



CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,

room 526-S, Statehouse, at 1:39 ~~xxx~~ p.m. on March 21, 1990.

3. Staff advised there is some overlap between employees in the group on page 1 of the bill and the group on page 2 of the bill but did not term it a conflict. It was staff's opinion the absolute prohibition on page 1 would govern.

There were no opponents to the bill.

Staff explained two bill requests:

- a. Allowing the State Historical Society to deal with its ability to allow third parties to use real property of the Historical Society for various functions, Attachment No. 5.
- b. Requested by the Sedgwick County district attorney and is a substantial revision of the Uniform Controlled Substances Act. The introduction is with the idea it will probably be referred for interim study, Attachment No. 6.

Representative Blumenthal moved to introduce the bills, seconded by Representative Long. The motion was adopted.

Representative Ensminger made a motion to approve the minutes of the February 22 and February 26, 1990 meetings of the committee, seconded by Representative Barr. The motion carried.

Chairman Barr appointed the following subcommittee to study various parimutuel bills, including simulcasting:

- Representative Aylward, Chairman
- Representative Charlton, Member
- Representative Gjerstad, Member
- Representative Ramirez, Member
- Representative Schauf, Member

HB 2732

The bill was heard February 21, 1990, at which time concern was expressed about inmates automatically furloughed after being in program and were previously passed over by the Parole Board. Representative Schauf proposed a conceptual amendment that any inmate in classified custody, not higher than minimum; eligible for parole at the end of six months, as long as he/she was not recently passed over by the Parole Board at the last review. Representative Cates seconded the motion. There was discussion concerning the definition of "recently passed over" and designation of a specific time period for "last review". Current law states that once an inmate qualifies for minimum eligibility, the Parole Board must conduct a review and then review periodically following minimum eligibility making them almost automatic. One member asserted there was no evidence that inmates furloughed were inappropriately released and use of the furloughs have been considerably restricted under the new Secretary of Corrections. Representative Douville moved to table the bill, seconded by Representative Gjerstad. The motion was adopted. A member expressed concern regarding an inmate being automatically paroled if furloughed with no review by the Parole Board. Another member called taking review away from the Parole Board an error and suggested the bill could have been cleaned up by eliminating everything after "board" in lines 21 through 24 and return review to the Parole Board after furlough.

HB 2784

Attachment No. 7 is a memo to Representative Sprague from Alcohol Beverage Control (ABC) explaining Class B temporary club memberships as they apply to serving guests traveling and lodging in recreational vehicles (RVs). Attachment No. 7A is a proposed amendment which would permit an RV resort to issue a temporary Class B license. Representative Sprague moved to adopt the amendment, seconded by Representative Barr. Committee discussion included a description of the facility requesting such licensing in Representative Sprague's district. Staff explained temporary membership would only be available to residents other than those of McPherson County and who were registered guests of the facility. The motion was adopted. Representative Barr moved to recommend the bill, as amended, favorably, seconded by Representative Jenkins. The motion was adopted.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,

room 526-S, Statehouse, at 1:39 ~~xxx~~ p.m. on March 21, 1990

Subcommittee report - SB 296

Attachment No. 8 is a letter from Roger Carlson, Ph.D., Laboratory Director, Kansas Department of Health and Environment (KDHE) refuting allegations made during the hearing on the bill regarding breath test instruments.

Chairman Jenkins reported there was no consensus among the subcommittee as one member favored the position of the Kansas Bar Association (KBA) and another favored the bill as presented.

Representative Roy moved to refer the bill to the Judiciary Committee as it centers on civil evidence. Representative Jenkins seconded the motion. There was brief discussion including the change in striking "validity" and leaving "admissibility" which one member asserted would allow the jury to consider the evidence. Another member stated the fundamental effects have less to do with results of DUI than what is admissible in civil cases. Vice-chairman Aylward clarified the motion would only permit the chairman to request the bill be referred as the committee does not have that authority. Representative Charlton made a substitute motion to pass the bill favorably, seconded by Representative Ensminger. One member noted the concern of the city attorney of Overland Park seemed to be tactics used by the defense in DUI cases and contended this bill would prolong the DUI court procedure. He favored the KBA alternative. The motion carried. Requested to be recorded as voting no was Representative Schauf.

The meeting adjourned at 2:28 p.m. The next meeting of the committee is scheduled for March 26, 1990, 1:30 p.m. in Room 526-S.



**TESTIMONY**  
**PRESENTED TO THE**  
**HOUSE FEDERAL AND STATE AFFAIRS**  
**COMMITTEE**  
**ON**  
**MARCH 21, 1990**  
**BY**  
**WHITNEY DAMRON**  
**OF**  
**PETE MCGILL & ASSOCIATES, INC.**  
**ON BEHALF OF**  
**WICHITA GREYHOUND PARK, INC.**

**Good Afternoon Chairperson Barr and Members of the Committee:**

**I am Whitney Damron of Pete McGill & Associates, appearing here before you today on behalf of Wichita Greyhound Park, Inc. I appreciate the opportunity to appear and offer testimony in support of Senate Bill 429, the Employee Wagering bill.**

**Our client, Wichita Greyhound Park, opened their doors on September 7, 1989 to become the first parimutual greyhound facility in operation in the state of Kansas. Since their opening, W.G.P. has generated hundreds of thousands of dollars for the organizational licensee, Wichita Greyhound Charities, significantly boosted the Wichita area economy and provided an atmosphere of first class greyhound racing and entertainment for the state of Kansas**

**W.G.P. presently employs some 450-500 people, a majority of which are unable to wager due to present restrictions in the statute. Many of these people work on a part-time basis, such as weekends, when the crowds may be twice the size of the weekday attendance. Even though they may only work one or two days per week, they are precluded by statute from wagering at any time. Many of W.G.P.'s employees also seek positions at a race track because they like the "action and**

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excitement" accompanying such a job - they enjoy the racing atmosphere - however, they would like to place a wager themselves, too.

The Kansas Racing Commission has been together as a unit for over two years now. They have traveled to half a dozen or more states to learn the industry and are active members in the Association of Racing Commissioners International, Inc., a world-wide association of their contemporaries. SB 429 would not automatically allow everyone employed by the tracks to wager - that would be based upon a "position by position" determination of the Commission. W.G.P. is confident that the Commission will use their resources and past experiences to properly decide who should be allowed to wager at Kansas tracks and still insure the integrity of the industry in Kansas.

For example, our track operates their own concessions. As employees of the facility owner/manager, they are presently prohibited from wagering. I believe one would be hard pressed to show how a waitress or kitchen helper could "influence the outcome of a race." Many people refused to accept such positions with the track when they learned that they would be unable to wager.

In conclusion, let me say that I have closely monitored the parimutuel issue since before the Constitutional admendment was adopted and on through its implementation. One overriding theme during discussions of employee wagering and so forth was that "if we were to err, it should be on the side of conservatism".

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The tracks are up and running in Wichita, Kansas City, Eureka, and other locations. It would appear that we can now afford to fine tune some of the programs and allow certain track employees who would like to wager to do so without having to make a choice between a job and placing a bet.

I thank you for your time and would ask for your favorable consideration of SB 429.

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The Racing Association  
of Kansas East

TESTIMONY BEFORE THE HOUSE COMMITTEE

ON FEDERAL AND STATE AFFAIRS

March 21, 1990

Madam Chairman and members of the committee, my name is Jim Yonally, representing the board of directors of TRAK-East, the non-profit corporation holding the organization license for the Woodlands race track in Kansas City. We are pleased to appear today in support on SB 429.

As you know, the current parimutuel racing act speaks in a rather broad fashion regarding who can, and who cannot, wager on races in Kansas. For example, employees of an owner or manager licensee at our, or any other track, in Kansas cannot legally wager at our facility. This, quite obviously, is impossible for us to enforce as we have no way of knowing who those people are if they step up to one of our windows to place a wager.

On the other hand, current law allows employees of the organization licensee, such as the racing secretary, judges, and others, to wager, and these people probably should not have this privilege.

Senate Bill 429, as recommended by the interim study committee, allows the racing commission to determine, by rules and regulations those persons who could influence the outcome of a race. Those persons would then be prohibited from wagering. We believe this to be a workable solution, and one which we endorse.

We urge your favorable consideration for SB 429, and I would be happy to try to respond to any questions.

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 2  
March 21, 1990

P.O. Box 1300 • Kansas City, Kansas 66117



TESTIMONY BEFORE THE HOUSE COMMITTEE

ON FEDERAL AND STATE AFFAIRS

March 21, 1990

I am Tom Burgess representing Sunflower Racing Inc. in support of SB 429. This bill is the result of a study by the Special Committee on Federal and State Affairs/ Governmental Organization. The committee in my opinion has produced a very good bill and we urge the committee to report it favorably.

I would be happy to answer any questions that members of the committee may have.

Thank You

**JONATHAN P. SMALL, CHARTERED**

Attorney and Counselor at Law  
Suite 304, Capitol Tower  
400 West Eighth Street  
Topeka, Kansas 66603  
913/234-3686

March 21, 1990

**TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON FEDERAL  
AND STATE AFFAIRS**

**RE: 1990 SENATE BILL 429**

I am Jonathan Small appearing here before the Committee today in behalf of Greenwood County Fair Association which manages the famous Eureka Downs in Eureka, Kansas.

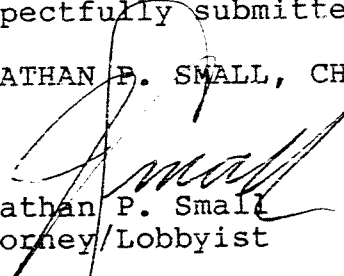
This is to advise the Senate Federal Committee that the Greenwood County Fair Association operator of Eureka Downs horse racing facility at Eureka, Kansas, supports 1990 Senate Bill 429.

S.B. 429 proposes amendments to the general and very broad proscription regarding wagering by officers, directors, members and employees of an organization licensee (the non-profit entity) and those of the facility owner and manager licensees. The proposal could allow directors, officers, members and certain employees of the non-profit organizational licensee and the for-profit facility owner and manager licensees to wager on horse or dog races, provided the Racing Commission does not designate such persons as being in a position to influence the outcome of a given race.

The substantive effect of the proposed amendments will be to place in the hands of the Commission the discretion to identify which of its licensees will be authorized to place parimutuel wagers on races. It is our opinion that his amendment will not degrade or compromise the security of or the strict lawful manner in which the races are or will be conducted. It should further enhance enforcement of the Act in this regard. The net effect of this will be to enlarge the potential parimutuel handle for all parimutuel races in Kansas. It should not serve to restrict the affected individuals from enjoying the sport of parimutuel wagering on horse and dog racing.

Respectfully submitted,

JONATHAN P. SMALL, CHARTERED

  
Jonathan P. Small  
Attorney/Lobbyist

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HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 4  
March 21, 1990

JONATHAN P. SMALL, CHARTERED

Attorney and Counselor at Law  
Suite 304, Capitol Tower  
400 West Eighth Street  
Topeka, Kansas 66603  
913/234-3686

March 21, 1990

TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON FEDERAL  
AND STATE AFFAIRS

RE: 1990 SENATE BILL 429

I am Jonathan Small appearing here before the Committee today in behalf of the Stockton Chamber of Commerce in behalf of Rooks County Free Fair, Stockton, Kansas.

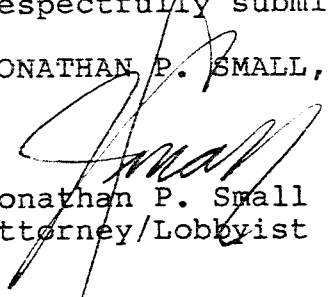
This is to advise the Senate Federal Committee that the Stockton Chamber of Commerce in behalf of Rooks County Free Fair horse racing facility at Stockton, Kansas, supports 1990 Senate Bill 429.

S.B. 429 proposes amendments to the general and very broad proscription regarding wagering by officers, directors, members and employees of an organization licensee (the non-profit entity) and those of the facility owner and manager licensees. The proposal could allow directors, officers, members and certain employees of the non-profit organizational licensee and the for-profit facility owner and manager licensees to wager on horse or dog races, provided the Racing Commission does not designate such persons as being in a position to influence the outcome of a given race.

The substantive effect of the proposed amendments will be to place in the hands of the Commission the discretion to identify which of its licensees will be authorized to place parimutuel wagers on races. It is our opinion that his amendment will not degrade or compromise the security of or the strict lawful manner in which the races are or will be conducted. It should further enhance enforcement of the Act in this regard. The net effect of this will be to enlarge the potential parimutuel handle for all parimutuel races in Kansas. It should not serve to restrict the affected individuals from enjoying the sport of parimutuel wagering on horse and dog racing.

Respectfully submitted,

JONATHAN P. SMALL, CHARTERED

  
Jonathan P. Small  
Attorney/Lobbyist

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HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 4A  
March 21, 1990

PROPOSED BILL NO. \_\_\_\_\_

By xx

AN ACT concerning the state historical society; relating to use of the society's facilities and real property.

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

Section 1. (a) The state historical society may permit the use of facilities and real property under the control of the society by individuals, groups and other entities for such purposes as the society determines are in the public interest and will further the purposes of the society. The society shall adopt policies and guidelines for such use, consistent with the provisions of this section.

(b) The state historical society may establish a schedule of reasonable fees for the use of its facilities or real property pursuant to this section. The society shall remit all moneys received from such fees to the state treasurer at least monthly. Upon receipt of such moneys, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state historical society facilities fund which 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 secretary of the state historical society or a person designated by the secretary. Moneys in the fund may be expended for the purpose of paying costs associated with the use of facilities or real property pursuant to this section, including compensation of any personnel needed to oversee such use, and for such other purposes as the state historical society considers appropriate.

(c) The state historical society may adopt such rules and regulations as necessary to implement and administer the provisions of this section.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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## PROPOSED BILL NO. \_\_\_\_\_

AN ACT ; amending K.S.A. 21-3302 and K.S.A. 1989 Supp. 21-3401, 65-4101, 65-4127a and 65-4127b and repealing the existing sections.

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

Section 1. K.S.A. 1989 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act: (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy.

(d) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(e) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments to these sections thereto.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the

substance.

(g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery.

(i) "Dispenser" means a practitioner or pharmacist who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means: (1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.

(m) "Immediate precursor" means a substance which the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of



chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a controlled substance: (1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(o) "Marihuana" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis: (1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the

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isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102 and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species Papaver somniferum l. except its seeds.

(s) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity, or any enterprise.

(t) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(u) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(v) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

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(x) "Ultimate user" means a person who lawfully possesses a controlled substance for such person's own use or for the use of a member of such person's household or for administering to an animal owned by such person or by a member of such person's household.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Medical care facility" shall have the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto.

(aa) "Sell" includes any transfer, actual or constructive, from one person to another, whether or not there is an agency relationship of any kind between the persons.

(bb) "Enterprise" means any individual, partnership, corporation, association or other legal entity, or any union or group of individuals associated in fact although not a legal entity, includes licit as well as illicit enterprises and governmental as well as nongovernmental entities.

Sec. 2. K.S.A. 1989 Supp. 65-4127a is hereby amended to read as follows: 65-4127a. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to ~~manufacture, possess, have under such person's control, possess with intent to sell, offer for sale, sell~~ or enterprise intentionally to sell, possess for purposes of sale, transport for purposes of sale, import into this state, transfer, give, offer to do any of the foregoing, manufacture, make, prepare, produce, grow, cultivate, prescribe, administer, deliver, distribute, dispense or compound any opiates, opium or narcotic drugs. Any person who violates this section shall be guilty of a class C felony, except that, upon conviction for the second offense, such person shall be guilty of a class B felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a class A felony, and the punishment shall be life imprisonment.

(b) Any person or enterprise which violates subsection (a) shall be guilty of a felony, the penalty for which shall be a minimum term of imprisonment of not less than five years nor more

than 20 years and a maximum of not less than 20 years nor more than life, a fine of not more than \$25,000 for each violation or any forfeiture as required under the provisions of section 10, or any combination thereof.

(c) It shall be unlawful for any person or enterprise to possess or have under the person's or enterprise's control any opiates, opium or narcotic drugs.

Any person or enterprise which violates this subsection shall be guilty of a class C felony, the penalty for which shall include any forfeiture as required by K.S.A. 65-4174 and amendments thereto.

(d) Any person convicted of a violation of either subsection (a) or (c), or both, must serve at least 10 consecutive days in jail before such person is granted probation, suspension or reduction of sentence, parole, assignment to community corrections or is otherwise released. As a condition to any such release such person shall be required to enter into and complete a treatment program for substance abuse as provided in K.S.A. 8-1008 and amendments thereto and to pay a fine of at least \$500 but not more than \$10,000. The provisions of this subsection shall apply unless the person serves the term of imprisonment imposed for the violation.

(b) (e) Upon conviction of any person pursuant to subsection (a) in which (1) the amounts of the substances involved were equal to or greater than the amounts for such substances as specified in K.S.A. 1988 1989 Supp. 65-4127e and amendments thereto, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age sold, possessed for purposes of sale, transported for purposes of sale, imported into this state, transferred, given, or were so offered, or were manufactured, made, prepared, produced, compounded, grown or cultivated, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment

to a community correctional services program or suspension of sentence or otherwise released without being committed to the custody of the secretary of corrections. Such presumption shall be in lieu of and shall supersede any contrary presumption.

Sec. 3. K.S.A. 1989 Supp. 65-4127b is hereby amended to read as follows: 65-4127b. (a) (1) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess--or--have--under--such-person's--control or enterprise to sell, possess for purposes of sale, transport for purposes of sale, import into this state, transfer, give, offer to do any of the foregoing, manufacture, make, prepare, produce, grow, cultivate, prescribe, administer, deliver, distribute, dispense or compound, any of the following:

(1) (A) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) (B) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or (f) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) (C) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto; or

(4) (D) any substance designated in subsection (c), (d), (e), (f) or (g), (g) or (h) of K.S.A. 65-4111 and amendments thereto; or

(5) any anabolic steroids as defined in subsection (h) of K.S.A. 65-4111 and amendments thereto.

Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class B felony upon conviction for a second or subsequent offense.

(2) Any person or enterprise which violates subsection (a) shall be guilty of a felony, the penalty for which shall be a minimum term of imprisonment of three to 15 years and a maximum

of 20 years to life, a fine of not more than \$25,000 for each violation or, any forfeiture as required by section 10, or any combination thereof.

(3) The presumption established in subsection (e) of K.S.A. 65-4127a and amendments thereto shall apply at the sentencing of each person who violates this subsection (a).

(b) (1) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer-for-sale-or-have-in---such--person's--possession--with--the intent--to--sell,--manufacture,--prescribe,--administer,--deliver,--distribute,--dispense-or-compound or enterprise to possess or have under the person's or enterprise's control:

~~(1)~~ (A) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or, subsection (b) of K.S.A. 65-4111, subsection (c) of K.S.A. 65-4111 or subsection (e) of K.S.A. 65-4111, and amendments thereto;

~~(2)~~ (B) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d) or-(f) of K.S.A. 65-4107 or, subsection (e) of K.S.A. 65-4109, or subsection (d) of K.S.A. 65-4111, and amendments thereto;

~~(3)~~ (C) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto; or

~~(4)~~ (D) any substance designated in subsection (e)-(d) or (e)-(f)-or-(g)-of--K.S.A.--65-4111 (f) of K.S.A. 65-4107 or subsection (h) of K.S.A. 65-4111, and amendments thereto, or

~~(5) any anabolic steroids as defined in subsection (h) of K.S.A. 65-4111 and amendments thereto.~~

(2) Any person who or enterprise which violates this subsection shall be guilty of a class E felony E felony, the penalty for which shall include any forfeiture as required by section 10. The court on motion of the state and considering the nature and circumstances of the violation of this subsection (b), may enter judgment of conviction for a class A misdemeanor,

except that, in the case of a person having previously been convicted of any felony whether in this state or in a foreign jurisdiction, no such motion may be made and no such judgment may be entered. Such motion may be made only once and not for a second or subsequent violation of this subsection (b).

(c) Any person convicted of a violation of subsection (a) or (b), or both, either felony or misdemeanor, must serve at least 10 consecutive days in jail before such person is granted probation, suspension or reduction of sentence, parole or assignment to community corrections, or is otherwise released. As a condition to any such release, the person shall be required to enter into and complete a treatment program for substance abuse as provided in K.S.A. 8-1008 and amendments thereto and to pay a fine of at least \$500 but not more than \$10,000. The provisions of this subsection shall apply unless the person serves the term of imprisonment imposed for the violation.

~~(c)~~ (d) (1) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection or enterprise to possess or have in such person's control any controlled substance designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 or 65-4113, and amendments thereto, which is not otherwise prescribed by subsection (b) or by K.S.A. 65-4127a and amendments thereto.

(2) Any person or enterprise which violates subsection (d)(1) shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class B felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.

~~(d)~~ Upon conviction of any person pursuant to subsection

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~~(a), (b) or (c) in which (1) the substances involved were equal to or greater than the amounts for such substance as specified in K.S.A. 1988 Supp. 65-4127e and amendments thereto, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence~~ E felony if the person or enterprise has previously been convicted of any felony, whether in this state or in any foreign jurisdiction.

(3) Each person convicted of a violation of subsection (d)(1) must serve at least 10 consecutive days in jail before the person is granted probation, suspension or reduction of sentence, parole or assignment to community corrections, or is otherwise released. As a condition of such release, the person shall be required to enter into and complete a treatment program for substance abuse as provided in K.S.A. 8-1008 and amendments thereto and to pay a fine of at least \$500 but not more than \$2,500. The provisions of subsection (d)(3) shall apply unless the person is sentenced to serve a longer term in jail, in which case, the longer term shall control. In either event, the court shall impose such fine.

New Sec. 4. (a) (1) Any person or enterprise which commits a serious drug offense, having committed such offense as part of a pattern of engaging in conduct prohibited by this act, and by reason of such offense or pattern such person or enterprise acquired, directly or indirectly, substantial income, proceeds, gain or other benefits shall be guilty of a felony, the penalty for which shall be a minimum term of imprisonment of not less than 10 years nor more than 40 years and a maximum of life, a fine of not to exceed \$50,000 or any forfeiture as required by section 10, or any combination thereof. Any person convicted under this subsection shall not be eligible for any release whatsoever until such person serves at least the minimum sentence



imposed by the court, without credit for good time.

(2) Any person or enterprise which violates subsection (a)(1) and has been convicted previously of a violation of this section shall be guilty of a felony for which the penalty shall be a minimum term of imprisonment of not less than 20 nor more than 40 years and a maximum term of life, a fine not to exceed \$100,000 or any forfeiture as required by section 10, or any combination thereof. Any person convicted under this subsection (b) shall not be eligible for any release whatsoever until such person serves at least the minimum sentence imposed by the court, without credit for good time.

(b) (1) Any person or enterprise which willfully organizes, manages, directs, supervises or finances another enterprise which is engaged, in whole or in part, in a pattern of conduct, any part of all of which conduct is prohibited by this act, and by reason of which conduct or pattern such person or enterprise acquired, directly or indirectly, substantial income, proceeds, gain or other benefit, is guilty of a felony, the penalty for which shall be a minimum term of imprisonment of not less than 20 years nor more than 40 years and a maximum term of life, a fine of not more than \$100,000 or any forfeiture as required by section 10, or any combination thereof. Any person convicted under this subsection (b)(1) shall not be eligible for any release whatsoever until such person has served at least the minimum sentence imposed by the court, without credit for good time.

(2) Any person or enterprise which violates subsection (b)(1) who has been convicted previously of a violation of subsection (a)(1) or (b)(1) shall be guilty of a felony, the penalty for which shall be a minimum term of imprisonment of not less than 40 years nor more than 60 years and a maximum of life, a fine of not more than \$200,000 or any forfeiture as required by section 10, or any combination thereof. Any person convicted under this subsection shall not be eligible for any release whatsoever until such person serves at least the minimum sentence

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imposed by the court, without credit for good time.

(3) For purposes only of subsection (b)(1), no liability may be imposed on any person or enterprise thereunder unless the person or enterprise organized, managed, directed, supervised or financed an enterprise of four or more persons or enterprises. In determining whether an enterprise was of four or more, all persons or enterprises, including the accused, acting or omitting to act in concert or otherwise acting or omitting to act to facilitate the carrying on or furthering of any activities, purposes or conduct of the enterprise which are prohibited by this act shall be counted, even though such persons or enterprises may not have known each other's identity, even though the identity or the number of such persons or enterprises may change from time to time and even though one or more of such persons or enterprises may stand in a wholesaler-retailer or other arm's length relationship in the course of carrying on or furthering any such activities, purposes or conduct of the enterprise.

(c) As used in this section:

(1) "Conduct" includes, but is not limited to, any attempt, conspiracy or solicitation to commit such conduct.

(2) "A serious drug offense" means any felony violation of this act, except, if the only controlled substance involved in the serious drug offense is marijuana, the quantity thereof must be at least three pounds.

(3) "Pattern of engaging in conduct, any part or all of which conduct is prohibited by this act", or similar phrase, includes at least two incidents, each of which involves, but is not limited to, at least one felony violation of this act, each of which incidents have the same or similar purposes, results, participants, victims or methods of commission or otherwise are interrelated; or, which incidents are related to the affairs of the enterprise.

(d) (1) Whenever any person or enterprise has committed a serious drug offense or engaged in a pattern of conduct, any part

or all of which conduct is prohibited by this act, and has also acquired any income, proceeds, gain or other benefit, it shall be presumed in the manner provided in K.S.A. 60-414 and amendments thereto that all such income, proceeds, gain or other benefit was acquired by such person by reason of the commission of such offense or engaging in such pattern of conduct, or both, if evidence is admitted which is sufficient to establish beyond a reasonable doubt that:

(A) Such income, proceeds, gain or other benefit were acquired by such person or enterprise during the time period in which the offense or pattern of conduct occurred, or within a reasonable period of time before or after such period; and

(B)(i) there was no likely or contemporaneously reported source of such acquisition or acquisitions other than from such offense or pattern of conduct or from another violation of this act which violation is also within such pattern; or (ii) such acquisition was not reported to the Kansas department of revenue on or before the initial date required by law, irrespective of any extensions which may be granted or amended returns which may be filed.

(2) The trier of fact shall be instructed, when the evidence permits, that an inference may be drawn in accordance with subsection (d)(1), but that such inference is not required to be drawn and that, in all events, the burden of proof remains on the plaintiff and is not shifted to any defendant by such instruction. There shall be no burden on any defendant to rebut any presumption set out in this subsection (d).

(e) One or more counts alleging conduct to be prohibited by this act, and one or more other counts alleging other conduct to be prohibited by chapter 21 of the Kansas Statutes Annotated may be joined with any additional count or counts alleging all of such conduct to be part of a pattern of conduct, any part of all of which conduct is prohibited by this act. Evidence of conduct relevant to prove the existence of a pattern of conduct any part or all of which conduct is alleged to be prohibited by this act

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shall be admitted to prove the existence of such pattern even though the conduct is not the subject of a separate count alleging such conduct to be in violation of this act or in violation of chapter 21 of the Kansas Statutes Annotated. Evidence of conduct relevant to prove such pattern, whether the subject of a separate count or not, shall be admitted even though no income, proceeds, gain or other benefit is shown to have been acquired by reason thereof.

New Sec. 5. For purposes of this act:

(a) Any person or enterprise may be convicted of one or more violations of this act other than the serious offender section, of one or more violations of chapter 21 of the Kansas Statutes Annotated and of one or more violations of the serious offender section and may be sentenced for each consecutively, or otherwise, as provided by law.

(b) Any enterprise may be liable under this act, as a principal, as an aider and abettor under K.S.A. 21-3205 and amendments thereto, as a conspirator under K.S.A. 21-3302 and amendments thereto, as a solicitor under K.S.A. 21-3303 and amendments thereto or by reason of the authorizing or ratifying of, in any manner, any conduct which violates this act or which is part of a pattern of conduct which pattern violates this act.

(c) A specific intent to violate any provision of this act or of chapter 21 of the Kansas Statutes Annotated shall not be an element of any violation thereof.

New Sec. 6. Any person who attempts or conspires to commit any offense established in this act shall be liable to be sentenced to the same terms of imprisonment, fine or forfeiture, or any combination thereof, as is provided by law for the most serious offense, the commission of which was an object of such attempt or conspiracy.

New Sec. 7. (a) It shall be unlawful for any person or enterprise which has intentionally acquired any income, proceeds, gain or other benefit by reason of any violation of this act, irrespective of where such violation was committed, for which

violation such person is liable under the laws of this state, willfully to use or invest, directly or indirectly, any part thereof in the acquisition or maintenance of any interest in any property or enterprise, or in the organizing, supplying, financing or operating, in whole or in part of, any enterprise.

(b) Any violation of subsection (a) is a class C felony. In addition to the terms of imprisonment or fine, or both, provided therefor, the court shall order any forfeiture as required by section 10.

New Sec. 8. (a) Any person or enterprise convicted of violating K.S.A. 65-4127a, 65-4127b, section 6 or section 7, and amendments thereto, after having previously been convicted of violating any one or more of such sections shall be guilty of a felony, the minimum term of imprisonment for which shall be determined by doubling the minimum minimum and doubling the maximum minimum and the maximum term for which shall be determined by doubling the minimum maximum and doubling the maximum maximum provided for a first violation, a fine of not more than \$100,000 for each violation or any forfeiture as required by section 10, or any combination thereof. Such person shall not be eligible for any release whatsoever until such person has served the minimum sentence imposed, without credit for any good time.

New Sec. 9. (a) Upon conviction of any person for one or more violations of this act in any one of which operable firearms were possessed by such person, or found in close proximity to the controlled substance or substances which are the basis for any one or more of such convictions, there shall be a presumption at sentencing that such person be sentenced to the custody of the secretary of corrections and not to any other disposition. The court shall make such finding at sentencing and shall apply the same. Such presumption shall be in lieu of and replace any contrary presumption.

(b) The presumption established by subsection (a) shall apply at the sentencing of each person convicted of any such

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violation, irrespective of whether the person's liability is as a principal, aider and abettor, conspirator or solicitor, and shall be in lieu of and replace any contrary presumption.

(c) Upon conviction of any violation of the uniform controlled substances act, the court shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 1989 Supp. 8-1014, and amendments thereto.

New Sec. 10. (a) The state of Kansas shall have one or more in personam criminal claims for forfeiture for violation of K.S.A. 65-4127a, 65-4127b, section 4, section 6 and section 7 and may obtain an order forfeiting on the basis thereof the property, things and other interests described and identified in K.S.A. 65-4135 and amendments thereto.

(b) Any claim established by subsection (a) may be alleged only by way of one or more forfeiture counts in any complaint, information or indictment. Any such claim may be alleged on behalf of the state of Kansas by the attorney general or any county or district attorney, or the deputies or assistants thereof. The rules of criminal procedure shall apply to such counts, except as otherwise provided in this act.

(c) All such actions shall be filed in the district court, which courts shall have jurisdiction to grant the judgments, orders and decrees provided for in this act without regard to the location of any property, things or other interests which are alleged to be subject to forfeiture, or which have been ordered forfeited, in such action. Physical seizure of any property, things or other interests alleged to be subject to forfeiture is not a prerequisite to filing an action therefore, to obtaining an order of forfeiture therefore or to the other relief provided for herein.

(d) (1) Any complaint, information or indictment alleging one or more criminal counts may also allege therein one or more forfeiture counts, if one or more of the crimes alleged in the criminal counts and one or more of the crimes alleged to give rise to the forfeiture counts, whether felony or misdemeanor, or

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both, are of the same or similar character, or are based on the same act or transaction, or on the same pattern of conduct prohibited by the serious offender section of the uniform controlled substances act, or are parts of a common scheme, artifice, device or pattern, or are otherwise connected together or may otherwise be joined as provided in the code of criminal procedure. In any action where the crimes charged in the criminal counts and the crimes giving rise to the forfeiture counts are the same, all such counts, criminal and forfeiture, shall be tried together and shall not be severed, and no defendant joined in any such criminal or forfeiture count shall be severed, even though such defendant is not alleged to be liable for any such crime or has no interest, or claims no interest, in some part or all of the property, things or other interests described in any such forfeiture count.

(2) Any forfeiture count of any complaint, information or indictment shall allege a description of the property, things or other interests which the state seeks to forfeit by means of such count and the ground or grounds therefore. It shall be sufficient to allege the grounds for forfeiture in the language of the statute defining such grounds. Probable cause for the forfeiture counts may be established by the same affidavit establishing probable cause for the criminal counts. Any such complaint, information or indictment may be amended to add or dismiss one or more counts of criminal forfeiture, or to allege that additional or different or differently described property, things or other interests are subject to forfeiture for the same, or different or additional grounds. The court shall allow one or more such amendments at any time as provided in the rules of criminal procedure. If the court finds that one or more defendants has demonstrated prejudice by the timing of the amendment, the court shall continue or recess the matter to avoid such prejudice.

(e) (1) At the time of the filing of a complaint, information or indictment alleging one or more claims established

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by subsection (a), or at any time thereafter, and upon the motion of the plaintiff the court may grant, ex parte, prejudgment relief, including but not limited to any one or more of the following: Restraining orders, injunctions, require the execution of satisfactory performance bonds, or grant any other prejudgment relief to preserve the status quo pending completion of the litigation of such claim or claims, to keep any property, things or other interests available for forfeiture or to satisfy any judgment that may be obtained in the action, to prevent the removal of any property, things or other interests from the jurisdiction of the court, to obtain immediate compliance with the law, order attachments and receiverships, or other relief, if the court determines that there is probable cause to believe that plaintiff will prevail on the merits of its claim or claims and that there is probable cause to believe there would be a substantial risk that the property, things or other interests would be destroyed, removed from the jurisdiction of the court, made unavailable for forfeiture, or of other loss or harm if relief is not granted. No other showing, including that of irreparable harm to plaintiff, shall be required. Such determination may be made on the basis of one or more affidavits submitted with the plaintiff's motion. Such orders shall remain in effect until modified or terminated by the court on motion and hearing, which motion may be filed at any time.

(2) Prior to the time of the filing of such a complaint, information or indictment, on motion of the plaintiff with notice to the persons appearing to have an interest in the property, things or other interests and an opportunity for them to be heard, the court may grant the prejudgment relief described in subsection (e) (1) if it determines that:

(A) There is probable cause to believe that plaintiff will prevail on the merits of its forfeiture claim or claims and that there is probable cause to believe that failure to grant the requested relief would result in a substantial risk that the property, things or other interests would be destroyed, removed



from the jurisdiction of the court, made unavailable for forfeiture, or of other loss or harm, except that no showing of irreparable harm to plaintiff shall be required; and

(B) there is probable cause to believe that the need to grant the requested relief outweighs any hardship on any party against whom such relief is to be granted, such hardships to be weighed on the basis of the effect of the prejudgment relief on the lawful actual uses party proves such party had made of such property, things or other interests prior to the requesting of such relief.

Any relief granted pursuant to this subsection (e) (2) shall be in effect for not more than 90 days, unless extended by the court for good cause shown or unless a complaint, information or indictment alleging the claim or claims on the basis of which the relief was granted has been filed, in which case the order shall remain in effect until modified or terminated by the court on motion by any party.

(3) The court may also grant, ex parte, relief upon the application of the plaintiff without notice or opportunity for a hearing when a complaint, information or indictment alleging one or more claims on the basis of which such relief is requested has not yet been filed, if the court finds that there is probable cause to believe that the plaintiff will prevail on the merits of such forfeiture claim or claims, that there is probable cause to believe that failure to grant the relief will result in a substantial risk that the property, things or other interests would be destroyed, removed from the jurisdiction of the court, made unavailable for forfeiture, or of other loss or harm and that there is probable cause to believe that provision of notice will jeopardize the effectiveness of granting the requested relief. No other showing, including that of irreparable harm to plaintiff, shall be required. Such prejudgment relief shall expire not more than 10 days after it is granted, unless extended for good cause shown or unless the party or parties against whom it is granted consents to an extension for a longer period. A

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hearing, if requested, concerning any relief granted under subsection (e) (3) shall be held at the earliest possible time, and prior to the expiration of the ex parte relief granted. If a complaint, information or indictment, alleging such claim or claims is filed before the expiration of the ex parte relief granted, the relief shall remain in effect until modified or terminated by the court on motion and hearing, which motion may be filed by any party at any time.

(4) The court may receive and consider, at any hearing held pursuant to this subsection (e), evidence and information that would be inadmissible under the rules of evidence, including hearsay evidence.

(f) (1) No person claiming an interest in any property, things or other interests alleged to be subject to forfeiture under this section may:

(A) Intervene in any action wherein one or more claims for forfeiture of such property, things or other interests are alleged; nor, intervene in any other action which concerns in any way any act or event which may give rise to the forfeiture of, or which concerns, such property, things or other interest; or

(B) file any action at law or in equity concerning in any way such property, things or other interests or which concerns in any way any event which is alleged to give rise to the forfeiture of any such property, things or other interest after the filing of any complaint, information, or indictment alleging that such property, things or other interests are subject to forfeiture; nor maintain any such action after such complaint, information or indictment has been filed.

(2) The discovery provisions of the rules of criminal procedure shall apply, and the discovery provisions of the rules of civil procedure shall not apply, to any discovery sought in any action alleging one or more counts of criminal forfeiture.

(g) Each defendant in any criminal action wherein one or more counts of forfeiture are alleged shall be entitled to a preliminary examination on each criminal count alleging a felony,

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as provided in K.S.A. 22-2902 and amendments thereto. No defendant in any such criminal action shall be entitled to a preliminary examination on any count of forfeiture alleged in such action. At any arraignment which may follow a preliminary hearing on a complaint joining forfeiture and criminal counts, the court shall cause the allegations of each count of forfeiture to be controverted as though by way of a plea of not guilty.

(h) (1) At the trial on any information or indictment, containing one or more forfeiture counts, the plaintiff shall have the burden to establish beyond a reasonable doubt that the described property, things or other interests are subject to forfeiture. At any such trial, all inferences established by statute shall be applicable, according to law.

(2) Trial shall be by jury on all counts, criminal and forfeiture, unless all parties, plaintiff and defendant, waive a jury trial on all counts.

(3) Any defendant alleging an exemption from forfeiture shall be entitled to a hearing on such allegations only after the plaintiff has established the plaintiff's claim or claims for forfeiture as provided in subsections (h)(1) and (2). Any hearing on a claim of exemption shall be separate from the trial on such information or indictment. Whether such property, things or other interests are exempt from forfeiture shall not be an issue at any trial on any information or indictment and no evidence as to any exemption shall be admitted at the trial to establish any exemption.

(i) (1) Upon a verdict, finding at any trial to the court or plea, including a no contest plea, establishing liability for forfeiture, the court shall forthwith forfeit to plaintiff in accordance with such verdict, finding or plea all right, title and interest of each such defendant in and to any property, things or other interests forfeited as of the date of the commission of the earliest act giving rise to forfeiture. Any forfeited property, thing or other interest that had been transferred after the date of such act may nonetheless be the

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subject of a verdict, finding or plea establishing liability for forfeiture and shall be ordered forfeited as aforesaid.

(2) The court shall also authorize, at the time of making its judgment of forfeiture and to the extent it had not already done so by way of prejudgment relief as provided in subsection (e), the seizure of all property, things or other interests ordered forfeited upon such terms and conditions as the court shall direct. In addition, the court may, at the same time as well as from time to time thereafter and upon application of plaintiff, enter restraining orders, injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants or trustees, or take any other action to protect plaintiff's interests in the property, things or other interests forfeited. Any income accruing to or derived from any property, things or other interests forfeited may be used to offset ordinary and necessary expenses, expenses which are required by law, or which are necessary to protect the plaintiff's interests in the property, things or other interests forfeited.

(j) In order to facilitate the identification or location of any property, things or other interests forfeited and to facilitate the disposition of petitions under subsection (k), the court may, upon application of plaintiff, order that the testimony of any person relating thereto be taken by deposition and that any documentary material, not privileged, be produced.

(k) (1) Following the entry of an order of forfeiture under subsection (k)(i), the plaintiff shall publish notice of such order and of its intent to dispose of the property, things or other interests forfeited. The plaintiff may also, to the extent practicable, provide written notice thereof to any person known to claim an interest in the property, things or other interests by depositing a copy of such order of forfeiture together with a copy of the notice hereinafter provided for in the United States mail, postage prepaid, return receipt requested to the last known address of each such person. The notice shall state that any

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person claiming an interest in the forfeited property, things or other interests, a description of which shall be set out, must file a petition or other responsive pleading alleging their claim or claims thereto as provided in this subsection or that judgment against them will be entered. The notice shall include a citation to this subsection.

(2) Only an owner of, or any interest holder in, the property, things or other interests, forfeited, other than any of the defendants named in any of the counts brought under this section, or persons acting or omitting to act in concert with any or all of such defendants, asserting a claim to the property, things or other interests, or asserting a claim that the same is exempt from forfeiture, may, within 30 days after the date of the final publication of such notice or of the depositing of such notice in the mails under subsection (k)(1), whichever is later, file a petition as hereinafter provided. The hearing thereon shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury, verified by the attorney filing the same, and shall allege the nature and extent of the petitioner's asserted right, title or interest in the property, things or other interests, the time and circumstances of the petitioner's acquisition of the right, title or interest therein, any additional facts supporting the petitioner's claim, including any grounds by which one or more exemptions is claimed, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days after the filing thereof. The court may consolidate the hearing on the petition with the hearing on any other petition claiming an interest in the property, things or other interests, or claiming that the same is exempt from forfeiture.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on the petitioner's own behalf, and

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cross-examine witnesses. The plaintiff may present evidence and witnesses in defense of its order of forfeiture and may cross-examine witnesses. In addition to any evidence presented at the hearing, the court shall take judicial notice of and shall consider the relevant portions of the record of the trial which resulted in the forfeiture.

(6) Any person found liable in any action for a crime giving rise to the forfeiture ordered under subsection (i) shall be precluded from subsequently denying in any hearing under subsection (k) the elements of, and their liability for, such crime. For purposes of this subsection, such a finding shall automatically result from a jury verdict, finding by the court or plea of guilty, including a no contest plea, and shall be deemed to have occurred upon any such verdict, finding or plea notwithstanding that appellate review thereof has been, or may be sought. Any order, judgment or decree under this subsection (k)(6) based upon such a finding which finding is subsequently reversed may be reopened upon motion. The journal entry setting out any such order, judgment or decree under this subsection (k)(6) shall specify any such finding and the portion of the order, judgment or decree based thereon.

(7) If, after the hearing, the court determines that any petitioner has established by a preponderance of the evidence that:

(A) Such petitioner has a right, title or interest in the property, thing or other interests forfeited, and such right, title or interest was vested in the petitioner rather than one or more defendants or was superior to any right, title or interest of such defendant or defendants at the time of the commission of the act or acts which gave rise to the forfeiture; and

(B) the petitioner is a bona fide purchaser for full value paid by petitioner or by petitioner's predecessors in interest, each and all of whom at all times did not know and had no reason to be aware that the property, things or other interests could be subject to forfeiture, each and all of whom had, in fact, taken

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every reasonable precaution to prevent any of the activity or uses which gave rise to the forfeiture and each and all of whom were not involved in any activity or use in connection with any of the activity or uses which gave rise to the forfeiture; or

(C) such property, things or other interests, or any ownership or lien interest therein, are exempt from forfeiture the court shall amend the order of forfeiture in accordance herewith.

(8) (A) Following the court's disposition of all petitions filed under this subsection (k), or if no such petitions are filed, then following the expiration of the period provided in subsection (k)(2) for the filing of such petitions, the court shall find and declare that plaintiff shall have good and clear title to such property, things or other interests and that the attorney for plaintiff may warrant such title on behalf of the state of Kansas to any subsequent purchaser or transferee and that such title shall be recognized by all courts of this state, by the state of Kansas and by all departments and agencies of this state and all political subdivisions of this state and shall be valid and entitled to full faith and credit by all other states and by the United States.

(B) The court shall further find and declare with reference to the same, that all right, title and interest in the property, things or other interests forfeited shall vest in the plaintiff as of the aforesaid date of the commission of the earliest act giving rise to forfeiture. Any such property, things or other interests transferred after such date shall be ordered forfeited unless any such transferee establishes at the trial by a preponderance of the evidence that such transferee is a bona fide purchaser meeting the requirements specified in subsection (k)(7).

(9) (A) On entry of judgment for one or more petitioners under subsection (k)(7), such property, things or other interests shall be restored as directed by the court, except that in the event the court finds any interest in any personal property,

thing or other interest to be exempt from forfeiture it shall order the same forfeited to the agency causing the forfeiture to be brought and shall further order either payment of the value of such exempt interest by the forfeiting agency to the owner thereof or payment of the value of the forfeited interest by such owner to the agency. If the court orders payment by such owner to the agency, it shall also order the agency to transfer its ownership to the owner on receipt of the payment ordered.

(B) If it appears that there was probable cause to believe that such property, things or other interests were subject to forfeiture for violation of any of the statutes set out in subsection (a), the court shall so find and such petitioner or petitioners shall not be entitled to costs, fees or damages, nor shall the seizing or the prosecuting agencies, the political subdivisions of which such agency or agencies are a part, the officer or officers who made the seizure, the state of Kansas or the attorneys for the plaintiff be liable to suit or judgment on account of any seizure thereof, or the bringing of any forfeiture action, and each and all shall be absolutely immune from any such liability irrespective of whether the property, things or other interests were exempt from, or otherwise not subject to, forfeiture.

(1) (1) If any property, things or other interests have been ordered forfeited under this section, and any such property, things or other interests, as a result of any act or omission of any defendant or petitioner, or any person acting or omitting to act in concert with any such defendant or petitioner which act or omission occurred after the date of the earliest act giving rise to forfeiture:

(A) Cannot be located upon the exercise of due diligence;

(B) has been transferred, sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be

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divided without difficulty the court shall order the forfeiture of any other property, things or other interests of the person, up to the value of any property, things or other interests described in subsections (1)(1)(A) through (1)(1)(E) value shall be measured as of the date of the earliest event giving rise to forfeiture or as of the date of the earliest act or omission giving rise to the liability imposed by this subsection, whichever is greater. Plaintiff shall establish this liability by a preponderance of the evidence at a hearing held on a motion therefore with an opportunity for any person against whom such motion is directed to be heard, cross-examine adverse witnesses and present evidence and witnesses.

(2) In addition to any other remedy provided by law, if the property, things or other interests subject to forfeiture are in any way transferred, conveyed, alienated, disposed of or otherwise rendered unavailable by any act or omission of any person named in any lis pendens notice which names the forfeiture action, or identifies the subject property, things or other interests which were ordered forfeited, or both, or is rendered unavailable by any person acting in concert with any person so named, which lien or notice was filed before such act or omission occurred, plaintiff may, on motion filed in such forfeiture action, recover judgment against such person or persons in an amount equal to the fair market value as of the date of the earliest act giving rise to forfeiture of, or, at plaintiff's election, as of the date of the earliest act or omission rendering unavailable, the property, things or other interests, together with the amount of any gain, income or other proceeds therefrom, reasonable investigative expenses and attorney fees.

(3) This subsection (1) does not limit the right of plaintiff to obtain any order or injunction, receivership, writ, attachment, garnishment or any other remedy authorized hereunder, or otherwise authorized by law.

(m) Unless otherwise stated, the in personam criminal counts established in subsection (a) are in addition to the in rem civil

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claims established by K.S.A. 65-4172 and amendments thereto. All such claims or counts are cumulative and mutually exclusive even though the same or related events, or the same or related property, things or other interests are alleged in one or more, or all such claims or counts.

(n) Neither the state of Kansas, any county or other subdivision thereof, nor any municipality nor any agency on whose behalf forfeiture is sought shall be required to post any bonds of other security in connection with the seizure of any property, things or other interest, or in connection with the filing, prosecuting or collecting any claim established by this section.

New Sec. 11. (a) When any property, things or other interests are forfeited under section 10, the court shall direct the disposition thereof as follows:

(1) With respect to all property, things or other interests other than motor vehicles, United States currency and contraband, the court shall direct the agency seizing the same to dispose thereof by sale or any other commercially feasible means, making due provision for the rights of any innocent persons, including lienholders. The proceeds of any sale or other such disposition shall be used to pay all proper expenses of seizure, maintenance and custody of the property pending its disposition, advertising, sale or other disposition and court costs. The remaining balance shall be deposited with the clerk of the district court issuing the order of forfeiture and held by the clerk subject to further order of the court.

(2) With respect to motor vehicles, the court shall order the same forfeited to the agency seizing the same for official use only, subject to the agency satisfying any prior liens thereon. If the seizing agency declines the forfeiture to it, the court shall order the disposition of such vehicle as provided by law.

(3) With respect to United States currency, the court shall order the deposit of any U.S. currency with the clerk of the district court issuing the order of forfeiture.

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(4) If the property or thing is hazardous or poses harm to the public health or safety, the court shall direct lawful disposition thereof.

(5) If the property or thing is a controlled substance, the court shall order it held by the seizing agency for training or other law enforcement use, or destroyed or transferred to the Kansas bureau of investigation for disposition by it.

(6) The court shall make any other disposition provided by law for the property in question.

(b) (1) With respect to the money proceeds and currency deposited with the clerk of the district court, the attorney for the plaintiff shall, from time to time, request the court to order, and the court shall order the clerk to disburse, as plaintiff's attorney requests, any part or all of the proceeds and currency to one or more special law enforcement trust funds in the treasuries identified in subsections (b)(2), (3) and (4) and such disbursements shall be ordered in the amounts requested by the attorney for plaintiff.

(2) If the fund to which the plaintiff's attorney requests disbursement is in the state treasury, the court shall order and the clerk shall disburse the entire amount so requested to one or more special law enforcement or prosecution trust funds in the state treasury for the benefit of the respective state agency or agencies all as requested by plaintiff's attorney and ordered by the court.

(3) If the fund to which the plaintiff's attorney requests disbursement is in the county treasury, the court shall order and the clerk shall disburse the entire amount so requested to one or more special law enforcement or prosecution trust funds in the county treasury for the benefit of the respective county agency or agencies all as requested by the plaintiff's attorney and ordered by the court.

(4) If the fund to which the plaintiff's attorney requests disbursement is in the treasury of a municipality or other political subdivision, the court shall order and the clerk shall

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disburse the entire amount so requested to one or more special law enforcement or prosecution trust funds in such municipal or subdivision treasury for the benefit of the respective city or subdivision agency or agencies all as requested by plaintiff's attorney and ordered by the court.

(5) If the plaintiff's attorney requests disbursement for, or to the account of, any agency of the United States, the court shall order and the clerk shall disburse the entire amount so requested to the agency, or account, all as requested by the plaintiff's attorney and ordered by the court.

(c) If the head of the agency for whose benefit such moneys or currency are disbursed pursuant to subsection (b) is an elected official, the such moneys shall be expended from such trust fund upon the written authorization of such elected official to meet the expenses hereinafter provided and no appropriation by any other fiscal authority shall be required; otherwise such moneys shall be expended only upon appropriation to the respective agencies by their respective elected legislature, board of county commissioners or other governing fiscal authority. In either case, such moneys may be expended or appropriated only to defray the costs of protracted or complex investigations or prosecutions of any offense, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other special or exceptional purposes as the respective elected official, legislature, board of county commissioners or governing fiscal authority determines. In no event shall any such moneys or currency be used as a source of revenue to meet normal operating expenses. Further, in no event shall any such proceeds or currency be taken into consideration in any way for budgeting purposes by either such agency or by the entity or entities having fiscal authority over part or all of such agency's budget.

(d) Nothing in this section shall be construed as limiting the authority of any prosecuting agency to compromise or settle any counts or claims for forfeiture. When any property, thing or

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other interest is forfeited under this act pursuant to the settlement of any forfeiture count or claim, the parties shall advise the court thereof and such property, things or other interests shall be disposed of hereunder as though the court had ordered the same forfeited.

New Sec. 12. Any agency receiving property forfeited under section 10 or proceeds from the sale of property so forfeited shall file an annual report with the entity which has fiscal authority over such agency, which report shall specify, for such period, the type and approximate value of the property so received and the amount of any money so received. Neither the agency nor the entity having fiscal control shall anticipate the proceeds or property from future forfeitures in the adoption and approval of any budget for the agency submitting such report nor shall the amounts of forfeited property or the proceeds therefrom affect in any way the amount of such agency's fiscal appropriations. The existence of such trust funds and the amounts deposited therein shall not affect the amount of any budget approved or to be approved by any such agency's budgeting authority, nor shall the same be taken into consideration at any level in determining the amount of any such agency's budget.

Sec. 13. K.S.A. 21-3302 is hereby amended to read as follows: 21-3302. ~~(1)~~ (a) A conspiracy is an agreement with another person or enterprise, as defined by K.S.A. 65-4101 and amendments thereto, to commit a crime or to assist to commit a crime one or more crimes. Such agreement may continue after the commission of any crime pursuant to such agreement. No person or enterprise may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by him such person or enterprise or by a coconspirator.

~~(2)~~ (b) A person or enterprise liable under subsection (a) is also liable for any other crime or crimes committed by any other coconspirator if:

(1) Such other crime or crimes were committed in pursuance

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of the object crime;

(2) the commission, although not necessarily the manner thereof, of such other crime or crimes was reasonably and objectively foreseeable as a probable consequence of carrying out the conspiracy;

(3) one or more of the persons committing such other crime or crimes was a member of the conspiracy at the time of the commission of such other crime or crimes.

(c) A person liable for a conspiracy under subsection (a) or liable for any other crime under subsection (b) may be charged with and convicted of such conspiracy or such other crime or crimes although the person alleged to have directly committed the overt act constituting the conspiracy or the other such crime or crimes lacked criminal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the conspiracy or of the other such crime or crimes, or both, or of some other conspiracy or some other crime based on the same act.

(d) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of his coconspirators, before any overt act in furtherance of the conspiracy has been committed by him the accused or by a coconspirator.

(3) (e) Except as otherwise provided by law, conspiracy to commit a class A felony is a class E felony. Conspiracy to commit a ~~felony-other-than-a-class-A~~ class B felony is a class C felony. Conspiracy to commit a class C felony is a class D felony. Conspiracy to commit a class D or E felony is a class E felony. A conspiracy to commit a misdemeanor is a class C misdemeanor. If there is more than one object crime of the conspiracy, the class of the conspiracy shall be determined by the highest class of the object crime of which a conviction is obtained.

Sec. 14. K.S.A. 1989 Supp. 21-3401 is hereby amended to read as follows: 21-3401. Murder in the first degree is the killing of

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a human being committed:

(a) Maliciously, willfully, deliberately and with premeditation;

(b) in the perpetration of or attempt to perpetrate any felony, including any violation of subsection (a) of K.S.A. 65-4127a, subsection (a) of K.S.A. 65-4127b, section 4 or section 6, and amendments thereto; or

(c) in the perpetration of abuse of a child, as provided in K.S.A. 21-3609 and amendments thereto.

Murder in the first degree is a class A felony.


Sec. 15. K.S.A. 21-3302 and K.S.A. 1989 Supp. 21-3401, 65-4101, 65-4127a and 65-4127b are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

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KANSAS DEPARTMENT OF REVENUE  
*Division of Alcoholic Beverage Control*  
Topeka, Kansas 66612-1584 · Phone (913) 296-3946  
MEMORANDUM

To: Mr. Dale Sprague, Speaker Pro Tem  
From:  Bernie Norwood, Legal Assistant  
Alcoholic Beverage Control  
Date: January 18, 1990  
Re: Class B Club Temporary Memberships

The Alcoholic Beverage Control Division of Kansas Department of Revenue received an inquiry from a Mr. Paul Malm of Lindsborg, Kansas, McPherson County, pertaining to class B clubs located on premises serving guests traveling and lodging in recreational vehicles (RV's) and whether these clubs can grant a temporary membership to such guests.

Current law provides temporary memberships only to guests of hotels, using hotel as defined in K.S.A. 36-501. Therefore guests coming into Kansas bringing their on lodging (RV's) are not provided access to class B clubs because the RV can't meet the definition of a hotel. Another concern was that if such class B club is located on a premises funded by Industrial Revenue Bonds, there may be some prohibitions to serving alcoholic beverages unless the premises meets the hotel definition.

My advise to Mr. Malm was that he could grant temporary memberships to transient guests visiting his resort, when traveling and lodging in an RV, only if the legislature amends the definition of hotel to include recreational vehicles of the guests at resorts that have a private club on their premises. Alcoholic Beverage Control anticipates no problem in administrating such an amendment.

HOUSE FEDERAL & STATE AFFAIRS  
Attachment No. 7  
March 21, 1990



## Proposed Amendment to H.B. 2784

On page 2, by striking line 4 and inserting:

"Sec. 2. K.S.A. 1989 Supp. 41-2601 is hereby amended to read as follows: 41-2601. As used in the club and drinking establishment act:

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) "Restaurant" means:

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

(2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 1988 Supp. 41-2642 and amendments thereto, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and

(3) in the case of a drinking establishment subject to no

food sales requirement under K.S.A. 41-2642 and amendments thereto, a licensed food service establishment.

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

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

~~(p)~~ (q) "Temporary permit" means a temporary permit issued pursuant to K.S.A. 1988 Supp. 41-2645 and amendments thereto.

Sec. 3. K.S.A. 1989 Supp. 41-2641 is hereby amended to read as follows: 41-2641. (a) A license for a class B club shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members of such club and guests accompanying them.

(b) Any two or more class B clubs which are restaurants may permit, by an agreement filed with and approved by the director, the members of each such club to have access to all other clubs which are parties to such agreement. The privileges extended to the visiting members of other clubs under such an agreement shall be determined by the agreement and, if the agreement so provides, any club which is a party to such agreement may sell, offer for sale and serve, to any person who is a member of another club which is a party to such agreement, alcoholic liquor for consumption on the licensed premises by such person and such person's family, and guests accompanying them.

(c) Except as provided by subsection (d), an applicant for membership in a class B club shall, before becoming a member of such club:

- (1) Be screened by the club for good moral character;
- (2) pay an annual membership fee of not less than \$10; and
- (3) wait for a period of 10 days after completion of the application form and payment of the membership fee.

(d) Notwithstanding the membership fee and waiting period requirement of subsection (c):

(1) Any class B club located on the premises of a hotel or RV resort may establish rules whereby a guest, who registered at the hotel or RV resort and who is not a resident of the county in which the club is located, may file application for temporary membership in such club. The membership, if granted, shall be valid only for the period of time that the guest is a bona fide registered guest at the hotel or RV resort and such temporary membership shall not be subject to the waiting period or fee requirement of this section.

(2) Any class B club located on property which is owned or operated by a municipal airport authority and upon which consumption of alcoholic liquor is authorized by law may establish rules whereby an air traveler who is a holder of a current airline ticket may file application for temporary membership in such club for the day such air traveler's ticket is valid, and such temporary membership shall not be subject to the waiting period or fee requirement of this section.

(3) Any class B club may establish rules whereby military personnel of the armed forces of the United States on temporary duty and housed at or near any military installation located within the exterior boundaries of the state of Kansas may file application for temporary membership in such club. The membership, if granted, shall be valid only for the period of the training, not to exceed 20 weeks. Any person wishing to make application for temporary membership in a class B club under this subsection (d)(3) shall present the temporary duty orders to the club. Temporary membership issued under this subsection (d)(3) shall not be subject to the waiting period or fee requirements of this section.

(4) Any class B club may enter into a written agreement with a hotel or RV resort whereby a guest who is registered at the hotel or RV resort and who is not a resident of the county in which the club is located may file application for temporary membership in such club. The temporary membership, if granted, shall be valid only for the period of time that the guest is a bona fide registered guest at the hotel or RV resort and shall

not be subject to the waiting period or dues requirement of this section. A club may enter into a written agreement with a hotel or RV resort pursuant to this provision only if (A) the hotel or RV resort is located in the same county as the club, (B) there is no class B club located on the premises of the hotel or RV resort and (C) no other club has entered into a written agreement with the hotel or RV resort pursuant to this section.

Sec. 4. K.S.A. 1989 Supp. 41-2601 and 41-2641 are hereby repealed.";

By renumbering section 3 as section 5;

In the title, in line 11, before "amending", by inserting "relating to temporary memberships in certain class B clubs;"; also in line 11, before "and", by inserting ", 41-2601 and 41-2641"; in line 12, by striking "section" and inserting "sections"



# State of Kansas

Mike Hayden, Governor

Department of Health and Environment  
Kansas Health and Environmental Laboratory

Forbes Field, Bldg. 740, Topeka, KS 66620-0002

Stanley C. Grant, Ph.D., Secretary

(913) 296-1619  
FAX (913) 296-6247

January 18, 1990

The Honorable Ginger Barr, Chairperson  
House Federal and State Affairs  
House of Representatives  
Capitol Bldg., Room 115-S  
Topeka, Kansas 66612

Dear Representative Barr:

Although this agency has not taken an official position on the merits of SB296, we do very strongly believe that the House Federal and State Affairs Committee must have clear and accurate information with which to evaluate this bill. My observations at the January 16, 1990, hearing on this bill indicated that considerable confusion may remain on several technical points of discussion. I am happy to respond to your request for correct information on breath alcohol test issues.

This agency does have statutory responsibility for the approval of evidential breath test instruments and the training and certification of instrument operators. This program currently includes 144 Kansas law enforcement agencies where 1,427 certified instrument operators provide court-defensible evidence used in the prosecution of 11,000 DUI subjects in our state each year.

The following allegations were made during testimony on SB296:

- 1) Allegation: Kansas evidential breath test instruments are not tested for radio interference and are inaccurate because of this interference.

**THIS ALLEGATION IS FALSE.**

All instruments approved in Kansas are listed on the Federal Department of Transportation Conforming Products list which assures that they have been evaluated for radio interference which might lead to an inaccurate result. Radio interference is an old and out-dated argument which is no longer valid with modern breath test instrumentation.

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March 21, 1990

- 2) Allegation: Kansas evidential breath alcohol test data is inaccurate because instrument operators are not well trained and/or do not follow standard protocol.

**THIS ALLEGATION IS FALSE.**

Kansas law requires that instrument operators be certified to perform evidential breath tests. The certification process includes rigorous training and tested ability to perform breath analyses according to standard protocols. Each certified operator is acutely aware that standard protocol requires that a certified alcohol standard must be run with each evidential test in order to validate instrument operating condition. In addition, in order to maintain certification status, each operator must also correctly analyze quarterly performance evaluation samples of unknown alcohol concentrations provided by the Kansas Department of Health and Environment.

- 3) Allegation: Breath alcohol tests are unreliable because they are less accurate than blood alcohol tests.

**THIS ALLEGATION IS FALSE.**

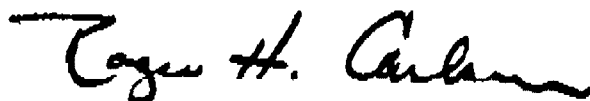
When standard test protocols are followed, breath alcohol measurements are a reliable indicator of blood alcohol concentration. Due to blood/breath partition effects, breath alcohol concentrations most often slightly under-read the actual blood alcohol concentration. Clearly, the subject receives the benefit of any deviation in these situations. The track record on breath alcohol measurement technology includes more than 15 million court-defensible tests performed over the past 15 years in the United States.

In summary:

Evidential breath alcohol tests have a reliable track record in Kansas and throughout the nation. Rigid Kansas certification procedures and modern instrumentation ensure that accurate court-defensible results are produced in our state.

Proponents of SB296 have argued that even the most experienced Kansas judicial systems can often be confused through the half-truths, "techno-babble," and scientific complexity of breath alcohol issues to unfairly prevent the admission of evidence. The recent House Federal and State Affairs hearing on this bill has clearly shown just how readily this can indeed occur.

Sincerely,



Roger H. Carlson, Ph.D.  
Laboratory Director

RHC:bc

bpc: Michael Santos ✓  
City of Overland Park

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