

Approved _____

Date

1/30/89

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

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

11:00 a.m./~~p.m.~~ on January 26, 1989 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Mary Galligan, Legislative Research
Emalene Correll, Legislative Research
Mary Ann Torrence, Revisor of Statutes Office
Marty Robison, Secretary

Conferees appearing before the committee:

Henry Schirmer, Board of Technical Professions
Valerie Joens, Kansans for Life
Kathryn Dysart, Wichita Public Schools

Chairman Reilly called the meeting to order.

Senator Bond moved the minutes of January 23, 1989 be approved.
Senator Vidricksen seconded and the motion passed.

Emalene Correll told committee members that SCR 1603 is void because the rules and regulations to which it speaks are void.

Senator Bond moved SCR 1603 be tabled. Senator Daniels seconded and the motion carried.

Chairman Reilly called the committee's attention to the written testimony of Peter Korth and Marvin Sevy, two conferees in the January 25 hearing who did not get to testify because of the time restraint.

Henry Schirmer presented a bill draft for introduction that would revise the current statutes governing the technical professions and asked the committee's support (Attachment 1).

Senator Yost moved the bill be introduced and Senator Daniels seconded.
The motion passed.

The committee was asked to consider two bill drafts for the introduction of Sunday beer sales and one-strength beer (Attachment 2).

Senator Yost moved the introduction of the two bills and Senator Anderson seconded. The motion carried.

Valerie Joens requested the committee introduce the parental consent for abortion bill. The requested bill is identical to SB 225 of the Session of 1987 (Attachment 3).

Senator Ehrlich moved the bill be introduced and Senator Daniels seconded. The motion passed.

Kathryn Dysart requested introduction of a bill relating to closed meetings concerning the sale of property (Attachment 4).

Senator Morris moved the bill be introduced. Senator Daniels seconded and the motion carried.

The meeting was adjourned at 11:31.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: 1/26/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
TUCK DUNNAN	TOPEKA	KWSWA
Jon Wollen	Topeka	Kansans for life
Julie Wollen	Topeka	Kansans for life
Valerie Jones	Topeka	Kansans for life
GREGORY A. JONES	TOPEKA	KANSANS FOR LIFE
Alan Weldon	Wichita	Kansans for life
ALBERT LOLLAR	TOPEKA	KRL DA
Jim Copple	Wichita	Wichita Public Schools
HENRY W. SCARMER FAIA	TOPEKA	KS BTP
Lori Callahan	Topeka	KS BTP
Betty Rose	Topeka	KS BTP
Beth Dillon	Leavenworth	St. Mary College
S. Marie Brinkman	Leavenworth	St. Mary College
Kathryn Dysart	Wichita	USD 259
Ken Bahr	Topeka	KEMB
Lon Malus	Tulsa	Quik-Trip
Michelle Webber	Lansing	St. Mary College
Michelle Davis	Leavenworth	St. Mary College
Jim Attker	Grand Island, NE	St. Mary College
FRANCES KASTNER	Topeka	Ks Food Dealers Assn
Richard F. Kelsey	Wichita	WAEC
Theodore	Topeka	Topeka City-Juni



KANSAS STATE BOARD OF TECHNICAL PROFESSIONS

(913) 296-3053

Suite 507, Landon State Office Building 900 Jackson Street Topeka, Kansas 66612-1214

January 26, 1989

Senator Edward F. Reilly, Jr.
Chairman, Federal & State Affairs Committee
Room 255-E, Statehouse
Topeka, Kansas 66612

RE: REQUEST FOR BILL INTRODUCTION-For the Board of Technical Professions

Dear Senator Reilly:

The Kansas State Board of Technical Professions is requesting the support of this committee for the introduction of a bill that would revise the current statutes governing the technical professions. The Board of Technical Professions is the state licensing and regulatory agency for the professions of architecture, engineering, landscape architecture, and land surveying.

In 1976, these Boards, which had previously operated independently, were merged. Since then, no major revision of these statutes has occurred.

The Board began consideration of these changes several years ago as lawsuits, Board procedures, and the practice of the professions revealed unnecessary differential treatment of the professions, vague language, and administration problems contained within the statutes. Since then, the Board, working in conjunction with the Societies for the technical professions and Kansas corporations, have prepared the revisions which are attached. They are intended to update, clarify and strengthen the Act which governs the practice of the technical professions in Kansas.

We, therefore, respectfully request your support for the introduction of these revisions as a committee bill.

Sincerely,

Henry W. Schirmer, FAIA
Chairman of the Board

Betty Rose, Executive Secretary
Board of Technical Professions

ARCHITECTS ● HWS/BLR/pa

ENGINEERS ●

LANDSCAPE ARCHITECTS ●

LAND SURVEYORS ● SF&SA 1-26-89

Attachment 1

_____ BILL NO. _____

By

AN ACT concerning the technical professions; relating to the board of technical professions; concerning licensing of persons to practice the technical professions; relating to the validity of certain building permits requiring technical submissions; authorizing the board to impose civil fines and costs for certain violations; amending K.S.A. 74-7003, 74-7005, 74-7006, 74-7008, 74-7009, 74-7010, 74-7016, 74-7017, 74-7018, 74-7019, 74-7020, 74-7021, 74-7023, 74-7025, 74-7026, 74-7029, 74-7031, 74-7032, 74-7033, 74-7035 and 74-7036 and K.S.A. 1988 Supp. 74-7022 and 74-7034 and repealing the existing sections; also repealing K.S.A. 74-7011, 74-7012 and 74-7014.

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

Section 1. K.S.A. 74-7003 is hereby amended to read as follows: 74-7003. As used in this act:

(a) "Technical professions" include the professions of engineering, land surveying, architecture and landscape architecture as the practice of such professions are defined in this act.

(b) "Board" means the state board of technical professions.

(c) "License" means a license to practice the technical professions granted under this act.

(d) "Architect" means a person, ~~who, by reason of his or her knowledge of mathematics, the physical sciences, and the principles of architecture acquired by professional education or practical experience, is qualified as provided in this act to engage in the practice of architecture and who is licensed by the board.~~ whose practice shall consist of:

(1) Rendering services or performing creative work which

requires architectural education, training and experience, including services and work such as consultation, evaluation, planning, providing preliminary studies and designs, overall interior and exterior building design, coordination of services furnished by licensed professional engineers and other consultants, overall project coordination, design, the preparation of drawing, specifications and related documents, all in connection with the construction or erection of any private or public building, building project or integral part or parts of buildings or of any additions or alterations thereto, or other services and instruments of services related to architecture;

(2) representation in connection with contracts entered into between clients and others;

(3) observing the construction, alteration and erection of buildings; and

(4) providing such engineering and other services controlled by the board as may be required that are incidental to the building design process.

(e) "Practice of architecture" means the rendering of service--by--consultation,--planning,--or--designing--of--buildings--or--the--responsible--administration--of--construction--projects or offering to render certain services, as provided for in the definition of architect under paragraph (d), in connection with the design and construction or alterations and additions of a building or buildings; the utilization of space surrounding such buildings; the design and construction of items relating to building code requirements and other building related features affecting the public's health, safety and welfare; and teaching architecture in a university offering an approved architecture curriculum of four years or more by a person who is a licensed architect.

(f) "Landscape architect" means a person who is professionally qualified as provided in this act to engage in the practice of landscape architecture, who teaches landscape

architecture in a recognized college or university or practices landscape architecture and who is licensed by the board.

(g) "Practice of landscape architecture" means the performing of professional services such as consultation, planning, designing or responsible supervision in connection with the development of land areas for preservation and enhancement; teaching landscape architecture in a university offering an approved landscape architectural curriculum of four years or more by a person who is a licensed landscape architect; and the designing of land forms and nonhabitable structures for aesthetic and functional purposes such as pools, walls, and structures for outdoor living spaces for public and private use. It encompasses the determination of proper land use as it pertains to: Natural features; ground cover, use, nomenclature, and arrangement of plant material adapted to soils and climate; naturalistic and aesthetic values; settings and approaches to structures and other improvements; soil conservation erosion control; drainage and grading; and the development of outdoor space in accordance with ideals of human use and enjoyment.

(h) "Professional engineer" means a person who, is qualified to practice engineering by reason of his-~~er~~-her special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, who is qualified as provided in this act to engage in the practice of engineering and who is licensed by the board.

(i) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of land and water, teaching engineering in a university offering an approved engineering curriculum of four (4) years or more by a person who is a licensed professional

engineer, engineering surveys and studies, representation in connection with contracts entered into between clients and others, and the inspection observation of construction for the purpose of assuring compliance with drawings and specifications; and providing such architectural and other services controlled by the board as may be required that are incidental to the practice of engineering; any of which embraces such service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects and including such architectural work as is incidental to the practice of engineering industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and the coordination of services furnished by architects and other professional services as may be necessary to the planning, progress and completion of any services related to engineering. As used in this paragraph (i), "engineering surveys" include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

(j) "Land surveyor" means a person who is professionally qualified as provided in this act to engage in the practice of land surveying and who is licensed by the board any person who is engaged in the practice of land surveying as provided in this act and who is licensed by the board.

(k) "Practice of land surveying" means the application of mathematics and the principles of law and methods of land measurement for the location or relocation of land boundaries and land monuments; the measurement and calculation of land areas; the preparation of the original descriptions of real property for conveyance or recording; and the preparation of maps or

~~certificates-of-survey-thereof:~~ includes:

(1) The performance of any professional service, the adequate performance of which involves the application of special knowledge and experience in the principles of mathematics, the related physical and applied sciences, the relevant requirements of law and the methods of surveying measurements in measuring and locating of lines, angles, elevation of natural and man-made features in the air, on the surface of the earth, within underground workings and on the bed of bodies of water for the purpose of determining areas, volumes and monumentation of property boundaries; and

(2) the platting and layout of lands and subdivisions thereof, including the topography, determination of, but not design of, alignment and grades of streets and utilities; and

(3) the preparation of the original descriptions of real property for the conveyance of or recording thereof and the preparation of maps, plats and field note records that represent these surveys; and

(4) teaching land surveying in a university offering an approved land surveying curriculum of four or more years by a person who is a licensed land surveyor.

(1) "Person" means a natural person, firm, corporation or partnership.

Sec. 2. K.S.A. 74-7005 is hereby amended to read as follows: 74-7005. Three ~~(3)~~ members of the board shall have been engaged in the practice of engineering, as defined in this act, for at least ~~five~~ eight years. One ~~(1)~~ member shall have been engaged in the practice of land surveying, as defined in this act, for at least ~~five~~ eight years; three ~~(3)~~ members shall be architects of recognized standing and shall have been engaged in the practice of the profession of architecture, as defined in this act, for at least ~~ten~~ eight years, which practice shall include responsible charge of architectural work as principal; one ~~(1)~~ member shall be a licensed landscape architect, as defined in this act, and shall have been engaged in the practice

of landscape architecture for at least seven eight years, which practice shall include responsible charge of landscape architectural work as principal; and one ~~(1)~~ member shall be from the general public of this state. Each member of the board shall be a citizen of the United States and a resident of this state. The amendments to this section shall not be applicable to any member of the board who was appointed to the board and qualified for such appointment under this section prior to the effective date of this act.

Sec. 3. K.S.A. 74-7006 is hereby amended to read as follows: 74-7006. ~~The--members--of--the--first--board--shall--be appointed--within--sixty--(60)--days--after--the--effective--date--of--this act,--to--serve--for--the--following--terms:--One--member--of--the--board shall--be--appointed--to--serve--for--one--(1)--year,--two--for--two--(2) years,--three--for--three--(3)--years,--and--three--for--four--(4)--years: The--term--of--each--board--member,--first--appointed--hereunder,--shall commence--on--the--day--this--act--becomes--effective.~~ Whenever a vacancy shall occur in the membership of the board by reason of the expiration of a term of office, the governor shall appoint a successor of like qualifications. All appointments made ~~subsequent--to--those--herein--first--specified~~ shall be for a term of four ~~(4)~~ years, but no member shall be appointed for more than three ~~(3)~~ successive four-year terms, ~~except--that--any--term--served by--a--member--as--secretary--shall--not--be--considered,--in--applying successive--term--limitations.~~ The terms of each member first appointed after the effective date of this act, for the purpose of computing the length of the term of such member, shall commence on the first calendar day subsequent to the day of expiration of the preceding term regardless of when the appointment is made and shall end on June 30 of the fourth year of the member's term for those members whose term commences on July 1, or on June 30 following the third full year of the member's term for those members whose term commences on January 1. Thereafter, for the purpose of computing the length of term of a member of the board, the terms of members appointed to the

board shall commence on the July 1 immediately following the day of expiration of the preceding term, regardless of when the appointment is made, and shall expire on June 30 of the fourth year of the member's term. Each shall serve until a successor is appointed and qualified. Whenever a vacancy shall occur in the membership of the board for any reason other than the expiration of a member's term of office, the governor shall appoint a successor of like qualifications to fill the unexpired term. The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

Sec. 4. K.S.A. 74-7008 is hereby amended to read as follows: 74-7008. The board may appoint an executive secretary director who shall be in the unclassified service of the Kansas civil service act and shall receive an annual salary fixed by the board. Members of the state board of technical professions attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The board may employ clerical personnel and other assistants all of whom shall be in the classified service under the Kansas civil service act and may make and enter into contracts of employment with such professional personnel as may be necessary, in the board's judgment, for the performance of its duties and functions and the execution of its powers.

Sec. 5. K.S.A. 74-7009 is hereby amended to read as follows: 74-7009. The following nonrefundable fees shall be collected by the board: For a license, issued upon the basis of an examination given by the board, an application fee in the sum of ~~five-dollars-(\$5)~~ \$25 plus an amount, to be determined by the board, equal to the cost of the respective examination in each branch of the technical professions. For a certificate of authorization for a corporation, the sum of not more than one ~~hundred-fifty-dollars-(\$150)~~ \$150. For the biennial renewal of a license, the sum of not more than ~~fifty-dollars-(\$50)~~ \$50. For

the biennial renewal of a certificate of authorization for a corporation, the sum of not more than ~~seventy-five-dollars-(\$75)~~ \$75. On or before November 15, each year, the board shall determine the amount necessary to administer the provisions of this act for the ensuing calendar year including the amount to be credited to the state general fund, and shall fix the fees for such year at the sum deemed necessary for such purposes. The board shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent ~~(20%)~~ of each such deposit shall be credited to the state general fund and the balance shall be credited to the technical professions fee fund, which fund is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board or by a person or persons designated by the chairperson.

Sec. 6. K.S.A. 74-7010 is hereby amended to read as follows: 74-7010. A roster showing the names and places of business of all persons licensed under this act or issued a certificate of authorization under K.S.A. 74-7036 and amendments thereto shall be maintained by the secretary of the board. The roster shall also specify the branch of the technical professions in which each such person is licensed or authorized to practice. Copies of the roster may be placed, at the discretion of the board, on file with the secretary of state and with the clerk of each county in this state, and shall be furnished to such other persons as determined by the board. Copies shall be furnished to members of the public upon request and-the-payment-of-a-sum. The board may charge and collect a fee for copies furnished to members of the public in an amount to be fixed by the board and approved by the director of accounts and reports under K.S.A. 1980-Supp--45-204 45-219 and amendments thereto in order to

recover the actual costs incurred. All fees collected under this section shall be remitted to the state treasurer who shall deposit the entire amount thereof in the state treasury and credit such amount to the technical professions fee fund.

Sec. 7. K.S.A. 74-7016 is hereby amended to read as follows: 74-7016. (a) The board shall keep a record of its proceedings, and a register of all applications for license, which register shall show (1) the name, age, and residence of each applicant; (2) the date of the application; (3) the place of business of such applicant; (4) educational and other qualifications; (5) whether or not an examination was required; (6) the action of the board upon the application; (7) the date of the action of the board; and (8) such other information as may be deemed necessary by the board.

(b) The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

Sec. 8. K.S.A. 74-7017 is hereby amended to read as follows: 74-7017. No applicant seeking original license to practice any technical profession shall be entitled to such license without first meeting the requirement to take and pass an examination ~~given~~ utilized by the board.

Sec. 9. K.S.A. 74-7018 is hereby amended to read as follows: 74-7018. Applications for license shall be in writing and on forms prescribed and furnished by the board, shall contain statements made under oath showing the applicant's education and detailed summary of the applicant's technical work, previous examinations, if any, and the results thereof, and such other information and references as may be required by the board. All such applications shall be filed with the secretary executive director, together with the application fee prescribed under K.S.A. 74-7009 and amendments thereto, not later than ~~sixty-(60)~~ 90 days prior to the date of the examination. Applications for

examination, and the fee therefor, received after said such date shall be retained by the board and shall be reviewed for eligibility to take the next succeeding examination held by the board, and the applicant shall be notified by the board of the time, date and place of said the examination. All applicants must take the examination within four scheduled examinations or must reapply and repay the current prescribed fee. Any applicant failing ~~in--his--or--her--first~~ the examination may apply for reexamination ~~after--the--expiration--of~~ within six (6) months following date of failure and will be reexamined upon payment of the application fee prescribed under K.S.A. 74-7009 and amendments thereto.

Sec. 10. K.S.A. 74-7019 is hereby amended to read as follows: 74-7019. Minimum qualifications of applicants seeking licensure as architects are the following:

(a) (1) Graduation in an architectural curriculum ~~accredited--by--the--national--accrediting--board,--together--with~~ approved by the board;

(b) ~~three--(3)--years--of~~ proof of architectural experience of a character satisfactory to the board; and ~~gained--under--the supervision--of--a--practicing--licensed--architect,--or--(2)--a--specific record--of--at--least--eight--(8)--years--experience--in--a--practicing architect's--office,--of--which--proof--of--experience--shall--be established--by--the--applicant--to--the--satisfaction--of--the--board, and--(3)~~

(c) the satisfactory passage of an examination given utilized by the board. Such examination may be taken during the last year of the period of work experience by any applicant who is a graduate in such curriculum.

~~(b)--The--satisfactory--completion--of--each--year---of---an accredited--architectural--course--without--graduation,--shall--be considered--as--equivalent--to--one--(1)--year's--experience---as specified--in--(a)--(2)--of--this--section:--Such--credit--to--be--limited, however,--to--a--total--credit--of--four--(4)--years.~~

~~(c)--Graduation--in--a--curriculum--other--than--architecture--from~~

~~a--college-or-university-of-recognized-standing-may-be-considered as-equivalent-to-two-(2)-years¹-experience-as--specified--in--(a) (2)--of--this-section.--No-applicant-shall-receive-credit-thereby for-more-than-two-(2)-years-of-experience.~~

Sec. 11. K.S.A. 74-7020 is hereby amended to read as follows: 74-7020. Minimum qualifications of applicants seeking licensure as landscape architects are the following:

(a) Graduation from a college or university having a ~~four~~ four-year curriculum in landscape architecture approved by the board, and a minimum of ~~two-(2)~~ four years of training experience of in landscape architectural work of a grade-and character satisfactory to the board; or

(b) graduation from a college or university having a ~~five~~ five-year curriculum, approved by the board, and ~~one-(1)~~ three years of training experience of in landscape architectural work of a grade-and character satisfactory to the board; or and

~~(c)--completion--of--seven-(7)-years-of-work-in-the-practice of-landscape-architecture-of-a-grade-and--character--satisfactory to--the--board.--Each--year-of-education-completed-in-a-school-of landscape-architecture-approved-by-the-board-shall-be--considered to--be--equivalent-to-one-(1)-year-of-such-work.--Graduation-in-a curriculum-other-than-landscape-architecture,--from-a--college--or university,--shall--be--equivalent-to-two-(2)-years-experience-of the-seven-(7)-specified-above-in--this--section--except--that--no applicant--shall--receive--credit--for--more--than--two-(2)-years experience;--or~~

~~(d)--graduation-from-a-school-of-landscape-architecture,--if approved--by--the-board,--together-with-the-submission-of-evidence of--five--(5)--years---of---actual,---practical---experience---in landscape-architectural---work---of---a---grade---and---character satisfactory-to-the-board;--and~~

~~(e) (c) the satisfactory passage of an examination given utilized by the board. Such examination may be taken prior-to-or during the last year of the period of work experience by any~~

applicant who is a graduate of such college--or-university curriculum.

Sec. 12. K.S.A. 74-7021 is hereby amended to read as follows: 74-7021. (a) Minimum qualifications of applicants seeking licensure as professional engineers are the following:

(1) (a) Graduation in an approved engineering curriculum of ~~four-(4)-years-or-more-from-a-school-or-college-approved--by--the~~ board--as--of-satisfactory-standing-and-a-record-of-an-additional ~~four-(4)-years-or-more-of-experience-in--engineering--work--of--a~~ character--which-is-satisfactory-to-the-board, and said applicant shall have been admitted to and shall have successfully passed--a written--examination--in--the--fundamentals--of--engineering,--or approved by the board;

(2) ~~--a-specific--record--of--eight--(8)--years--or--more--of~~ experience-in-engineering-work-of-a-character-satisfactory-to-the board--and-indicating-that-the-applicant-is-competent-to-practice engineering, and has successfully passed a written examination in the fundamentals of engineering; ~~---Graduation--in--a--curriculum~~ other-than-engineering-from-a-college-or-university-of-recognized standing--may--be--considered--as--equivalent--to--two--(2)--years experience-and-graduation-in-a-board-approved-technical-institute two-year--curriculum--covering--engineering--sciences--shall---be accepted--for-not-more-than-two-(2)-years-of-the-eight-(8)-years' experience-set-forth-above; or

(3) ~~--graduation-in-an--approved--engineering--curriculum--of~~ four--(4)-years-or-more-from-a-school-approved-by-the-board-as-of satisfactory-standing, and a specific record of twelve-(12)-years or--more--of--practice--in--engineering--work--of---a---character satisfactory--to--the--board-and-indicating-that-the-applicant-is competent-to-practice-engineering, provided said applicant--shall have--successfully--passed--an--oral--or-written-examination. Any applicant-qualifying-for-examination-under--this--paragraph--(3), and--demonstrating-a-specific-record-of-twenty-five-(25)-years-or more-of-practice-in-engineering-work, shall--be--given--an--oral examination--by--the--board-in-lieu-of-a-written-examination-upon

request therefor by such applicant; and

(4) the satisfactory passage of a professional examination given by the board. Such examination may be taken during the last year of the period of work experience by an applicant who is a graduate in an approved engineering curriculum of four (4) years or more from a college or school approved by the board.

(b) the satisfactory passage of a written examination in the fundamentals of engineering;

(b) In considering the qualifications of applicants, teaching engineering in a college or university offering an approved engineering curriculum of four (4) years or more may be considered as engineering experience.

(c) The satisfactory completion of each year of an approved curriculum in engineering in a school or college approved by the board as of satisfactory standing, without graduation, shall be considered as equivalent to not more than one (1) year of experience specified in paragraph 2 of subsection (a).

(d) Any person, licensed as a professional engineer in the state of Kansas at the time this act takes effect, shall thereafter continue to possess the same rights and privileges with respect to the practice of engineering, without being required to be licensed anew under the provisions of this act, subject, however, to the power of the board as provided in this act to suspend or revoke the license of any such person for any of the causes set forth in this act, and subject to power of the board to require any such person to renew said license as provided in this act.

(e) Prior to completion of the requisite years of experience in engineering work, an applicant may be permitted to take an eight-hour written examination in the fundamentals of engineering and satisfactory passage of this portion of the professional examination by the applicant shall constitute a credit for a period of ten years. The board shall issue to each applicant upon successfully passing the examination in the fundamentals of engineering a certificate stating that he or she

has-passed-the-examination.

(c) proof of four years of engineering experience of a character satisfactory to the board; and

(d) the satisfactory passage of an examination in professional practice which may be taken during the last year of the period of work experience by an applicant who is a graduate of such approved curriculum.

Sec. 13. K.S.A. 1988 Supp. 74-7022 is hereby amended to read as follows: 74-7022. ~~†a†~~ Minimum qualifications of applicants seeking licensure as land surveyors are the following:

~~(1)--Graduation--in--an--accredited--engineering--curriculum--of--four--years--or--more;--approved--by--the--board--and--two--or--more--years--survey--experience--of--a--character--satisfactory--to--the--board;--or~~

~~(2) (a) Graduation in an--accredited a surveying curriculum approved by the board; of--not--less--than--two--years--with--two--years--survey--experience--of--a--character--satisfactory--to--the--board;--or~~

~~(3)--completion--of--six--years--or--more--of--active--experience--in--land--surveying;--of--a--character--satisfactory--to--the--board.--Each--year--of--satisfactory--work--in--an--accredited--engineering--or--surveying--curriculum--may--be--considered--as--equivalent--to--one--year--of--experience--in--land--surveying;--but--not--exceeding--a--total--of--four--years;--and (b) proof of at least four years of land surveying experience satisfactory to the board; and~~

~~(4) (c) the satisfactory passage of an examination given utilized by the board. Such examination may be taken prior-to-or during the last year of the period of work experience by any applicant who is a graduate in such approved curriculum.~~

~~(b)-(1)--The--board--may--exempt--from--examination--and--may--issue;--upon--application--therefor--and--receipt--of--payment--of--the--application--fee--prescribed--under--K.S.A.-74-7009;--and--amendments--thereto;--a--license--to--practice--land--surveying--to--any--professional--engineer--licensed--in--the--state--of--Kansas--who--was--so--licensed--prior--to--January--17;--1986;--and--who--submits;--under--oath;--evidence--satisfactory--to--the--board--that--the--applicant--is--and--was;--for--at--least--one--year--prior--to--July--1;--1986;--a--resident--of--the--state--of~~

~~Kansas and is and was, for at least two years prior to July 17, 1986, in responsible charge of land surveying work.~~

~~(2) The provisions of this subsection (b) shall expire on September 30, 1988.~~

Sec. 14. K.S.A. 74-7023 is hereby amended to read as follows: 74-7023. (a) All examinations required by this act shall be held at such time and place as the board ~~shall determine~~ determines. The scope of the examinations and the methods of procedure shall be prescribed by the board. The board, after receiving satisfactory evidence of the qualifications of applicants and after satisfactory examination of said the applicants, shall issue a license authorizing the applicant to practice the technical profession for which ~~he--or--she~~ the applicant is qualified and to use the title appropriate to such technical profession. Each license shall show the full name of the licensee, shall have a serial number and shall be signed by the chairperson and the secretary of the board under seal of the board. The issuance of a license by the board shall be prima facie evidence that the person named ~~therein~~ on the license is legally licensed and is entitled to all the rights and privileges of a licensed practitioner of ~~his--or--her~~ the technical profession for which the licensee is licensed while said the license remains unrevoked and unexpired. The licensee shall notify the board in writing of any change of address of the licensee within 30 days subsequent to the date of such change of address.

(b) Each licensee shall purchase a seal of a distinctive design authorized by the board, bearing the licensee's name and number and a uniform inscription formulated by the board. Documents, reports, records and papers signed by the licensee in his--or--her the licensee's professional capacity shall be stamped with said the seal during the duration of the license, but it shall be unlawful for anyone to stamp any document with said the seal after the license has expired or has been revoked, unless said the license has been renewed or reissued. No person shall tamper with or revise the seal without express written approval

by the board.

~~(b)~~ (c) Any Kansas practitioner of a technical profession licensed hereunder may stamp any documents submitted to ~~him-er~~ her such practitioner by any practitioner of such a technical profession licensed in another state upon assuming full responsibility for furnishing complete and adequate supervision observation of the work covered by the documents to which ~~he-er~~ she the Kansas practitioner has affixed ~~said-stamp-er~~ the seal.

Sec. 15. K.S.A. 74-7025 is hereby amended to read as follows: 74-7025. (a) ~~it-shall-be-the-duty-of~~ The secretary of the board ~~to~~ shall notify every person licensed under this act or issued a certificate of authorization under K.S.A. 74-70367 and amendments thereto of the date of the expiration of the license or certificate of authorization, and the amount of the fee that is required for its renewal for two years~~7~~. Such notice shall be mailed to the last address provided the board by the licensee at least one month in advance of the date of the expiration of ~~said~~ the license or certificate of authorization. Renewal may be effected without penalty any time during a period of ~~thirty-(30)~~ 30 days following the date of the expiration of ~~said the~~ the license or certificate of authorization by the payment of a renewal fee established by the board pursuant to the provisions of K.S.A. 74-7009 and amendments thereto.

(b) Any person who fails to renew a license or certificate of authorization during ~~said the~~ the thirty-day period may have ~~said the~~ the license or certificate of authorization reinstated any time during a period of ~~one-hundred-twenty-(120)~~ 120 days following ~~said the~~ the thirty-day period upon payment of a fee for reinstatement which shall be the amount of the regularly established renewal fee increased by ~~fifty-percent-(50%)~~ 50%. The failure on the part of any licensee or holder of a certificate of authorization to effect renewal or reinstatement of a license or certificate of authorization as required above shall result in the revocation of ~~said the~~ the license or certificate of authorization by the board.

~~(b)~~ (c) A new license or certificate of authorization, to replace any lost, destroyed or mutilated license, may be issued, subject to rules and regulations of the board, and a charge of ~~ten-dollars-(\$10)~~ \$20 shall be made for such issuance.

Sec. 16. K.S.A. 74-7026 is hereby amended to read as follows: 74-7026. (a) The board shall have the power to reprimand or otherwise discipline, suspend or revoke the license of any person who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or certificate of authorization issued under K.S.A. 74-7036; and amendments thereto;

(2) any gross negligence, incompetency ~~or~~, misconduct or wanton disregard for the rights of others in the practice of any technical profession;

(3) a conviction of a felony as set forth in the criminal statutes of the state of Kansas, of any other state or of the United States;

(4) violation of any rules of professional conduct adopted and promulgated by the board or violation of rules ~~or~~ and regulations adopted by the board for the purpose of carrying out the provisions of this act;

(5) affixing or permitting to be affixed such licensee's seal or name to any documents, reports, records or papers which were not prepared ~~or-reviewed-and-evaluated~~ by such licensee; or prepared under the ~~responsible~~ direct supervision ~~or~~ and control of such licensee, except as provided in K.S.A. 74-7023 and amendments thereto.

(b) The board shall have the power to reprimand or otherwise discipline, suspend or revoke the certificate of authorization of any corporation whose officers or directors have committed any act or have been guilty of any conduct which would authorize the board to reprimand or otherwise discipline, suspend or revoke the license of a person under this section.

(c) The board, for reasons it may deem sufficient, may reissue a license or certificate of authorization to any person

whose license or certificate of authorization has been revoked and may remove the suspension of the license or certificate of authorization of any person whose license or certificate of authorization has been suspended providing five or more members of the board vote in favor of such reissuance or removal of suspension. A new license or certificate of authorization, to **replace any revoked or suspended license or certificate of authorization**, may be issued, subject to rules and regulations of the board, and a charge of \$50 \$100 shall be made for the issuance of such license or \$75 \$150 for the issuance of a certificate of authorization.

(d) Any action of the board pursuant to this section shall be subject to the provisions of the Kansas administrative procedure act.

Sec. 17. K.S.A. 74-7029 is hereby amended to read as follows: 74-7029. (a) It shall be a class A misdemeanor for any person to: (1) Practice or offer to practice or hold such--person oneself out as entitled to practice any technical profession unless duly licensed as provided in this act or holds a certificate of authorization issued under K.S.A. 74-7036 and amendments thereto; (2) present or attempt to use, as such person's own, the license, certificate of authorization or seal of another; (3) falsely impersonate any other practitioner of like or different name; (4) give false or forged evidence to the board or any member thereof in obtaining a license or certificate of authorization; (5) use or attempt to use a license or certificate of authorization that has expired or been suspended or revoked; (6) falsely advertise as a licensed practitioner or as the holder of a certificate of authorization; (7) use in connection with such person's name, or otherwise assume, or advertise any title or description intended to convey the impression that such person is a licensed practitioner or holds a certificate of authorization; (8) otherwise violate any of the provisions of this act or any rule or regulation promulgated by the board in conformance with the revisions of this act.

(b) For the purposes of item (1) of subsection (a), a person shall be construed to practice or offer to practice or hold oneself out as entitled to practice a technical profession if such person practices any branch of the technical professions; or by verbal claim, sign, advertisement, letterhead, card or in any other way represents oneself to be an architect, landscape architect, professional engineer or land surveyor; or through the use of some other title implies that such person is an architect, landscape architect, professional engineer or land surveyor or that such person is licensed to practice a technical profession; or who holds oneself out as able to perform, or who does perform, any service or work or any other service designated by the practitioner which is recognized as within the scope of the practice of a technical profession.

~~(b)~~ (c) The attorney general of the state or the district or county attorney of any county shall, at the request of the board, shall render such legal assistance as may be necessary in carrying out the provisions of this act. Upon the request of the board, the attorney general or district or county attorney of the proper county shall institute in the name of the state or board the proper proceedings against any person regarding whom a complaint has been made charging such person with the violation of any of the provisions of this act. The attorney general, and such district or county attorney, at the request of the attorney general or of the board, shall appear and prosecute any and all such actions.

Sec. 18. K.S.A. 74-7031 is hereby amended to read as follows: 74-7031. The provisions of this act requiring licensure or the issuance of a certificate of authorization under K.S.A. 74-7036 and amendments thereto to engage in the practice of architecture shall not be construed to prevent or to affect:

(a) The practice of any person engaging in the publication of books or pamphlets illustrating architectural designs.

(b) Persons preparing plans, drawings or specifications for one and two family dwellings or for agricultural buildings.

(c) Persons furnishing, individually or with subcontractors, labor and materials, with or without plans, drawings, specifications, instruments of service, or other data concerning the labor and materials to be used for any of the following as long as the utilization of the uniform building code or life safety code, as currently adopted by the division of architectural services of the state of Kansas, is not required:

(1) Store fronts or facades, interior alterations or additions, fixtures, cabinet work, furniture, appliances or other equipment;

(2) work necessary to provide for installation of any item designated in (1) above;

(3) alterations or additions to a building necessary to or attendant upon installation of any item designated in (1) above, if the alteration or addition does not change or affect the structural system of the building, which structural system includes, but is not limited to, foundations, walls, floors, roofs, footings, bearing partitions, beams, columns or joists.

(d) Work involving matters of rates, rating and loss prevention by employees of insurance rating organizations and insurance service organizations and insurance companies and agencies.

(e) The performance of services by a licensed landscape architect or corporation issued a certificate of authorization to provide services in landscape architecture under K.S.A. 74-7036 and amendments thereto in connection with landscape and site planning for the sites, approaches or environment for buildings, structures or facilities.

(f) ~~The practice of architecture by any officer or employee of the federal government or of any interstate railroad system while engaged in the performance of official duties.~~

(g) For the purposes of this section:

(1) "Building" means any structure consisting of foundation, floors, walls, columns, girders, beams and roof, or a combination of any number of these parts, with or without other

parts and appurtenances thereto, including the structural, mechanical and electrical systems utility services, and other facilities as may be required for said the structure.

(2) "Agricultural building" means any structure designed and constructed to house hay, grain, poultry, livestock, or other horticultural products and for farm storage of farming implements. Such structure shall not be a place for human habitation or a place of employment where agricultural products are processed, treated, or packaged; nor shall it be a building or structure for use by the public.

Sec. 19. K.S.A. 74-7032 is hereby amended to read as follows: 74-7032. The provisions of this act requiring licensure or the issuance of a certificate of authorization under K.S.A. 74-7036 and amendments thereto to engage in the practice of landscape architecture shall not be construed to prevent or to affect:

(a) The right of any individual to engage in the occupation of growing and marketing nursery stock or to use the title nurseryman, landscape nurseryman or gardener, or to prohibit any individual to plan or plant such individual's own property.

(b) The right of nurserymen to engage in preparing and executing planting plans.

(c) The practice of site development planning, in accordance with the practice of architecture, or the practice of engineering.

~~(d) The practice of landscape architecture by any officer or employee of the federal or state governments while engaged in the performance of official duties.~~

Sec. 20. K.S.A. 74-7033 is hereby amended to read as follows: 74-7033. The provisions of this act requiring licensure or the issuance of a certificate of authorization under K.S.A. 74-7036 and amendments thereto to engage in the practice of engineering shall not be construed to prevent or to affect:

(a) The design or erection of any structure or work by the owner thereof, upon such owner's own premises for such owner's

own use.

(b) Persons preparing plans, drawings or specifications for one or two family dwellings or for agricultural buildings.

(c) Persons engaged in planning, drafting, and designing of products manufactured for resale to the public.

(d) The performance of services by a licensed landscape architect in connection with landscape and site planning for the sites, approaches or environment for buildings, structures or facilities.

~~(e) -- The -- practice -- of -- engineering -- by -- any -- officer -- or -- employee -- of -- the -- federal -- government -- while -- engaged -- in -- the -- performance -- of -- official -- duties --.~~

Sec. 21. K.S.A. 1988 Supp. 74-7034 is hereby amended to read as follows: 74-7034. The provisions of this act requiring licensure or the issuance of a certificate of authorization under K.S.A. 74-7036, and amendments thereto, to engage in the practice of land surveying shall not be construed to prevent or to affect:

(a) Surveying, other than land surveying where such surveying is incidental to the design or construction of engineering or architectural works.

(b) The practice of land surveying by an individual of such individual's own real property or that of such individual's employer for purposes other than the conveyance of an interest in such real property.

(c) The surveying on farms for agricultural purposes other than the conveyance of an interest in such farm property.

(d) The performance of services by a licensed landscape architect or by a corporation issued a certificate of authorization to provide services in landscape architecture under K.S.A. 74-7036, and amendments thereto, in connection with landscape and site planning for the sites, approaches or environment for buildings, structures or facilities.

(e) The practice of land surveying by any officer or employee of any federal, state, county or city governmental agency while engaged in the performance of official duties.

Sec. 22. K.S.A. 74-7035 is hereby amended to read as follows: 74-7035. The provisions of this act shall not apply to:

(a) The practice of any technical profession by a person who is not a resident of and having has no established place of business in the state of Kansas, or who has recently become a resident of this state, if such person ~~shall have~~ has filed with the board an application for a license and ~~shall have~~ has paid the application fee required by this act. Such person shall be legally qualified by license or registration to practice ~~said~~ the profession in ~~his--or-her~~ such person's own state or country in which the requirements and qualifications for obtaining a license or certificate of registration are not lower than those specified in this act. Such practice shall continue only for such time as the board requires for the consideration of the application for license; or

(b) the work of an employee or a subordinate of a person holding a license under this act, or an employee of a person practicing lawfully under subsection (a) of this section, provided such work does not include final designs or decisions, responsible charge of design or supervision and is done under the direct responsibility and supervision of a person practicing lawfully under subsection (a) of this section; or

(c) the practice of persons who are not residents of and have not established a place of business in this state, who are acting as consulting associates of persons licensed under the provisions of this act. ~~Such~~ Any person shall be legally qualified for such professional service in ~~his--or-her~~ such person's own state or country; or

(d) the practice of persons who are employees of any person, firm or corporation who do not offer to the public their services in the technical professions as herein defined; or

(e) the practice of any person who is exclusively and regularly employed by one employer only, ~~said~~ the employer not being an engineering, architectural, or land surveying firm, and ~~said~~ the employer not being primarily engaged in the business of

conveying an interest in real property, in an employer-employee relationship, in making surveys of land and determinations of physical property rights in connection only with the affairs of such employer or its subsidiaries and affiliates and for the uses, purposes and benefit of such employer, subsidiaries and affiliates, only; or

(f) a nonresident, who holds a license or certificate to practice the technical professions in another state, who agrees to perform or holds oneself out as able to perform any of the technical professions so long as such person, prior to licensure in this state, notifies the board in writing if such person engages in such activities.

Sec. 23. K.S.A. 74-7036 is hereby amended to read as follows: 74-7036. (a) The practice of or offer to practice any profession included within the term "technical professions" by an individual licensed to practice the technical professions through a corporation as an officer, employee or agent of such corporation is authorized as provided under this section if: (1) One or more of the corporate officers of such corporation is designated as responsible for the activities and decisions relating to the practice of such profession and is licensed to practice such profession by the state board of technical professions and is a regular employee of the corporation, a member of its board of directors and a holder of its stock; (2) all personnel of ~~said~~ such corporation who act in its behalf in the practice of such profession are licensed to practice such profession by the state board of technical professions or are persons lawfully practicing under K.S.A. 74-7031 to 74-7035, inclusive, and any amendments thereto, or are exempt from examination for licensure in this state under K.S.A. 74-7024; and any amendments thereto; and (3) such corporation has been issued a certificate of authorization by the state board of technical professions.

(b) A corporation may apply to the board of technical professions for a certificate of authorization, upon a form

prescribed and furnished by the board, listing the names and addresses of all officers and members of the board of the corporation and also of an individual or individuals licensed to practice a branch of the technical professions who will be responsible for the practice of such branch of the technical professions in this state through such corporation, and such other information as may be required by the board of technical professions. The application for a certificate of authorization shall be accompanied by an application fee fixed by the board under K.S.A. 74-7009 and amendments thereto. The biennial renewal fee fixed by the board under K.S.A. 74-7009 and amendments thereto shall be accompanied by the same form providing current information. In the event of a change of any officer of such corporation or a change of any member of the board, such change shall be designated on such form and filed with the board within ~~thirty-(30)~~ 30 days after the effective date of such change.

(c) If the board of technical professions finds that such corporation is in compliance with all of the requirements of this section, the board shall issue a certificate of authorization to such corporation designating the branch or branches of the technical professions for which such corporation is authorized to provide services. A corporation to which a certificate of authorization has been issued is hereby authorized to provide services in the branch or branches of the technical professions for which such corporation is authorized to provide services under such certificate of authorization.

(d) No corporation issued a certificate of authorization under this section shall be relieved of responsibility for the conduct or acts of its agents, employees or officers by reason of its compliance with the provisions of this section, nor shall any individual practicing a branch of the technical professions be relieved of responsibility and liability for services performed by reason of employment or relationship with such corporation. The requirements of this section shall not affect a corporation and its employees in performing services included within the term

"technical professions" solely for the benefit of such corporation or subsidiary or affiliated corporations. Nothing in this section shall exempt any corporation from the provisions of any other law applicable thereto.

~~(e) As used in this section, the term "corporation" shall not include corporations organized under the professional corporation law of Kansas.~~

New Sec. 24. (a) A public official charged with the enforcement of any state, county or municipal building code shall not accept or approve any technical submissions involving the practice of the technical professions unless the technical submissions have been stamped with the technical professional's seal as required by this act, or unless the applicant has certified on the technical submission to the applicability of a specific exception provided for in K.S.A. 74-7035 and amendments thereto permitting the preparation of the technical submissions by a person not licensed under this act. A building permit issued with respect to technical submissions which does not conform to the requirements of this act is invalid.

(b) A violation of this section may be punished pursuant to the authority of the board under section 25.

New Sec. 25. (a) The state board of technical professions, in addition to any other penalty prescribed under the act governing the technical professions, may assess civil fines and costs, including attorney fees, after proper notice and an opportunity to be heard, against any person or entity for a violation of the statutes, rules and regulations or orders enforceable by the board in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation. All civil fines assessed and collected under this section shall be remitted to the state treasurer at least monthly and shall be deposited in the state treasury and credited to the state general fund. All costs assessed under this section shall be remitted to the state treasurer at least monthly and shall be deposited in

the state treasury and credited to the technical professions fee fund.

(b) In determining the amount of penalty to be assessed pursuant to this section, the board may consider the following factors among others: (1) Willfulness of the violation; (2) repetitions of the violation; and (3) magnitude of the risk of harm caused by the violation.

New Sec. 26. Any person licensed to practice the technical professions in the state of Kansas at the time this act takes effect shall thereafter continue to possess the same rights and privileges with respect to the practice of the technical profession for which such person is licensed without being required to obtain a new license under the provisions of this act, subject to the power of the board as provided in this act to suspend or revoke the license of any such person for any of the causes set forth in K.S.A. 74-7026 and amendments thereto, and subject to the power of the board to require any such person to renew such license as provided in K.S.A. 74-2025 and amendments thereto.

New Sec. 27. The state board of technical professions shall adopt rules and regulations establishing the criteria which a school or curriculum, or both, shall satisfy to be approved by the board under K.S.A. 74-7019, 74-7020, 74-7021 and 74-7022, and amendments to such sections. The board may send a questionnaire developed by the board to any college or university or other school conducting an educational curriculum in one of the technical professions for which the board does not have sufficient information to determine whether the school or curriculum should be approved by the board and whether the school or curriculum, or both, meets the rules and regulations adopted under this section. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school or curriculum to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about a

school or curriculum, or both. In entering such contracts the authority to approve a school or curriculum shall remain solely with the board.

Sec. 28. K.S.A. 74-7003, 74-7005, 74-7006, 74-7008, 74-7009, 74-7010, 74-7011, 74-7012, 74-7014, 74-7016, 74-7017, 74-7018, 74-7019, 74-7020, 74-7021, 74-7023, 74-7025, 74-7026, 74-7029, 74-7031, 74-7032, 74-7033, 74-7035 and 74-7036 and K.S.A. 1988 Supp. 74-7022 and 74-7034 are hereby repealed.

Sec. 29. This act shall take effect and be in force from and after its publication in the statute book.

One-strength beer

9 RS 0468

Bahr

PROPOSED BILL NO. _____

By

AN ACT concerning alcoholic beverages; relating to the alcoholic content of beer and cereal malt beverage; amending K.S.A. 41-208, 41-211, 41-708 and 41-2722 and K.S.A. 1988 Supp. 41-102, 41-103, 41-104, 41-307, 41-308, 41-308b, 41-317, 41-501, 41-601, 41-602, 41-701, 41-717, 41-2701 through 41-2705 and 41-2708 and repealing the existing sections.

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

Section 1. K.S.A. 1988 Supp. 41-102 is hereby amended to read as follows: 41-102. As used in this act, unless the context clearly requires otherwise:

(a) "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) "Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) "Beer" means a beverage, containing more than 3.2% 5% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

(d) "Caterer" has the meaning provided by K.S.A. 41-2601 and amendments thereto.

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

(f) "Club" has the meaning provided by K.S.A. 41-2601 and amendments thereto.

SF & SA
1-26-89

Attachment 2

(g) "Director" means the director of alcoholic beverage control of the department of revenue.

(h) "Distributor" means the person importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquor for sale or resale to retailers licensed under this act or cereal malt beverage for sale or resale to retailers licensed under K.S.A. 41-2702 and amendments thereto.

(i) "Domestic cereal malt beverage or beer" means ~~beer which contains~~ cereal malt beverage, or beer containing not more than 8% alcohol by weight and, which is manufactured from agricultural products grown in this state.

(j) "Domestic table wine" means wine which contains not more than 14% alcohol by volume and which is manufactured without rectification or fortification from agricultural products grown in this state.

(k) "Drinking establishment" has the meaning provided by K.S.A. 41-2601 and amendments thereto.

(l) "Farm winery" means a winery licensed by the director to manufacture, store and sell domestic table wine.

(m) "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

(n) (1) "Manufacturer" means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage.

(2) "Manufacturer" does not include a microbrewery or a farm winery.

(o) "Microbrewery" means a brewery licensed by the director to manufacture, store and sell domestic cereal malt beverage or beer.

(p) "Minor" means any person under 21 years of age.

(q) "Nonbeverage user" means any manufacturer of any of the

products set forth and described in K.S.A. 41-501 and amendments thereto, when the products contain alcohol or wine, and all laboratories using alcohol for nonbeverage purposes.

(r) "Original package" means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor.

(s) "Person" means any natural person, corporation, partnership or association.

(t) "Primary American source of supply" means the manufacturer, the owner of alcoholic liquor at the time it becomes a marketable product or the manufacturer's or owner's exclusive agent who, if the alcoholic liquor cannot be secured directly from such manufacturer or owner by American wholesalers, is the source closest to such manufacturer or owner in the channel of commerce from which the product can be secured by American wholesalers.

(u) (1) "Retailer" means a person who sells at retail, or offers for sale at retail, alcoholic liquors.

(2) "Retailer" does not include a microbrewery or a farm winery.

(v) "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

(w) "Salesperson" means any natural person who:

(1) Procures or seeks to procure an order, bargain, contract or agreement for the sale of alcoholic liquor or cereal malt beverage; or

(2) is engaged in promoting the sale of alcoholic liquor or cereal malt beverage, or in promoting the business of any person, firm or corporation engaged in the manufacturing and selling of alcoholic liquor or cereal malt beverage, whether the seller resides within the state of Kansas and sells to licensed buyers

within the state of Kansas, or whether the seller resides without the state of Kansas and sells to licensed buyers within the state of Kansas.

(x) "Secretary" means the secretary of revenue.

(y) (1) "Sell at retail" and "sale at retail" refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits.

(2) "Sell at retail" and "sale at retail" do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

(z) "To sell" includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

(aa) "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(bb) "Supplier" means a manufacturer of alcoholic liquor or cereal malt beverage or an agent of such manufacturer, other than a salesperson.

(cc) "Temporary permit" has the meaning provided by K.S.A. 41-2601 and amendments thereto.

(dd) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

Sec. 2. K.S.A. 1988 Supp. 41-103 is hereby amended to read as follows: 41-103. The legislature hereby declares the public policy of this state to be that:--(a)--Cereal-malt-beverage-shall be-sold-at-retail-separately-from-sales-of--alcoholic--liquor--at retail;--(b)--cereal-malt-beverage-shall-be-sold-and-dispensed-at retail-in-rooms-or-premises-separate-and-distinct-from--rooms--or

~~premises--where--alcoholic--liquor--is--sold;--and--(e)~~ no retailer's license for the sale of alcoholic liquor shall be granted to any applicant making application therefor if the premises sought to be licensed are located outside the corporate limits of any city within this state, except as provided in K.S.A. 41-303 and amendments thereto.

Sec. 3. K.S.A. 1988 Supp. 41-104 is hereby amended to read as follows: 41-104. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor or cereal malt beverage for beverage purposes, except as specifically provided in this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, except that nothing contained in this act shall prevent:

(a) The possession and transportation of alcoholic liquor for the personal use of the possessor, the possessor's family and guests except that the provisions of K.S.A. 41-1103 and amendments thereto relating to transportation and the provisions of K.S.A. 41-407 and amendments thereto shall be applicable to all persons;

(b) the making of wine, cider ~~or~~, beer or cereal malt beverage by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker and the maker's family;

(c) any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of the medical or dental profession;

(d) any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or institution;

(e) any drugstore employing a licensed pharmacist from possessing and using alcoholic liquor in the compounding of prescriptions of duly licensed physicians; or

(f) the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church.

Sec. 4. K.S.A. 41-208 is hereby amended to read as follows: 41-208. The power to regulate all phases of the control of the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor and the manufacture of beer ~~regardless--of--its--alcoholic--content~~ or cereal malt beverage, except as specifically delegated in this act, is hereby vested exclusively in the state and shall be exercised as provided in this act. No city shall enact any ordinance in conflict with or contrary to the provisions of this act and any ordinance of any city in effect at the time this act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this act shall be null and void. 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 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 by this act for the same violation.

Sec. 5. K.S.A. 41-211 is hereby amended to read as follows: 41-211. (a) The rules and regulations adopted by the secretary of revenue pursuant to K.S.A. 41-210 and amendments thereto shall include rules and regulations:

(1) Prescribing the nature, form and capacity of all containers used for alcoholic ~~liquors~~ liquor;

(2) prescribing the nature of and the representations to be shown upon the labels attached to the containers and requiring that the labels attached to all original containers or packages of alcoholic ~~liquors~~ liquor sold or offered for sale in this state shall set forth in plain and legible print in the English

language the quantity of such ~~liquors~~ liquor, exclusive of the package or cask containing them, in either metric or English measurement, except that no original package of alcoholic liquor sold or offered for sale in the original package in this state shall contain less than 100 milliliters (3.4 fluid ounces);

(3) prescribing administrative procedures for the issuance of licenses and the investigation of license applications and providing for advisory recommendations from governing bodies of cities as to retailers' licenses and for hearings on applications;

(4) prescribing conditions for the issuance of duplicate licenses in lieu of those lost or destroyed;

(5) prescribing those violations of the rules and regulations for which licenses shall be suspended or revoked;

(6) establishing standards of purity, sanitation and honest advertising and representations;

(7) establishing the form of revenue stamps and the methods of affixing the same to the containers and prescribing such design, character, color combination, color changes, sizes and material therefor, including a decalcomania revenue stamp, as afford the best security to the state;

(8) requiring the destruction of stamps upon containers which have been opened;

(9) in the case of manufacturers and distributors of alcoholic ~~liquors~~ liquor or cereal malt beverage, requiring the labels attached to all containers of such ~~liquors~~ liquor which are intended for sale in this state to set forth, in plain legible print in the English language, the name and kind of alcoholic ~~liquors~~ liquor contained therein, together with their alcoholic content, and if a blended product (except wine) to so state, except that, if the director deems it unnecessary to show the alcoholic content of beer or cereal malt beverage on labels of containers of beer or cereal malt beverage, the alcoholic content shall not be required to be shown thereon; and

(10) providing for such other details as are necessary or

convenient to the administration and enforcement of this act.

(b) The secretary of revenue may adopt rules and regulations pursuant to K.S.A. 41-210 and amendments thereto establishing:

(1) Standards of manufacture of alcoholic liquors-and-beer, ~~regardless--of--its--alcoholic--content,~~ liquor and cereal malt beverage not inconsistent with federal laws, in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof; and

(2) standards, not inconsistent with federal law, for the proper labeling of containers or barrels, casks or other bulk containers or bottles of alcoholic liquor and beer, ~~regardless-of its-alcoholic-content,~~ cereal malt beverage manufactured or sold in this state.

Sec. 6. K.S.A. 1988 Supp. 41-307 is hereby amended to read as follows: 41-307. A beer distributor's license shall allow:

(a) The wholesale purchase, importation and storage of beer.

(b) The sale of beer to:

(1) Licensed caterers;

(2) beer distributors licensed in this state;

(3) retailers, clubs and drinking establishments, licensed in this state, except that such distributor shall sell a brand of beer only to those retailers, clubs and drinking establishments of which the licensed premises are located in the geographic territory within which such distributor is authorized to sell such brand, as designated in the notice or notices filed with the director pursuant to K.S.A. 41-410 and amendments thereto; and

(4) such persons located outside such territory or outside this state as permitted by law.

(c) The sale of cereal malt beverage to:

(1) Licensed caterers;

(2) beer distributors licensed in this state;

~~(2)~~ (3) retailers, clubs and drinking establishments, licensed in this state, and cereal malt beverage retailers

licensed under K.S.A. 41-2702 and amendments thereto, except that such distributor shall sell a brand of cereal malt beverage only to those such retailers, clubs, drinking establishments and cereal malt beverage retailers of which the licensed premises are located in the geographic territory within which such distributor is authorized to sell such brand, as designated in the notice or notices filed with the director pursuant to K.S.A. 41-410 and amendments thereto; and

(3) such persons located outside such territory or outside this state as permitted by law.

(d) The purchase of cereal malt beverage in kegs or other bulk containers and the bottling or canning thereof in accordance with law.

Sec. 7. K.S.A. 1988 Supp. 41-308 is hereby amended to read as follows: 41-308. (a) A retailer's license shall allow the licensee to sell and offer for sale at retail and deliver in the original package, as therein prescribed, alcoholic liquor and cereal malt beverage for use or consumption off of and away from the premises specified in such license. A retailer's license shall permit sale and delivery of alcoholic liquor and cereal malt beverage only on the licensed premises and shall not permit sale of alcoholic liquor and cereal malt beverage for resale in any form, except that a licensed retailer may:

(1) Sell alcoholic liquor and cereal malt beverage to a temporary permit holder for resale by such permit holder; and

(2) sell and deliver alcoholic liquor and cereal malt beverage to a caterer or to the licensed premises of a club or drinking establishment, if such premises are in the county where the retailer's premises are located or in an adjacent county, for resale by such club, establishment or caterer.

(b) The holder of a retailer's license shall not sell, offer for sale, give away or permit to be sold, offered for sale or given away in or from the premises specified in such license any service or thing of value whatsoever except alcoholic liquor or cereal malt beverage in the original package, except that a

licensed retailer may:

(1) Charge a delivery fee for delivery to a club, drinking establishment or caterer pursuant to subsection (a); and

(2) sell lottery tickets and shares to the public in accordance with the Kansas lottery act, if the retailer is selected as a lottery retailer.

(c) No licensed retailer shall furnish any entertainment in such premises or permit any pinball machine or game of skill or chance to be located in or on such premises.

(d) A retailer's license shall allow the licensee to store wine in refrigerators, cold storage units, ice boxes or other cooling devices, and the licensee may sell such wine to consumers in a chilled condition.

Sec. 8. K.S.A. 1988 Supp. 41-308b is hereby amended to read as follows: 41-308b. (a) ~~On--and--after--January--17--1988,~~ A microbrewery license shall allow:

(1) The manufacture of not less than 100 nor more than 5,000 barrels of domestic cereal malt beverage or beer during the license year and the storage thereof;

(2) the sale to beer distributors of cereal malt beverage or 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 cereal malt beverage or beer manufactured by the licensee;

(4) the serving on the premises of samples of cereal malt beverage or 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; and

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

(b) Not less than 50% of the products utilized in the

manufacture of domestic cereal malt beverage or beer by a microbrewery shall be grown in Kansas except when a greater proportion of products grown outside this state is authorized by the director based upon findings that such products are not available in this state. The label of each container of domestic cereal malt beverage or beer shall clearly set forth the proportion of the products utilized in the manufacture of the cereal malt beverage or beer which was from agricultural products grown in Kansas.

(c) A microbrewery may sell domestic cereal malt beverage or beer in the original unopened container to consumers for consumption off the licensed premises at any time when a retailer is authorized to sell alcoholic liquor at retail. If authorized by subsection (a), a microbrewery may serve samples of domestic cereal malt beverage or beer and serve and sell domestic cereal malt beverage or 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) A microbrewery 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.

(e) 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-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.

(f) 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.

Sec. 9. K.S.A. 1988 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. Each application shall be accompanied by a state registration 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 paid into the state treasury by the director and shall be credited to the state general fund. All license fees received by the director, including fees received for licenses to manufacture beer, ~~regardless of its alcoholic content~~ or cereal malt beverage, shall be paid into the state treasury by the director and shall be credited to the state general fund.

(b) Every applicant for a manufacturer's, distributor's, nonbeverage user's, microbrewery, farm winery or retailer's 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;
- (3) for a beer or wine distributor or a retailer, \$2,000;
- (4) 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; and

(5) for a microbrewery or a farm winery, \$2,000.

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) 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, fines and forfeitures which may be assessed against the licensee.

Sec. 10. K.S.A. 1988 Supp. 41-501 is hereby amended to read as follows: 41-501. (a) As used in this section and K.S.A. 41-501a and amendments thereto:

(1) "Gallon" means wine gallon.

(2) "Federal area" means any lands or premises which are located within the exterior boundaries of this state and which are held or acquired by or for the use of the United States or any department, establishment or agency of the United States.

(b) (1) For the purpose of raising revenue a tax is imposed upon the manufacturing, using, selling, storing or purchasing alcoholic ~~liquors~~ liquor in this state or a federal area at a rate of \$.18 per gallon on all beer containing more than 3-2% 5% alcohol by weight; \$.30 per gallon on wine containing 14% or less alcohol by volume; \$.75 per gallon on wine containing more than 14% alcohol by volume; and \$2.50 per gallon on alcohol and spirits.

(2) The tax imposed by this section shall be paid only once and shall be paid by the person in this state or federal area who first manufactures, uses, sells, stores, purchases or receives the alcoholic liquors. The tax shall be collected and paid to the director as provided in this act. If the alcoholic liquor is manufactured and sold in this state or a federal area, the tax shall be paid by the manufacturer, microbrewery or farm winery producing it. If the alcoholic liquor is imported into this state by a distributor for the purpose of sale at wholesale in this

state or a federal area, the tax shall be paid by the distributor, and in no event shall such tax be paid by the manufacturer unless the alcoholic liquor is manufactured in this state. If not to exceed one gallon, or metric equivalent, per person of alcoholic liquor has been purchased by a private citizen outside the borders of the United States and is brought into this state by the private citizen in such person's personal possession for such person's own personal use and not for sale or resale, such import is lawful and no tax payment shall be due thereon.

(c) Manufacturers, microbreweries, farm wineries or distributors at wholesale of alcoholic liquors shall be exempt from the payment of the gallonage tax imposed on alcoholic liquors, upon satisfactory proof, including bills of lading furnished to the director by affidavit or otherwise as the director requires, that the liquors were manufactured in this state but were shipped out of the state for sale and consumption outside the state.

(d) Wines manufactured or imported solely and exclusively for sacramental purposes and uses shall not be subject to the tax provided for by this section.

(e) The tax provided for by this section is not imposed upon:

(1) Any alcohol or wine, whether manufactured in or imported into this state, when sold to a nonbeverage user licensed by the state, for use in the manufacture of any of the following when they are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic and toilet preparations; flavoring extracts and syrups and food products; scientific, industrial and chemical products; or scientific, chemical, experimental or mechanical purposes; or

(2) the privilege of engaging in any business of interstate commerce or otherwise, which business may not be made the subject of taxation by this state under the constitution and statutes of the United States.

(f) The tax imposed by this section shall be in addition to all other taxes imposed by the state of Kansas or by any municipal corporation or political subdivision thereof.

(g) Retail sales of alcoholic liquor and beer, sales of beer to consumers by microbreweries and sales of wine to consumers by farm wineries shall not be subject to the tax imposed by the Kansas retailers' sales tax act but shall be subject to the enforcement tax provided for in this act.

(h) Notwithstanding any ordinance to the contrary, no city shall impose an occupation or privilege tax on the business of any person, firm or corporation licensed as a manufacturer, distributor, microbrewery, farm winery, retailer or nonbeverage user under this act and doing business within the boundaries of the city except as specifically authorized by K.S.A. 41-310 and amendments thereto.

(i) The director shall collect the taxes imposed by this section and shall account for and turn over to the state treasurer at least once each week all moneys collected from the tax. The state treasurer shall credit 1/10 of the moneys collected from taxes imposed upon alcohol and spirits under subsection (b)(1) to the community alcoholism and intoxication programs fund created by K.S.A. 41-1126 and amendments thereto and shall credit the balance of the moneys collected to the state general fund.

(j) If any alcoholic liquor manufactured in or imported into this state is sold to a licensed manufacturer or distributor of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon the manufacturer or distributor shall be reduced by the amount of the taxes which have been paid under this section as to the alcoholic liquor so used.

(k) The tax provided for by this section is not imposed upon alcohol or wine used by any school or college for scientific, chemical, experimental or mechanical purposes or by hospitals, sanatoria or other institutions caring for the sick.

Any school, college, hospital, sanatorium or other institution caring for the sick may import alcohol or wine for scientific, chemical, experimental, mechanical or medicinal purposes by making application to the director for a permit to import it and receiving such a permit. Application for the permit shall be on a form prescribed and furnished by the director, and a separate permit shall be required for each purchase of alcohol or wine. A fee of \$2 shall accompany each application. All permits shall be issued in triplicate to the applicant and shall be under the seal of the office of the director. Two copies of the permit shall be forwarded by the applicant to the microbrewery, farm winery, manufacturer or distributor from which the alcohol or wine is purchased, and the microbrewery, farm winery, manufacturer or distributor shall return to the office of the director one copy of the permit with its shipping affidavit and invoice. Within 10 days after receipt of any alcohol or wine, the school, college, hospital or sanatorium ordering it shall file a report in the office of the director upon forms furnished by the director, showing the amount of alcohol or wine received, the place where it is to be stored, from whom it was received, the purpose for which it is to be used and such other information as required by the director. Any school, college, hospital, sanatorium or institution caring for the sick, which complies with the provisions of this subsection, shall not be required to have any other license to purchase alcohol or wine from a microbrewery, farm winery, manufacturer or distributor.

Sec. 11. K.S.A. 1988 Supp. 41-601 is hereby amended to read as follows: 41-601. Every manufacturer, distributor, microbrewery which sells any beer or cereal malt beverage to a beer distributor at wholesale and farm winery which sells any wine to a distributor at wholesale shall between the 1st and 15th day of each calendar month, make return under oath to the director of all alcoholic liquor or cereal malt beverage manufactured and sold by the manufacturer, distributor, microbrewery or farm winery in the course of business during the

preceding calendar month. In the case of a distributor, the return shall also show: (a) The total amount of liquor or cereal malt beverage purchased by the distributor during the preceding calendar month, the names of the distillers or distributors from whom purchased, the quantity of each brand and the price paid therefor; and (b) the names and locations of the retailers to whom alcoholic liquor or cereal malt beverage was sold by the distributor during the preceding calendar month, the quantity of each brand and the price charged therefor. The return shall be made upon forms prescribed and furnished by the director and shall contain such other information as the director reasonably requires.

Sec. 12. K.S.A. 1988 Supp. 41-602 is hereby amended to read as follows: 41-602. It is the duty of each manufacturer, distributor, microbrewery which sells any beer or cereal malt beverage to a beer distributor and farm winery which sells any wine to a distributor to keep complete and accurate records of all sales of liquor spirits, wine ~~or~~, beer or cereal malt beverage and complete and accurate records of all alcoholic liquors liquor or cereal malt beverage produced, manufactured, compounded or imported. The director, in the director's discretion, may prescribe reasonable and uniform methods for keeping records by manufacturers, distributors, microbreweries and farm wineries as contemplated by K.S.A. 41-401 through 41-409, and amendments thereto.

Sec. 13. K.S.A. 1988 Supp. 41-701 is hereby amended to read as follows: 41-701. (a) Except as provided in subsection (d), no spirits distributor shall sell or attempt to sell any spirits within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed spirits distributor; or

(2) a licensed retailer, as authorized by K.S.A. 41-306 and amendments thereto.

(b) A Except as provided in subsection (d), no wine distributor shall sell or attempt to sell any wine within this

state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed wine distributor;

(2) a licensed caterer; or

(3) a retailer, club or drinking establishment, licensed in this state, as authorized by K.S.A. 1987 1988 Supp. 41-306a and amendments thereto.

(c) Except as provided by subsection (d), no beer distributor shall sell or attempt to sell any beer or cereal malt beverage within this state except to:

(1) A licensed manufacturer, licensed nonbeverage user or licensed beer distributor;

(2) a licensed caterer; or

(3) a retailer licensed under the Kansas liquor control act or, a cereal malt beverage retailer licensed under K.S.A. 41-2702 and amendments thereto or a club or drinking establishment, licensed in this state, as authorized by K.S.A. 41-307 and amendments thereto.

(d) (1) If any spirits distributor refuses to sell spirits which such distributor is authorized to sell or refuses to provide any service in connection therewith to any licensed retailer as authorized by K.S.A. 41-306 and amendments thereto, it shall be lawful for any other licensed spirits distributor to sell such spirits to such retailer.

(2) If any wine distributor refuses to sell wine which such distributor is authorized to sell or refuses to furnish service in connection therewith to any licensed retailer, as authorized by K.S.A. 1987 1988 Supp. 41-306a and amendments thereto, it shall be lawful for any other licensed wine distributor to sell such wine to such retailer.

(3) If any beer distributor refuses to sell beer or cereal malt beverage which such distributor is authorized to sell or provide service in connection therewith to any retailer licensed under this act or any cereal malt beverage retailer licensed under K.S.A. 41-2702 and amendments thereto, as authorized by

K.S.A. 41-307 and amendments thereto, it shall be lawful for any other licensed beer distributor to sell such beer or cereal malt beverage to such retailer.

(e) No manufacturer of alcoholic liquor or cereal malt beverage shall sell or attempt to sell any alcoholic liquor or cereal malt beverage within this state except to a licensed manufacturer, licensed distributor or licensed nonbeverage user.

(f) No supplier, wholesaler, distributor, manufacturer or importer shall by oral or written contract or agreement, expressly or impliedly fix, maintain, coerce or control the resale price of alcoholic liquor, beer or cereal malt beverage to be resold by such wholesaler, distributor, manufacturer or importer.

(g) Any supplier, wholesaler, distributor or manufacturer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$500 and not more than \$1,000, to which may be added not to exceed six months' imprisonment. In addition, any supplier, wholesaler, distributor, manufacturer or importer violating the provisions of this section relating to fixing, maintaining or controlling the resale price of alcoholic liquor, beer or cereal malt beverage shall be liable in a civil action to treble the amount of any damages awarded plus reasonable attorney fees for the damaged party.

Sec. 14. K.S.A. 41-708 is hereby amended to read as follows: 41-708. No retailer licensed under this act shall purchase or receive alcoholic liquor from any source except from a distributor licensed under this act and having a place of business in this state: Provided, except that a licensed retailer may purchase confiscated alcoholic liquor at a sheriff's sale: And-provided-further, That-a-licensed-retailer or may purchase or receive beer or cereal malt beverage from a licensed beer or cereal malt beverage manufacturer having a place of business in this state. Any retail licensee who shall ~~violate~~ violates this section shall be guilty of a misdemeanor, and upon conviction

thereof shall be punished by a fine of not less than ~~two--hundred dollars--(\$200)~~, \$200 nor more than ~~one-thousand-dollars--(\$1,000)~~ \$1,000, to which may be added imprisonment for not more than ~~six~~ (6) months, and the license of such licensee may be revoked as provided by law.

Sec. 15. K.S.A. 1988 Supp. 41-717 is hereby amended to read as follows: 41-717. (a) No person shall sell or furnish at retail and no microbrewery or farm winery shall sell to any consumer any alcoholic liquor or cereal malt beverage on credit; on a passbook; on order on a store; in exchange for any goods, wares or merchandise; or in payment for any services rendered. If any person extends credit in violation of this subsection, the debt attempted to be created shall not be recoverable at law.

(b) No microbrewery, farm winery or retailer of ~~alcoholic liquor~~ shall accept a check for payment for alcoholic ~~liquors~~ liquor or cereal malt beverage sold by the winery or retailer to a consumer, other than the personal check of the person making the purchase.

Sec. 16. K.S.A. 1988 Supp. 41-2701 is hereby amended to read as follows: 41-2701. As used in this act unless the context otherwise requires:

(a) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than ~~3-2%~~ 5% alcohol by weight.

(b) "Director" means the director of alcoholic beverage control of the department of revenue.

(c) "Manufacturer" means a manufacturer as defined by K.S.A. 41-102 and amendments thereto.

(d) "Person" means any individual, firm, partnership, corporation or association.

(e) "Cereal malt beverage retailer" means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form, but does not include any retailer licensed under the Kansas liquor control act.

(f) "Place of business" means any place at which cereal malt beverages are sold by a cereal malt beverage retailer, except that the place of business of a caterer licensed under the club and drinking establishment act shall be considered to be the caterer's principal place of business.

(g) "Distributor" means a beer distributor licensed pursuant to the Kansas liquor control act.

(h) "Legal age for consumption of cereal malt beverage" means 21 years of age, except that "legal age for consumption of cereal malt beverage" shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

Sec. 17. K.S.A. 1988 Supp. 41-2702 is hereby amended to read as follows: 41-2702. (a) No cereal malt beverage retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided. In case such place of business is located within the corporate limits of a city, the application for license shall be made to the governing body of such city. In all other cases, the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, except that the application for license to sell on railway cars or at events catered by a caterer licensed pursuant to the club and drinking establishment act shall be made to the director as hereinafter provided.

(b) A board of county commissioners shall not issue or renew a cereal malt beverage retailer's license without giving the clerk of the township where the place of business is to be located written notice by registered mail of the filing of the application for licensure or renewal. The township board may within 10 days file advisory recommendations as to the granting of such license or renewal and such advisory recommendations shall be considered by the board of county commissioners before such license is issued. If an original license is granted and

issued, the board of county commissioners shall grant and issue renewals thereof upon application of the license holder, if the license holder is qualified to receive the same and the license has not been revoked as provided by law.

(c) An application for a cereal malt beverage retailer's license shall be verified and upon a form prepared by the attorney general of the state and shall contain:

(1) The name and residence of the applicant;

(2) the length of time that the applicant has resided within the state of Kansas;

(3) the particular place of business for which a license is desired;

(4) the name of the owner of the premises upon which the place of business is located; and

(5) a statement that the applicant is a citizen of the United States and not less than 21 years of age and that the applicant has not within two years immediately preceding the date of making application been convicted of a felony, any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

(d) In addition to the fee provided by subsection (e), each application for a cereal malt beverage retailer's license to sell cereal malt beverages for consumption on the licensed premises shall be accompanied by a fee as follows:

(1) For licensure of a place of business other than a railway car, a fee of not less than \$25 nor more than \$200, as prescribed by the board of county commissioners or the governing body of the city, as the case may be; and

(2) for licensure to sell on railway cars or at events catered by a caterer licensed pursuant to the club and drinking establishment act, a fee of \$100.

(e) Each applicant for a cereal malt beverage retailer's license or renewal of such a license shall submit to the director

a copy of the completed application for such license or license renewal, together with a fee of \$25. Upon receipt of such application, the director shall authorize a state stamp to be affixed to the license. No such stamp shall be affixed to any license except such stamps as provided by the director and no retailer's license shall be issued or renewed unless such stamp has first been affixed thereto.

(f) The director shall remit to the state treasurer all fees collected by the director hereunder, and the state treasurer shall credit the same to the state general fund, except that the director may provide for the deposit in the cereal malt beverage tax refund fund of such amounts as necessary for the refund of any license fees collected hereunder.

(g) The board of county commissioners of the several counties or the governing body of a city shall issue a license upon application duly made as otherwise provided for herein, to any cereal malt beverage retailer engaged in business in such county or city and qualified to receive such license, to sell only cereal malt beverages in original and unopened containers, and not for consumption on the premises. The annual license fee for such license, which shall be in addition to the fee provided by subsection (e), shall be not less than \$25 nor more than \$50.

(h) No license issued under this act shall be transferable.

Sec. 18. K.S.A. 1988 Supp. 41-2703 is hereby amended to read as follows: 41-2703. (a) After examination of an application for a cereal malt beverage retailer's license, the board of county commissioners or the director shall, if they approve the same, issue a license to the applicant. The governing body of the city shall, if the applicant is qualified as provided by law, issue a license to such applicant.

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

(1) A person who is not a resident of the county in which the place of business covered by the license is located, has not been a resident of such county for at least six months or has not

been a resident in good faith of the state of Kansas.

(2) A person who has not been a resident of this state for at least one year immediately preceding application for a retailer's license.

(3) A person who is not of good character and reputation in the community in which the person resides.

(4) A person who is not a citizen of the United States.

(5) A person who, within two years immediately preceding the date of application, has been convicted of a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

(6) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, would be ineligible to receive a license hereunder for any reason other than the citizenship and residency requirements.

(8) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(9) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all the qualifications of a licensee.

(10) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection (b)(10) shall not apply in determining eligibility for a renewal

license.

(c) Retailers' licenses shall be issued either on an annual basis or for the calendar year. If such licenses are issued on an annual basis, the board of county commissioners or the governing body of the city shall notify the distributors supplying the county or city on or before April 1 of the year if a retailer's license is not renewed.

Sec. 19. K.S.A. 1988 Supp. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of this act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Except as provided by subsection (g), no cereal malt beverages may be sold by a cereal malt beverage retailer:

(1) Between the hours of 12:00 midnight and 6:00 a.m.;

(2) on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises and which is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city; or

(3) on the day of any national, state, county or city election, including primary elections, during the hours the polls are open, within the political area in which such election is being held.

(c) No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply if--~~the licensed--premises-are-also-currently-licensed-as-a-club-pursuant~~ to the premises of a club, or the place of business of a caterer,

licensed under the club and drinking establishment act.

(d) Each place of business, other than that of a club or caterer licensed under the club and drinking establishment act, shall be open to the public and to law enforcement officers at all times during business hours, ~~except that~~. A premises licensed as a club pursuant to the club and drinking establishment act, and the premises of an event catered by a caterer licensed under the club and drinking establishment act and licensed as a cereal malt beverage retailer, shall be open to law enforcement officers and not to the public.

(e) No licensee shall permit a person under the legal age for consumption of cereal malt beverage to consume or purchase any cereal malt beverage in or about a place of business, and no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, if:

(1) The licensee's place of business is licensed only to sell cereal malt beverage at retail in original and unopened containers and not for consumption on the premises; or

(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(f) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act or are the premises of an event catered by a caterer licensed under such act.

(g) Cereal malt beverages may be sold on premises which are licensed pursuant to both ~~the acts contained in~~ article 27 of chapter 41 of the Kansas Statutes Annotated and the club and

drinking establishment act, or on premises of an event catered by a caterer licensed under the club and drinking establishment act and licensed as a cereal malt beverage retailer, at any time when alcoholic liquor is allowed by law to be served on the premises.

Sec. 20. K.S.A. 1988 Supp. 41-2705 is hereby amended to read as follows: 41-2705. (a) Except to the extent permitted pursuant to K.S.A. 41-703 and amendments thereto, no cereal malt beverage retailer, or any officer, associate, member, representative or agent thereof, shall accept, receive or borrow money or anything else of value, or accept or receive credit, directly or indirectly, from: (1) Any manufacturer or distributor; (2) any person connected with, in any way representing or a member of the family of a manufacturer or distributor; (3) any stockholders in a manufacturer or distributor; or (4) any officer, manager, agent or representative of a manufacturer or distributor.

(b) Any licensee *distributor, manufacturer or cereal malt beverage retailer who shall permit or assent, or be a party in any way, to any violation or infringement of the provisions of this section or of K.S.A. 41-702 or 41-703, and amendments thereto, shall be deemed guilty of a violation of this act, and any money loaned contrary to a provision of this section shall not be recovered, or any note, mortgage or other evidence of indebtedness, or security, or any lease or contract obtained or made contrary to this act shall be unenforceable and void.

Sec. 21. K.S.A. 1988 Supp. 41-2708 is hereby amended to read as follows: 41-2708. (a) The board of county commissioners or the governing body of any city, upon five days' notice to the persons holding a cereal malt beverage retailer's license, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application therefor;

(2) the licensee has violated any of the provisions of this act or any rules or regulations made by the board or the city, as

the case may be;

(3) the licensee has become ineligible to obtain a license under this act;

(4) drunkenness of the licensee or permitting any intoxicated person to remain in the licensee's place of business;

(5) the sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage;

(6) the nonpayment of any license fees;

(7) permitting any gambling in or upon the licensee's place of business;

(8) permitting any person to mix drinks with materials purchased in the place of business or brought in for that purpose;

(9) the employment of persons under 18 years of age in dispensing or selling cereal malt beverages;

(10) the employment of persons who have been adjudged guilty of felony or of any violation of the intoxicating liquor law; or

(11) the sale or possession of, or permitting any person to use or consume on the licensed premises, any alcoholic liquor as defined by K.S.A. 41-102 and amendments thereto.

(b) The provisions of subsections (a)(8) and (11) shall not apply if the place of business or premises are also currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act, or are the premises of an event catered by a caterer licensed under such act.

(c) Within 20 days after the order of the board revoking or suspending any cereal malt beverage retailer's license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to the former licensee, or to any

person acting for or on the former licensee's behalf, for a period of six months thereafter.

Sec. 22. K.S.A. 41-2722 is hereby amended to read as follows: 41-2722. (a) No cereal malt beverage retailer, or employee or agent of such a retailer, licensed to sell cereal malt beverage for consumption on the licensed premises shall:

(1) Offer or serve any free cereal malt beverage to any person;

(2) offer or serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee;

(3) 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;

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

(5) increase the size of a drink of cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day;

(6) 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

(7) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (6).

(b) Nothing in subsection (a) shall be construed to prohibit a retailer from offering free food or entertainment at any time.

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

(d) 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.

(e) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages.

(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. 23. K.S.A. 41-208, 41-211, 41-708 and 41-2722 and K.S.A. 1988 Supp. 41-102, 41-103, 41-104, 41-307, 41-308, 41-308b, 41-317, 41-501, 41-601, 41-602, 41-701, 41-717, 41-2701 through 41-2705 and 41-2708 are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. _____

By

AN ACT concerning cereal malt beverages; relating to sales thereof; amending K.S.A. 1988 Supp. 41-2701 and 41-2704 and repealing the existing sections.

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

Section 1. K.S.A. 1988 Supp. 41-2701 is hereby amended to read as follows: 41-2701. As used in this act unless the context otherwise requires:

(a) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2% alcohol by weight.

(b) "Director" means the director of alcoholic beverage control of the department of revenue.

(c) "Manufacturer" means a manufacturer as defined by K.S.A. 41-102 and amendments thereto.

(d) "Person" means any individual, firm, partnership, corporation or association.

(e) "Retailer" means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

(f) "Place of business" means any place at which cereal malt beverages are sold.

(g) "Distributor" means a beer distributor licensed pursuant to the Kansas liquor control act.

(h) "Legal age for consumption of cereal malt beverage" means 21 years of age, except that "legal age for consumption of cereal malt beverage" shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are

repealed or otherwise invalidated or nullified.

(i) "Off-premise consumption" means only in original and unopened containers and not for consumption on the licensed premises.

(j) "On-premise consumption" means consumption on the licensed premises.

Sec. 2. K.S.A. 1988 Supp. 41-2704 is hereby amended to read as follows: 41-2704. (a) In addition to and consistent with the requirements of this act, the board of county commissioners of any county or the governing body of any city may prescribe hours of closing, standards of conduct and rules and regulations concerning the moral, sanitary and health conditions of places licensed pursuant to this act and may establish zones within which no such place may be located.

(b) Except as provided by subsection (g), no cereal malt beverages may be sold:

(1) Between the hours of 12:00 midnight and 6:00 a.m.;

(2) on Sunday, ~~except-in-a~~ unless the place of business which: (A) Is licensed to sell cereal malt beverage for ~~consumption-on-the-premises,-which-derives-not-less-than--30%--of-its--gross--receipts-from-the-sale-of-food-for-consumption-on-the-licensed-premises-and-which-is~~ off-premise consumption, or is licensed to sell cereal malt beverage for on-premise consumption and derives from sales of food for consumption on the licensed premises not less than 30% of all its gross receipts from sales of food and beverages on such premises; and (B) is located in a county where such sales on Sunday have been authorized by resolution of the board of county commissioners of the county or in a city where such sales on Sunday have been authorized by ordinance of the governing body of the city; or

(3) on the day of any national, state, county or city election, including primary elections, during the hours the polls are open, within the political area in which such election is being held.

(c) No private rooms or closed booths shall be operated in

a place of business, but this provision shall not apply if the licensed premises are also currently licensed as a club pursuant to the club and drinking establishment act.

(d) Each place of business shall be open to the public and to law enforcement officers at all times during business hours, except that a premises licensed as a club pursuant to the club and drinking establishment act shall be open to law enforcement officers and not to the public.

(e) No licensee shall permit a person under the legal age for consumption of cereal malt beverage to consume or purchase any cereal malt beverage in or about a place of business, and no licensee shall permit a person under the legal age for consumption of cereal malt beverage to possess cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage, if:

(1) The licensee's place of business is licensed only to sell cereal malt beverage at retail in original and unopened containers and not for consumption on the premises; or

(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(f) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.

(g) Cereal malt beverages may be sold on premises which are licensed pursuant to both the acts contained in article 27 of chapter 41 of the Kansas Statutes Annotated and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.

Sec. 3. K.S.A. 1988 Supp. 41-2701 and 41-2704 are hereby

repealed.

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

DRAFT

SENATE BILL NO. _____

By Committee on Federal and State Affairs

AN ACT relating to abortion; concerning abortions performed on minors; imposing certain conditions and requirements thereon; defining and classifying certain crimes; amending K.S.A. 38-123 and 38-133 and repealing the existing sections.

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

New Section 1. (a) It is the intent of the legislature in enacting this parental consent provision to further the important and compelling state interests of: (1) Protecting minors against their own immaturity; (2) fostering the family structure and preserving it as a viable social unit; and (3) protecting the rights of parents to rear children who are members of their household.

(b) The legislature finds as fact that: (1) Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences; (2) the medical, emotional and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature; (3) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related; (4) parents ordinarily possess information essential to a physician's exercise of the physician's best medical judgment concerning the child; and (5) parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion. The legislature further finds that parental consultation is usually desirable and in the best interests of the minor.

(c) It is the intention of the legislature to reasonably regulate abortion in conformance with the decisions of the United

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States supreme court of January 22, 1973.

It is the further intention of the legislature to assure and protect the woman's health and the integrity of the woman's decision whether or not to continue to bear a child, to protect the valid and compelling state interest in the infant and unborn child, to assure the integrity of marital and familial relations and the rights and interests of persons who participate in such relations. The legislature finds as fact that these rights and interests are not secure in the economic and social context in which abortions are presently performed in Kansas.

New Sec. 2. For purposes of this act:

(a) "Abortion" means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a woman from the time of fertilization until giving birth, and with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(b) "Emancipated minor" means any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents or legal guardians.

(c) "Informed consent" means the giving of information, facts and data, either orally, in written or in pictorial form, as to what would be done by the physician and the consequences of the abortion.

(d) "Minor" means any person under the age of 18 years.

(e) "Parent" or "parents" means only an individual or individuals and includes a natural guardian, an individual conservator and every individual who is by law liable to maintain, care for or support the minor. It shall not mean a corporate body, body politic or the department of social and rehabilitation services.

(f) "Physician" means a person licensed to practice medicine and surgery pursuant to K.S.A. 65-2873 and 65-2873a, and

amendments thereto.

New Sec. 3. No physician shall perform an abortion upon a minor unless:

(a) The minor is emancipated and the physician or the physician's agents have first secured written acknowledgment of informed consent from the emancipated minor; or

(b) the physician or the physician's agent, or another physician (hereinafter called the referring physician) or the referring physician's agents, first obtains the written acknowledgment of informed consent from one parent of the unemancipated minor, except that:

(1) If neither of the parents is available within a reasonable time or manner to the physician performing the abortion or the physician's agent, or the referring physician or the referring physician's agent, after reasonable attempts to contact such parents, if the persons from whom consent must be obtained pursuant to this section refuse to consent to the performance of an abortion or if the minor elects not to seek the consent of those whose consent is required, the unemancipated minor may petition any district court for a waiver of the consent requirement of this section pursuant to the procedures of section 4, except that, if the unemancipated minor is in the care, custody and control of a corporate body or the department of social and rehabilitation services, such that the corporation or the department stand in loco parentis to the minor, the minor shall follow the procedures of section 4; and

(2) if the district court grants the petition, the unemancipated minor shall sign a written acknowledgment or informed consent with the physician performing the abortion setting forth the date of the court order waiving consent and the case number.

New Sec. 4. (a) The Kansas code for care of children shall not apply to proceedings under this act except as specifically made applicable by this act. All proceedings under sections 1

through 7 shall be civil in nature.

(b) The district court shall ensure that the unemancipated minor is given assistance in preparing and filing the petition and shall ensure that the minor's identity is kept anonymous. Subsections (a)(1) and (2) of K.S.A. 38-1506 and amendments thereto shall apply to this act. The petition shall include only the initials of the minor, her age and the reasons why the minor seeks the abortion and why the minor seeks a waiver of consent.

(c) The unemancipated minor shall participate in proceedings in the court on her own behalf. The court shall advise her that she has a right to court-appointed counsel and shall provide her with such counsel upon her request.

(d) All court proceedings under this section shall be anonymous and shall be given such precedence over other pending matters as is necessary to ensure that the court may reach a decision promptly, but a hearing shall be held and the court shall enter judgment, either granting or denying the petition, within five days of the filing of petition, unless extended at the request of the minor.

(e) (1) The district court shall hear the merits of the petition on the record. The court shall hear evidence about the minor's age, family, circumstances of pregnancy, gestation of the fetus, emotional and physical stability and development of the minor, the alternatives to the abortion considered by the minor, whether the minor's parents have consented to the abortion, previous pregnancies of the minor and any other matter which the court considers useful in determining if the minor's petition should be granted.

(2) If the minor is under 14 years of age, the court may consider whether one or both parents of the minor should be consulted by the court or should counsel the minor concerning the abortion.

(3) The consent requirement of section 3 shall be waived if the court finds that:

(A) The minor is mature and well-informed enough to make the abortion decision on her own; or

(B) the performance of the abortion would be in the minor's best interests.

(f) An expedited anonymous appeal shall be available to any minor from a decision of the district court denying the petition. Such appeal shall be pursuant to article 21 of chapter 60 of the Kansas Statutes Annotated. A notice of appeal shall be filed within three days of an entry of judgment denying the petition. The clerk of the court shall prepare the entire official file before the district court and forward it to the court of appeals within five days of the filing of the notice of appeal. The official file shall be the record on appeal. A hearing before the appellate courts shall be held within seven days of the filing of appeal and an order shall be issued within five days of the hearing unless a longer time is requested by the minor. Any subsequent appeals shall follow these same procedures.

(g) Any court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained.

(h) No fees or court costs shall be required of any minor who avails herself of the procedures provided by this section. Expenses for all proceedings under this act shall be paid in the manner provided by subsection (b) of K.S.A. 38-1511 and 38-1593, and amendments thereto, for expenses of proceedings under the Kansas code for care of children.

(i) The judicial administrator shall annually report to the legislature the number of proceedings conducted pursuant to this act and the disposition of those proceedings.

New Sec. 5. The requirements of sections 3 and 4 shall not apply if, in the best medical judgment of the physician, based on the facts of the case, a medical emergency exists that so complicates the pregnancy and would so impair the health of the

minor as to require an immediate abortion.

New Sec. 6. All abortions after the first trimester shall be performed in either a hospital or a licensed surgical facility as defined in K.S.A. .65-425 and amendments thereto.

New Sec. 7. Failure to obtain written acknowledgment of informed consent, where required pursuant to the requirements of this act, is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this state shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this act. Nothing in this act shall be construed to limit the common law rights of parents.

New Sec. 8. (a) Aggravated abortion is: (1) The performance of an abortion by any person other than a person licensed to practice medicine and surgery pursuant to K.S.A. 65-2873 and 65-2873a, and amendments thereto; (2) the performance of an abortion without first obtaining informed consent as defined in section 2; (3) the performance of an abortion upon a person known to the physician to be an unemancipated minor if the requirements of section 3 have not been satisfied; or (4) the performance of an abortion after the first trimester of pregnancy in any place or location other than that required by any law regulating abortion.

(b) Aggravated abortion is a class D felony.

New Sec. 9. (a) Illegal abortion is the failure of any person to perform any act required by the laws regulating abortion not amounting to a felony.

(b) Illegal abortion is a class A misdemeanor.

New Sec. 10. It is a complete defense to aggravated abortion and illegal abortion that either a medical emergency existed or that the informed consent could not be obtained as required because the medical condition of the minor upon whom the abortion was performed prohibited or made the obtaining of such consent impractical and impossible.

Sec. 11. K.S.A. 38-123 is hereby amended to read as follows: 38-123. Except as provided by section 3 and notwithstanding any other provision of the law, an unmarried pregnant minor where if no parent or guardian is available may give consent to the furnishing of hospital, medical and surgical care related to her pregnancy, and such consent shall not be subject to disaffirmance because of minority. Except as provided by section 3, the consent of a parent or guardian of an unmarried pregnant minor shall not be necessary in order to authorize hospital, medical and surgical care related to her pregnancy, where if no parent or guardian is available.

Sec. 12. K.S.A. 38-133 is hereby amended to read as follows: 38-133. (a) Whenever any child has been placed by the secretary of social and rehabilitation services or by any court of competent jurisdiction in a licensed foster care home, or a home approved by the department of health and environment and department of social and rehabilitation services as meeting licensing standards of a foster care home, and such child needs medical or surgical care, other than an abortion, determined by a physician to be necessary for the welfare of such child, consent to such care by the child's parent or other legal guardian shall be deemed to have been given if there has been given a consent to medical and surgical care by the terms of a written order of a court of competent jurisdiction or if there has been given a consent in terms that substantially conform to the provisions of subsection (c) and such form has been signed by a parent or other legal guardian of such child and acknowledged before a notary public or other person authorized by law to administer oaths.

(b) The secretary of social and rehabilitation services or such secretary's designee is authorized to sign the consent form as legal guardian of any child committed to the custody of the secretary when the parental rights of a child's parents have been severed or when authorized by order of a court of competent jurisdiction.

(c) The form provided for in subsection (a) is as follows:

CONSENT TO MEDICAL CARE

I, _____, parent or legal guardian of _____, born _____, do hereby consent to any medical or surgical care and the administration of anesthesia determined by a physician to be necessary for the welfare of _____ while said child is under the care, custody and control of the secretary of social and rehabilitation services.

(Name of Child)

(Signature of Parent or Legal Guardian)

Acknowledged before me this _____ day of _____, ____.

(Signature of Notary Public)

My appointment expires _____, ____.

New Sec. 13. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application. To this end, the provisions of this act are severable.

Sec. 14. K.S.A. 38-123 and 38-133 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Closed meetings - sale
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PROPOSED BILL NO. _____

By Committee on Federal and State Affairs

AN ACT concerning meetings of certain public bodies and agencies;
relating to closed or executive meetings; amending K.S.A.
1988 Supp. 75-4319 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 75-4319 is hereby amended to read as follows: 75-4319. (a) Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

(1) Personnel matters of non-elected personnel;

(2) consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

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(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition or sale of real property; and

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 1987 1988 Supp. 74-8804 and amendments thereto.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

Sec. 2. K.S.A. 1988 Supp. 75-4319 is hereby repealed.

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