposition of a civil fine as provided by K.S.A. 41-2633a and amendments thereto.

(f) As used in this section, "drink" means an individual serving of any beverage containing alcoholic liquor or an individual serving of cereal malt beverage.

(g) This section shall be part of and supplemental to K.S.A. 41-2601 through 41-2639, and amendments thereto.

Sec. 2. (a) No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverage for consumption on the licensed premises shall:

- (1) Offer or serve any free drink to any person;
- (2) serve more than two drinks to one person at one time;
- (3) sell, offer to sell or serve to any person any drink at a price less than the price regularly charged for such drink during that calendar week, except at private functions not open

to the general public;

(4) sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

(5) sell, offer to sell or serve any drink to any person on any one day at a price less than that charged the general public on that day, except at private functions not open to the general public;

(6) sell, offer to sell or serve malt beverage by the pitcher or similar quantity except to two or more persons at any one time;

(7) increase the size of a serving of cereal malt beverage without increasing proportionately the price regularly charged for the drink during that calendar week;

(8) encourage or permit, on the licensed premises, any game or contest which involves drinking cereal malt beverage or the awarding of drinks as prizes; or

(9) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (8).

(b) Every retailer shall maintain on the licensed premises a schedule of the prices charged for all drinks to be served and consumed on the licensed premises or in any room or part thereof. Such prices shall be effective for not less than one calendar week.

(c) Nothing in subsection (a) shall be construed to prohibit a retailer from:

(1) Offering free food or entertainment at any time; or

(2) including a drink as part of a meal package.

(d) Violation of any provisions of this section is a misdemeanor punishable as provided by K.S.A. 41-2711 and amendments thereto.

(e) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by K.S.A. 41-2708 and amendments thereto.

(f) As used in this section, "drink" means an individual serving of cereal malt beverage.

(g) This section shall be part of and supplemental to K.S.A. 41-2701 through 41-2721, and amendments thereto.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. 127

By

AN ACT concerning crimes and punishments; relating to driving under the influence of alcohol or drugs; amending K.S.A. 1984 Supp. 8-1567 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1984 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate any vehicle within this state while under the influence of alcohol.

(b) No person shall operate any vehicle within this state if the person is a habitual user of or under the influence of any narcotic, hypnotic, somnifacient or stimulating drug or is under the influence of any other drug to a degree which renders such person incapable of safely driving a vehicle. The fact that any person charged with a violation of this subsection is or has been entitled to use the drug under the laws of this state shall not constitute a defense against any charge of violating this subsection.

(c) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 hours' nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which (1) places restrictions on the person's driver's license as provided in K.S.A. 1984 Supp. 8-292 and amendments thereto and (2) requires that the person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as

provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs. If the person convicted has a suspended or revoked driver's license, the court shall not make the restricted license, provided under this subsection, applicable until the suspension or revocation is terminated. No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(d) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least five days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and amendments thereto. In addition, the court shall suspend the driver's license of the convicted person for one year or until the person completes the treatment program approved by the court, whichever is directed by the court. After the person completes the treatment program, the court may restrict the person's driver's license as provided in K.S.A. 1984 Supp. 8-292 and amendments thereto. No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to

avoid the mandatory penalties established by this subsection or the ordinance.

(e) On the third or subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008 and amendments thereto. In addition, the court shall revoke the driver's license of the convicted person for the period of time specified for the revocation of a driver's license under subsection (j) and in accordance with the procedure for revoking a driver's license under subsection (k). No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or any ordinance of a city in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this subsection or the ordinance.

(f) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(g) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by

an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(h) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(i) For the purpose of determining whether a conviction is a first, second or third or subsequent conviction in sentencing under this section, the term "conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section. For such purpose "conviction" also includes being convicted of a violation of a law of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance. For the purpose of determining whether a conviction is a first, second or third or subsequent conviction in sentencing under this section, only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable.

(j) In addition to any fine or imprisonment imposed under this section and in lieu of any restrictions on or suspension of a driver's license under this section, the judge of any court in

which any person is convicted of violating this section or of violating any municipal ordinance which prohibits the acts prohibited by this section may revoke the person's driver's license or privilege to operate a motor vehicle on the public highways of this state. Whenever a license or privilege to operate a motor vehicle is revoked pursuant to this section, the person whose license or privilege has been revoked shall not be entitled to have such license or privilege restored until the expiration of one year from the date of revocation. On conviction of a third or subsequent violation of this section, revocation pursuant to this subsection shall be mandatory for a period set by the court at not less than one year.

(k) Upon suspending or revoking any license pursuant to this section, the court shall require that such license be surrendered to the court. The court shall transmit the license to the division to be retained by the division until further order of the court. Whenever the court restores the privilege to operate a motor vehicle on the public highways of this state to any person whose license was suspended or revoked pursuant to this section, the court shall notify the division, and if the person has successfully completed the examination required by K.S.A. 8-241 and amendments thereto, and the other conditions established by law have been met, the division shall issue the appropriate license to the person upon proper application and payment of the required fee.

(1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance shall not be less than nor exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed for the same violation.

Sec. 2. K.S.A. 1984 Supp. 8-1567 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL NO. 129

By

AN ACT concerning criminal procedure; relating to diversion in lieu of criminal proceedings for certain alcohol and drug-related offenses; amending K.S.A. 12-4416 and K.S.A. 1984 Supp. 22-2909 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-4416 is hereby amended to read as follows: 12-4416. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the city attorney, the city attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the municipal court with which the agreement is filed.

(b) If a diversion agreement is entered into in lieu of

further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement shall include a stipulation, agreed to by the defendant and the city attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay the minimum fine equal to that required by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, consonant with K.S.A. 8-1567, and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both such education and treatment programs, as specified by the agreement, and pay the assessment required by K.S.A. 8-1008 and amendments thereto.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may restrict the defendant's privilege of operating a motor vehicle to driving only under the following circumstances: (1) In going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto; (5) at such times of the day as may be specified by the order; and (6) to such places as may be specified by the diversion agreement. Restrictions imposed pursuant to this subsection

shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement. Upon entering a diversion agreement restricting a person's license under this subsection, the city attorney shall require that the license be surrendered to the city attorney. The city attorney shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the diversion agreement. Upon its receipt, the division of vehicles shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's privilege of operating a motor vehicle and that a certified copy of the diversion agreement imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the city attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence. The city attorney shall furnish to any person whose driver's license has had restrictions imposed on it under this subsection a copy of the diversion agreement, which for a period of 30 days only shall be recognized as a valid Kansas driver's license pending issuance of the restricted license as provided in this subsection. Upon expiration of the period of time for which restrictions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior to expiration. Violation of restrictions imposed under this subsection is a misdemeanor subject to punishment and driver's license suspension

as provided by K.S.A. 1984 Supp. 8-291 and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may suspend or revoke the defendant's privilege of operating a motor vehicle on the public highways of this state. Suspension or revocation imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement suspending or revoking any license pursuant to this subsection, the city attorney shall require that such license be surrendered to the city attorney. The city attorney shall transmit the license to the division to be retained by the division.

Upon expiration of the period of time for which suspension or revocation is imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior to expiration.

(e) If the city attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the municipal court and the municipal court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the municipal court shall resume the criminal proceedings on the complaint.

Sec. 2. K.S.A. 1984 Supp. 22-2909 is hereby amended to read as follows: 22-2909. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program

described therein, as determined by the county or district attorney, the county or district attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant and the county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay the minimum fine required by K.S.A. 8-1567 and

amendments thereto for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567 and amendments thereto; and

(2) enroll in and successfully complete an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both such education and treatment programs, as specified by the agreement, and pay the assessment required by K.S.A. 8-1008 and amendments thereto.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may restrict the defendant's privilege of operating a motor vehicle to driving only under the following circumstances: (1) In going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program as provided in K.S.A. 8-1008 and amendments thereto; (5) at such times of the day as may be specified by the order; and (6) to such places as may be specified by the diversion agreement. Restrictions imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement. Upon entering a diversion agreement restricting a person's license under this subsection, the county or district attorney shall require that the license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division of vehicles of the department of revenue, together with a copy of the diversion agreement. Upon its receipt, the division of vehicles shall issue without charge a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's privilege of operating a motor vehicle and that a certified copy of the

diversion agreement imposing the restrictions is required to be carried by the person for whom the license was issued any time the person is operating a motor vehicle on the highways of this state. If the person is a nonresident, the county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence. The county or district attorney shall furnish to any person whose driver's license has had restrictions imposed on it under this subsection a copy of the diversion agreement, which for a period of 30 days only shall be recognized as a valid Kansas driver's license pending issuance of the restricted license as provided in this subsection. Upon expiration of the period of time for which restrictions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior to expiration. Violation of restrictions imposed under this subsection is a misdemeanor subject to punishment and driver's license suspension as provided by K.S.A. 1984 Supp. 8-291 and amendments thereto.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement may suspend or revoke the defendant's privilege of operating a motor vehicle on the public highways of this state. Suspension or revocation imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

Upon entering a diversion agreement suspending or revoking any license pursuant to this subsection, the county or district

attorney shall require that such license be surrendered to the county or district attorney. The county or district attorney shall transmit the license to the division to be retained by the division.

Upon expiration of the period of time for which suspension or revocation is imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's privilege to operate a motor vehicle on the highways of this state has been otherwise suspended or revoked prior to expiration.

(f) If the county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

Sec. 3. K.S.A. 12-4416 and K.S.A. 1984 Supp. 22-2909 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

SENATE CONCURRENT RESOLUTION NO. 1612

By Committee on Federal and State Affairs

A PROPOSITION to amend section 10 of article 15 of the constitution of the state of Kansas, relating to intoxicating liquors.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 10 of article 15 of the constitution of the state of Kansas is amended to read as follows:

"§ 10. Intoxicating liquors. ~~The legislature may provide for the prohibition of intoxicating liquors in certain areas. Subject to the foregoing, the legislature may regulate, license and tax the manufacture and sale of intoxicating liquors, and may regulate the possession and transportation of intoxicating liquors.~~ The manufacture and sale of intoxicating liquors shall be forever prohibited in this state, except for medical, scientific and mechanical purposes. The open saloon shall be and is hereby forever prohibited."

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. This proposed amendment would prohibit the sale of intoxicating liquors in this state, except for medical, scientific and mechanical purposes and would forever prohibit the open saloon.

"A vote for the proposed amendment would prohibit

the sale of intoxicating liquors in Kansas, except for certain purposes.

"A vote against the proposed amendment would permit the continuation of the sale of , intoxicating liquors as it presently exists."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the senate and two-thirds of the members elected (or appointed) and qualified to the house of representatives, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in the year 1936 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.