

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by CHAIRMAN MILLER at _____
Chairperson

1:30 a.m./p.m. on January 26, 1987 in room 526S of the Capitol.

All members were present except:

Representatives Barr, Peterson, Roenbaugh - E

Committee staff present:

Lynda Hutfles, Secretary
Mary Galligan, Research
Mary Torrance, Revisor's Office
Raney, Gilliland, Research

Conferees appearing before the committee:

The meeting was called to order by Chairman Miller.

The Chairman announced that HB2005 has been re-referred to Local Government.

The Chairman also announced that the report on contingency fees from Chief Justice will be available in our office as well as Legislative Services.

A statement from Reverend Taylor was distributed. See attachment A.

Representative Rolfs made a motion, seconded by Representative Long, to approve the minutes of the January 22 meeting. The motion carried.

HB2043 - Lottery

Representative Aylward made a motion, seconded by Representative Grotewiel, to change Sec. 3 subsection (e) in order to clarify and expedite emergency purchases. The motion carried. See Attachment B (a).

Representative Sprague made a motion, seconded by Representative Hensley, to adopt Art Grigg's recommendations on the use of a procurement negotiating committee. The motion carried. See attachment B (b).

Representatives Rolfs made a motion, seconded by Representative Long, to adopt an amendment explained by Chairman Miller which subjects the lottery commission to the accountability of the Legislative Post Audit Committee. The motion carried. See attachment C.

Representative Aylward made a conceptual motion, seconded by Representative Eckert, to change New Sec. 5 (i) to make it clear that the list of odds of winning the lottery only need to be available at the point of sale. The motion carried.

Representative Sebelius made a motion, seconded by Representative Sughrue, which would require the Kansas Lottery to collect fingerprints of natural persons in applying to become a lottery retailer; any partner, officer, director or stockholder of a partnership, corporation or unincorporation, or associate to become a lottery retailer and the lottery would then submit fingerprints to KBI.

After much discussion, Representative Sebelius, with the consent of her second, withdrew her motion.

Representative Sebelius made a motion, seconded by Representative Sughrue, to delete "be of good character and reputation in such persons community" on line 246 & 247. The motion carried.

Representative Aylward made a motion, seconded by Representative Ramirez, to make a technical change which would allow the state to use a setoff for debts

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS
room 526S, Statehouse, at 1:30 a.m./p.m. on January 26, 1987.

owed to the state before a lottery winner over \$5,000 can be paid. The motion carried.

Representative Sprague made a motion, seconded by Representative Hensley to include monies owed to units of government or tax entities in the setoff. The motion carried.

Representative Rolfs made a conceptual motion, seconded by Representative Walker, to amend the section dealing with interest to revert any interest earned by the investments to be credited to the State General Fund rather than the Lottery Operating Fund. The motion carried.

Representative Bryant made a motion, seconded by Representative Sifers, to put a 4% cap on advertising. The motion failed - 10-9.

Representative Rolfs made a motion, seconded by Representative Bryant, to change in line 542 "\$100" to "\$10", the limit on any economic opportunity, gift, loan gratuity, special discount, favor or service to be accepted other than food and beverages. The motion carried.

Representative Hensley made a conceptual motion, seconded by Representative Rolfs to clarify that the salary of the assistant attorney general, provided in this bill, is to be paid for by the Lottery Operating Fund. The motion carried.

Representative Hensley made a motion, seconded by Representative Sebelius, to make reference to KSA 79-3294 in Sec. 18 (e). The motion carried.

Representative Gjerstad made a motion, seconded by Representative Aylward, to adopt a suggestion by Secretary Duncan, that the director of accounts and reports may designate one or more persons to sign warrants which do not exceed \$5000. The motion carried.

Representative Rolfs made a motion, seconded by Representative Hensley, to strike on page 32 line 0302 "on and after January 1, 1987,". The motion carried.

Representative Sebelius made a motion, seconded by Representative Sifers, to provide for disclosure of information regarding taxes and other income tax from applicants to become lottery retailers. The motion carried. See attachment D.

The Chairman announced that action would be taken on HB2043 on Tuesday, followed by some type of briefing on HB2044, Pari-mutuel.

Suggestions by Harley Duncan - See attachment E.

The meeting was adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 1/26/

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
FRANCOS Kastner	Topeka	Ks Food Dealers Assn
Duane A. Parde	Lawrence	
Virginia Renner	Wallace	
DAVE RENNER	WALLACE	
Paul Schrag	Lawrence	University Daily Kansan
DAVID WAHBE	WICHITA	
DON WEFER	KTOP	KTR
Greg Keith	Topeka	
Dean P. Reynolds	Topeka	KTR
Frances Wood	Topeka	concerned citizens
Richard Foyler	Topeka	Life at Best
John Peterson	Topeka	Scientific Games
Pat Wilkins	Topeka	A+OP
Don Workman	Topeka	observer
Bill SNEED	TOPEKA	Gen. Inst. Corp.
Art Griggs	Topeka	Dept. of Adm.
Nick Roach	Topeka	Div. of Purchases
Phil Wilkes	"	Dept. of Revenue
H. Danna	"	Dept. of Revenue
Fred Johnson	Hays	Harris News Service
Richard Smith	Topeka	Governor's Office

Is 22¢ enough to pay lottery gambling promoters for each \$1.00 revenue? Or should they receive 83¢ and more for each \$1.00 raised for Kansas?

Lottery gambling promoters won last November because they convinced voters this is a voluntary and painless way to raise taxes. They said we should follow the lead of Missouri. But like all swindlers, you can not trust them. Now lottery promoters do not want to be like Missouri.

Money received from lottery sales in Missouri is to be divided this way:

- 45% Player prizes
- 45% Taxes for the state
- 10% Salaries and expenses for lottery promoters.

House Bill 2043 to implement a Kansas lottery divide lottery sales this way:

- 45% Player prizes "as nearly as practical"
- 30% Taxes for the state
- 25% For lottery promoters

If 45% is used for player prizes, and if \$100 million consumer dollars are spent by Kansans for lottery tickets, this would be the result:

- \$45 million player prizes
- \$30 million for the state
- \$25 million into pockets of lottery promoters

For each \$1.00 received by Kansas, 83¢ would go to gambling promoters.

But "as nearly as practical" gives gambling promoters a blank check with no limit on how much money may go into their pockets. Less for player prizes means more for their salaries and promotional hype. Each \$1.00 received by Kansas could cost more than \$1.00 to collect!

If Kansas used Missouri percentages, only \$66.7 million consumer dollars would be needed to raise the same revenue for the state:

- 45% of \$66.7 million equals \$30 million for player prizes
- 45% of \$66.7 million equals \$30 million for the state
- 10% of \$66.7 million equals \$6.7 million into pockets of lottery promoters. For each \$1.00 received by Kansas, only 22¢ would go to gambling promoters. Because only \$66.7 million, not \$100 million, would be gambled away on lottery tickets, the public will have the other \$33.3 million consumer dollars in their pockets to spend on main street.

Do merchants receive 22¢ to collect \$1.00 sales tax for Kansas?

Seventeen hundredths of a cent sales tax in Kansas will bring in \$30 million revenue. That is an additional penny tax on a \$6 purchase. Such tax would take \$30 million consumer dollars and the state would receive all of it. Lottery will take \$100 million consumer dollars and the state will receive \$30 million. The sales tax would leave \$70 million consumer dollars in the pockets of Kansans for merchants on main street!

No matter how you cut it, fewer dollars gambled away on lottery tickets means more consumer dollars for merchants on main street! That is economic development at its best.

Concerned Chamber of Commerce members will want to ask lawmakers to require Missouri percentages in Kansas law.

Fewer dollars for gambling hype promotion means less pressure on Kansas poor people to spend grocery and rent money for lottery tickets.

Act B ~~A~~

0083 and implementation of the Kansas lottery.

0084 (e) For a period of 18 months after the effective date of this
0085 act, the state director of purchases, upon request of the executive
0086 director, shall authorize emergency purchases pursuant to sub-
0087 section (a)(5) of K.S.A. 75-3739 and amendments thereto when
0088 the timely implementation of the Kansas lottery requires the
0089 immediate delivery of supplies, materials or equipment or the
0090 immediate performance of services.

[make on behalf of the Kansas lottery

[The award of any such emergency purchase shall be subject
to the approval of the executive director.

(a)

0091 New Sec. 4. The executive director shall have the power to:

0092 (a) Supervise and administer the operation of the state lottery
0093 in accordance with the provisions of this act and such rules and
0094 regulations as adopted hereunder.

[K.S.A. 75-3738 through 75-3744, and amendments thereto, as
through the use of a procurement negotiating committee
established under paragraph (1), as determined by the
executive director.

0095 (b) Appoint, subject to the Kansas civil service act and within
0096 the limitations of appropriations therefor, all other employees of
0097 the Kansas lottery, which employees shall be in the classified
0098 service unless otherwise specifically provided by this act.

0099 (c) Enter into contracts for such promotional services; annui-
0100 ties or other methods deemed appropriate for the payment of
0101 prizes; data processing and other technical products, equipment
0102 and services; and facilities as needed to operate the Kansas
0103 lottery, including but not limited to gaming equipment, tickets
0104 and other services involved in major procurement contracts, in
0105 accordance with the following procedures:

[(1) Whenever a procurement negotiating committee is
utilized it shall be composed of: (A) the executive
director, or a Kansas lottery employee designated by the
executive director; (B) the chairperson of the commission
or a commission member designated by the chairperson; and
the director of the division of purchases or an employee
of such division designated by such director. Prior to
negotiating for any procurement, the committee shall
solicit for bids or proposals thereon. The division of
purchases shall provide staff support for such
solicitations. Upon receipt of bids or proposals, the
committee may negotiate with one or more of the persons
submitting such bids or proposals and select from among
the persons submitting such bids or proposals the party to
contract with for the procurement. Such procurements
shall be open and competitive and shall consider relevant
factors

(b)

0106 ~~(1) The executive director shall utilize an open and competi-~~
0107 ~~itive bid process and weighted evaluation criteria which reflects~~
0108 ~~the best interest of the state of Kansas, considering all relevant~~
0109 ~~factors~~ including security, competence, experience, timely per-
0110 formance and maximization of net revenues to the state.

0111 (2) Major procurement contracts entered into pursuant to this
0112 subsection (c) are subject to approval of the commission and shall
0113 not be subject to the provisions of K.S.A. 75-3738 through 75-
0114 3744, and amendments thereto.

[or subsection (e) of section 3

0115 (3) Before a major procurement contract is awarded, the ex-
0116 ecutive director shall conduct a background investigation of (A)
0117 the vendor to whom the contract is to be awarded, (B) all officers
0118 and directors of such vendor, (C) all persons who own a 5% or
0119 more interest in such vendor, (D) all persons who own a con-

[, if a procurement negotiating committee is utilized,

Attachment B

0120 trolling interest in such vendor and (E) any subsidiary or other
 0121 business in which such vendor owns a controlling interest. The
 0122 vendor shall submit appropriate investigation authorizations to
 0123 facilitate such investigation. The executive director may require,
 0124 in accordance with rules and regulations of the commission, that
 0125 a vendor submit any additional information considered appro-
 0126 priate to preserve the integrity and security of the lottery. In
 0127 addition, the executive director may conduct a background in-
 0128 vestigation of any person having a beneficial interest in a vendor.
 0129 The secretary of revenue, securities commissioner, attorney
 0130 general and director of the Kansas bureau of investigation shall
 0131 assist in any investigation pursuant to this subsection (c)(3) upon
 0132 request of the executive director. Whenever the secretary of
 0133 revenue, securities commissioner, attorney general or director of
 0134 the Kansas bureau of investigation assists in such an investiga-
 0135 tion and incurs costs in addition to those attributable to the
 0136 operations of the office or bureau, such additional costs shall be
 0137 paid by the Kansas lottery. The furnishing of assistance in such
 0138 an investigation shall be a transaction between the Kansas lottery
 0139 and the respective officer and shall be settled in accordance with
 0140 K.S.A. 75-5516 and amendments thereto.

0141 (d) Contract with persons for the sale of lottery tickets or
 0142 shares to the public, as provided by this act and rules and
 0143 regulations adopted pursuant to this act.

0144 (e) Enter into written agreements with one or more other
 0145 entities for the operation, marketing and promotion of a joint
 0146 lottery or joint lottery games and which conform to the provisions
 0147 of this act.

0148 (f) Require lottery retailers to furnish proof of financial sta-
 0149 bility or furnish surety in an amount based upon the expected
 0150 volume of sales of lottery tickets or shares.

0151 (g) Examine, or cause to be examined by any agent or repre-
 0152 sentative designated by the executive director, any books,
 0153 papers, records or memoranda of any lottery retailer for the
 0154 purpose of ascertaining compliance with the provisions of this
 0155 act or rules and regulations adopted hereunder.

0156 (h) Issue subpoenas to compel access to or for the production

and such contracts shall not be subject to the provisions
 of K.S.A. 75-3738 to 75-3744, and amendments thereto.

and such contracts shall not be subject to the provisions
 of K.S.A. 75-3738 to 75-3744, and amendments thereto.

0157 of any books, papers, records or memoranda in the custody or
0158 control of any lottery retailer, or to compel the appearance of any
0159 lottery retailer or employee of any lottery retailer, for the pur-
0160 pose of ascertaining compliance with the provisions of this act or
0161 rules and regulations adopted hereunder. Subpoenas issued
0162 under the provisions of this subsection may be served upon
0163 natural persons and corporations in the manner provided in
0164 K.S.A. 60-304 and amendments thereto for the service of process
0165 by any officer authorized to serve subpoenas in civil actions or by
0166 the executive director or an agent or representative designated
0167 by the executive director. In the case of the refusal of any person
0168 to comply with any such subpoena, the executive director may
0169 make application to the district court of any county where such
0170 books, papers, records, memoranda or person is located for an
0171 order to comply.

0172 (i) Administer oaths and take depositions to the same extent
0173 and subject to the same limitations as would apply if the deposi-
0174 tion were in aid of a civil action in the district court.

0175 New Sec. 5. The executive director shall have the duty to:

0176 (a) Make and keep books and records which accurately and
0177 fairly reflect each day's transactions, including but not limited to:
0178 The distribution of tickets and shares to lottery retailers; receipt
0179 of funds, prize claims, prize disbursements or prizes liable to be
0180 paid; expenses and other financial transactions of the Kansas
0181 lottery necessary so as to permit daily accountability.

0182 (b) Make quarterly and annual financial reports to the com-
0183 mission, the governor, the state treasurer and the legislature.
0184 Such reports shall be based upon generally accepted accounting
0185 principles and include a full and complete statement of lottery
0186 revenues, prize disbursements, expenses, net revenues and
0187 other financial transactions for the reporting period.

0188 (c) Make available for inspection by the commission, upon
0189 request, all books, records, files and other information and doc-
0190 uments of the Kansas lottery.

0191 ~~(d) Engage an independent firm of certified public account-~~
0192 ~~ants to conduct an annual financial audit of the accounts and~~
0193 ~~transactions of the Kansas lottery, the report of which shall be~~

Attachment C

0194 ~~presented to the commission, the governor, the state treasurer~~
0195 ~~and the legislature.~~

0196 ~~(c)~~ Engage an independent firm experienced in security (d)
0197 procedures, including but not limited to computer security and
0198 systems security, to periodically conduct a comprehensive study
0199 and evaluation of all aspects of security in the operation of the
0200 Kansas lottery. (e)

0201 ~~(d)~~ Engage an independent firm experienced in marketing (e)
0202 research and analysis to periodically conduct an evaluation to
0203 determine the effectiveness of marketing, promotion and public
0204 information programs used by the Kansas lottery and make
() recommendations which will enhance such programs. (f)

0206 ~~(e)~~ Prepare and submit budgets and proposals for the opera- (f)
0207 tion of the Kansas lottery. (g)

0208 ~~(d)~~ Operate the Kansas lottery in such a manner that, after the (g)
0209 initial state appropriation, it is self-sustaining and self-funded.

0210 ~~(i)~~ Include in printed promotional materials and information (h)
0211 published for each lottery game, a list of the odds of winning
0212 such game, based upon the number of tickets or shares projected
0213 to be sold.

0214 ~~(j)~~ Make provision for the timely and efficient transfer of (i)
0215 funds due from lottery retailers to the lottery operating fund,
0216 including the use of electronic funds transfers whenever possi-
0217 ble.

New Sec. 6 (see attached)

0218 New Sec. 6. (a) The executive director shall select as lottery
() retailers such persons as deemed best able to serve the public
0220 convenience and promote the sale of tickets or shares in accord-
0221 ance with marketing plans developed by the Kansas lottery. In
0222 the selection of lottery retailers, the executive director shall
0223 consider factors such as financial responsibility, security of the
0224 applicant's place of business or activity, accessibility of the
0225 applicant's place of business or activity, integrity, reputation,
0226 volume of expected sales and such other factors as the executive
0227 director may deem appropriate. Persons lawfully engaged in
0228 nongovernmental business on state property may be selected as
0229 lottery retailers.

7

0230 (b) The executive director may charge an application fee to

The accounts and transactions of the Kansas lottery and the Kansas lottery commission shall be subject to an annual post audit under the legislative post audit act. The audit shall be conducted as soon after the close of the fiscal year as practicable. The post auditor shall annually compute the reasonably anticipated cost of providing such audit, subject to review and approval by the contract audit committee established by K.S.A. 46-1120 and amendments thereto. Upon such approval, the Kansas lottery shall reimburse the division of post audit for the amount approved by the contract audit committee. The furnishing of audit services pursuant to this section shall be a transaction between the post auditor and the Kansas lottery and shall be settled in accordance with the provisions of K.S.A. 75-5516 and amendments thereto.

Amendments to House Bill No. 2043

To provide for disclosure of information regarding income taxes for applicants to become lottery retailers, amend the Kansas Income Tax Act, K.S.A. 79-3234, to add the following new paragraph:

(f) Notwithstanding the provisions of this section, the secretary of revenue may communicate to the executive director of the Kansas lottery information as to whether a person, partnership, or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer.


To provide for disclosure of information regarding taxes other than income tax for applicants to become lottery retailers, amend K.S.A. 74-2424 to add the following paragraph:

(b) Notwithstanding the provisions of this section, the secretary of revenue may communicate to the executive director of the Kansas lottery information as to whether a person, partnership, or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer.

E

MEMORANDUM

TO: THE HONORABLE ROBERT H. MILLER, CHAIRMAN
HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

FROM: HARLEY T. DUNCAN, SECRETARY
KANSAS DEPARTMENT OF REVENUE 

RE: HOUSE BILL NO. 2043 - LOTTERY ENABLING LEGISLATION

DATE: JANUARY 26, 1987

During the last committee meeting on House Bill No. 2043, several concerns were raised regarding the enabling legislation for the Kansas Lottery. The following information is provided for your use and dissemination. In addition, a few technical or clarifying amendments are offered in an attached, highlighted copy of the bill.

SEC. 5(i). Printed odds of winning. At every lottery retailer location, the odds of winning each type of prize will be prominently displayed and a handout readily available which will also explain how the games are played. Since all point of sale locations will have this information; newspaper, radio, and television ads will not contain a detailed list of odds. Such a requirement would duplicate efforts, substantially increase advertising costs and is impractical in some cases.

SEC. 6(h)(1) & (2). Lottery retailer background checks. The language contained in this section was taken from the enabling legislation of other states. Through discussions with their security personnel, they have indicated that they have been successful in obtaining necessary information without specifically requiring fingerprints for retailers. It is a practice in several states, however, to require fingerprinting of vendors who have major procurement contracts with the state. Keep in mind that lottery retailers are business outlets registered by the state and are not transient in nature like those involved in the pari-mutuel industry.

SEC. 9(c) & 10(c). Maintain interest earned in the lottery operating fund. This practice is becoming more and more prevalent in state government for non-state general funds; examples include the Turnpike Authority and Freeway Funds administered through the Department of Transportation. Interest would be credited as gross revenue, invested by the PMIB and transferred to the Gaming Revenues Fund under the bill. If interest is retained by the State General Fund, it should be recognized as a lottery-related revenue.

Attachment E

SEC. 13. Appointment of an assistant attorney general. The salary of the assistant attorney general assigned exclusively to the lottery will be paid by the lottery.

SEC. 19. Exemption from sales tax. Of the twenty-three lotteries, most have a state sales tax which specifically exempts lottery ticket sales. The State of Iowa is the only exception. It imposes a state tax on a tax revenue.

For retailer and consumer convenience, the lottery industry uses the standard of a \$1.00 for the price of a ticket. If sales tax were applied, gross lottery revenue would be decreased due to the lottery remitting the sales tax on behalf of the retailers; .96 to the lottery operating fund and .04 to the State General Fund which would reduce the net transfer to the State Gaming Revenues Fund. Basically, it would increase direct deposits to the State General Fund through the backdoor. It would also have the effect of reducing money available to other expense areas:

	without sales tax	with sales tax
Gross Sales	80,000,000	76,923,077
45% Prizes	36,000,000	34,615,385
30% Net	24,000,000	23,076,923
5% Commissions	4,000,000	3,846,154
20% Expenses	16,000,000	15,384,615

Charging \$1.04 would substantially affect sales and decrease net revenue.

SEC. 23(c). Allows the director of accounts and reports to authorize the lottery to issue its own warrants for the payment of prizes. This provision was included to allow the lottery to issue, upon validation, checks for the payment of lottery prizes. It is extremely important, especially with instant tickets, to promptly pay prizes. This flexibility translates into increased sales not only in lottery tickets but for the merchant who sold the ticket.

The issue, though, is not the ability of the lottery to cut its own checks for prizes. Rather, it surrounds the current procedure the state uses to setoff for debts owed to the state before a warrant is issued. To accomplish both objectives, an amendment is offered which would allow the lottery to write checks that do not exceed five thousand dollars.

(c) the director of accounts and reports may designate one or more persons to sign, on behalf of the director of accounts and reports, warrants which do not exceed five thousand dollars

for the payment of prizes to the holders of valid winning lottery tickets or shares pursuant to section 10.

Why \$5,000? This is the amount at which the Internal Revenue Service begins to require 20 percent withholding on winnings. The cutoff at this level also allows the direct issuance of the vast majority of lottery prizes while protecting the state against issuing large prize payments to those who have outstanding debts to the state. To illustrate, following are examples of typical lottery prize structures.

Prize	Number of Prizes	Prize	Number of Prizes
Free Ticket	3,504,000	Free Ticket	5,040,000
\$2	2,628,000	\$2	4,536,000
\$5	350,400	\$5	504,000
Entry	175,200	Entry	201,600
\$100	2,190	\$20	100,800
\$500	584	\$100	17,220
\$1,000	292	\$100,000	26
\$5,000	146		
\$50,000	36		

The entry tickets are used to determine who can participate in a jackpot drawing, usually held weekly, for amounts up to and exceeding \$1 million. The finalists are notified at least a week in advance of the drawing which allows time for checking outstanding debts to the state prior to a prize being awarded.

attachment

(f) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in relation to employment.

(g) "Person" means individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver.

(i) The term "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purposes of this subsection, "detention" includes the duties of employees assigned to guard individuals incarcerated in any penal institution.

(j) The term "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

Section 2. K.S.A. 44-1113 is hereby amended to read as follows: 44-1113: Unlawful employment practices based on age. (a) It is an unlawful employment practice based on age to engage in any of the following acts in any manner which would limit, deprive or tend to deprive any person of employment opportunities or otherwise adversely affect the person's status as an employee or applicant for employment.

(1) For an employer, because of the age of a person, to refuse to hire or employ the person, to bar or discharge the person from employment or to otherwise discriminate against the person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees because of age. ~~or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation because of age without a valid business motive.~~

(2) For an employer to reduce the age rate of any employee or otherwise alter the terms or conditions of any employee's employment in order to comply with this act, unless the reduction is with the employee's express or implied consent.

(2) For an employer to follow any facially neutral employment procedure or practice which, in fact, results in discrimination, segregation or separation because of age unless the procedure or practice in question is validly justifiable by reason of business necessity.

(3) For a labor organization, because of the age of a person, to exclude or to expel the person from its membership or to discriminate in any way against any of its members or against any employer or any person employed by an employer because of age.

(4) For any employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership or to make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, or any intent to make any such limitation, specification or discrimination.

(5) For any employer, employment agency or labor organization to discharge, expel or otherwise discriminate against any person because the person has opposed any practices or acts forbidden under this act or has filed a complaint, testified or assisted in any proceeding under this act.

(6) For an employment agency to refuse to list and properly classify for employment or to refuse to refer any person for employment or otherwise discriminate against any person because of age to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to age.

(7) For an employer, labor organization, employment agency or school which provides, coordinates or controls apprenticeship, on-the-job or other training or retraining program, to maintain a practice of discrimination, segregation or separation because of age, in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship or training; or to follow any policy or procedure which, in fact, results in such practices without a valid business motive.

(8) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or attempt to do so.

(b) It shall not be an unlawful employment practice to:

(1) Fill vacancies in such way as to eliminate or reduce imbalance with respect to age:

(2) take any action on the basis of age, which is otherwise prohibited under subsection (a), if age is a bona fide occupational qualification necessary to the normal operation of the particular business or if the differentiation is based on necessary factors other than age;

(3) observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of article 10 of chapter 44 of Kansas Statutes Annotated, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual.

~~(4) observe a mandatory retirement age of 70 years or above or minimum age of employment; or~~

~~(5) observe the provisions of a retirement, pension or other benefit plan permitted by state or federal law or by ordinance or resolution.~~

(4) For the State of Kansas, a political subdivision of the State, an agency or instrumentality of the State or a political subdivision of the State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken --

(A) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

(B) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this Act.

(C) These exemptions are repealed December 31, 1993.

Section 3. K.S.A. 44-1118 is hereby amended to read as follows: 44-1118: Construction of act. (a) The provisions of this act shall be construed liberally for the accomplishment of its purposes.

(b) Nothing in this act shall be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.

(c)(1) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals in the aggregate, at least \$44,000.

(d)(1) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education.

(2) This exemption is repealed December 31, 1993.

New Section 4. K.S.A. 44-1120: (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on July 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement --

(1) which is in effect on June 30, 1987,

(2) which terminates after July 1, 1987,

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

(4) which contains any provision that would be superseded by such amendments, but for the operation of this section.

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

Section 5. K.S.A. 44-1112, 44-1113, and 44-1118 are hereby repealed.