

Approved: 3/10/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 2, 1998 in Room 313-S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Mayans (excused)
Representative Mays (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

The Chair called the meeting to order.

Bill introductions:

Representative Kirk requested two bills. The first bill request would state that in Child In Need of Care (CINC) cases, either the sole legal guardian or one parent on the birth certificate needs to be notified.

Representative Kirk made a motion, second by Representative Dahl to introduce as a Committee bill. The motion carries.

Representative Kirk requested the introduction of a bill concerning the Landlord Tenant Act. Representative Kirk stated that this bill will provide a reasonable mechanism for removing a person living in a rental property who has become a real danger to the community. The bill allows a District Attorney to file action if the landlord does not. This is a three day action for arrest of certain violent activities. The bill would change the 14 day notice to 7 days for failure to comply with lease agreement either landlord or tenant. This bill would allow for partial eviction where there is more than one tenant sharing the premises.

A motion was made by Representative Kirk, second by Representative Ruff to introduce as a Committee bill. The motion carries.

Representative Pauls requested the introduction of two bills. One bill the would change language concerning the state security hospital at Larned and the provision for separate quarters and placement so that (in)voluntary patients can not be transferred to more dangerous sections.

A motion was made by Representative Pauls, second by Representative Swenson to introduce as a Committee bill. The motion carries.

Representative Pauls requested a bill that will define grandparents as "interested parties" in CINC cases. The proposed bill will also provide that step parents are entitled to reasonable visitation rights if there is a sufficient tie with the child(ren). This bill will clarify that such cases should be considered domestic relations cases, not a juvenile cases unless so ordered by the administrative judge.

A motion was made by Representative Pauls, second by Representative Swenson to introduce as a Committee bill. The motion carries.

Representative Presta requested the introduction of a bill to rectify a situation where a step father was charged with incest instead of rape of his 12 year old step daughter. The judge ruled that the specific criminal provision rules over the more general charge of rape. This bill would correct that situation.

A motion was made by Representative Presta, second by Representative Dahl to introduce Representative Presta's proposal as a committee bill. The motion carries.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 2, 1998.

The Chair stated that Representative Morrison requested the introduction of a bill that would terminate parental rights in certain circumstances if a person was convicted of killing the other parent.

Representative Carmody made a motion to introduce as a Committee bill, second by Representative Dahl. The motion carries.

The Chair stated that the Kansas Juvenile Justice Authority requested the introduction of eight bills. (Attachment 1)

The first request concerns extended juvenile jurisdiction (EJJ) prosecution. The second request concerns juvenile jurisdiction to eliminate adult admissions to juvenile correctional facilities with certain exceptions. The third request concerns the powers and duties of the Commissioner of juvenile justice. The fourth request concerns the appointment of personnel for Juvenile Justice Authority. The fifth proposal will cleanup language relating to aggravated juvenile delinquency. The sixth proposal will cleanup language relating to juvenile dispositions. The seventh proposal concerns inclusion of certain staff to the drug screening program. The eighth proposal concerns involuntary HIV testing of juvenile offenders and proposes to include certain JJA employees for testing of infectious disease.

A motion was made by Representative Carmody, second by Representative Presta to introduce the eight Juvenile Justice Authority proposals. The motion carries.

Representative Carmody stated that he received information from the Sedgwick county district court clerks' office concerning digital storage of court records. This bill will specifically authorize storage of court records, etc. on digital media.

Representative Carmody made a motion to introduce as a Committee bill, second by Representative Powell. The motion carries.

The Chair stated that he had worked with the task force from Johnson and Wyandotte counties concerning bad check problems. The Chair requested the introduction of a bill that would allow for prosecution for knowingly drawing of a check on a closed account.. Currently there is SB 155, concerning bad checks, but it does not include this proposal.

A motion was made by Representative Carmody to introduce as a Committee bill. Second by Representative Powell. The motion carries.

The Chair stated that Representative Vining requested the introduction of a bill (from a constituent in Valley Center) allowing for a NCIC background check by the hiring facility on coaches.

A motion was made by Representative Carmody, second by Representative Gilmore to introduce as a Committee bill. The motion carries.

HB 2367 **Hard 15 sentences for persons selling or manufacturing certain controlled substances.**

The Revisor discussed the HB 2367 balloon which amends the bill to provide the recommendations from the KBI and updates the bill to current statutes. (Attachment 2)

The Committee members discussed issues concerning the amount of controlled substance in a mixture and that the crime and punishment listed in this bill refers to the volume and weight of the total mixture. The Committee discussed the sentencing provision for intent to distribute, manufacture and sell of the controlled substances.

The Committee members discussed the effect of deleting Section 3, and the comparison of this bill with last year's legislation.

SB 9 **Enacting the uniform partnership act (1994).**

The Chair opened discussion on SB 9. The Revisor explained the suggested amendments recommended by Professor Hecker and the revisor changes. (Attachment 3)

A motion was made by Representative Carmody to adopt the balloon to

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 2, 1998.

SB 9, second by Representative Presta. The motion carries.

A motion was made by Representative Carmody, second by Representative Presta to recommend SB 9 as amended favorably for passage. The motion carries.

SB 8 Enacting the uniform fraudulent transfers act.

The Revisor stated that two changes are needed to update this bill.

A motion was made by Representative Carmody, second by Representative Presta to adopt the recommended changes to update the bill. The motion carries.

The committee members discussed the effective date of SB 8.

Representative Garner requested information on the net effect of this bill.

A motion was made by Representative Carmody, second by Representative Presta to recommend SB 8 as amended. The motion carries.

The Chair discussed the subcommittees' agendas and outlined the committee's agenda.

The Chair adjourned the meeting at 4:40 p.m.

The next meeting is scheduled for February 4, 1998.

AGENCY

Kansas Juvenile Justice Authority
Proposal #1 - Extended juvenile jurisdiction (EJJ) prosecution

SUMMARY

This proposal requests an amendment to Ch 156, Section 58; As presently written, it is questionable whether EJJ prosecution provides due process when a motion can be filed anytime before adjudication or conviction. That could result in a juvenile trial being held before a judge, as no jury is required, then a motion for EJJ prosecution could be filed, triggering the right to a jury trial. At that time, the Court would lose time and money as the trial would have to be moved to the adult court to afford the defendant's rights inherent in an adult prosecution. Further, if a conviction resulted by the time a motion for extended juvenile jurisdiction were filed, then double jeopardy may exist, where the youth could not be retried for the same crime. This proposal requests that the motion to prosecute for extended juvenile jurisdiction can only be filed and considered prior to trial.

FISCAL IMPACT

Although this will have a negligible fiscal impact of the agency, this proposal will save considerable time and money for courts as well as prosecution.

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This proposal is directly supportive of the goal of the agency's strategic plan to hold juvenile offenders accountable for such juvenile's behavior and improve the ability of juveniles to live more productively and responsibly in the community. The proposed legislation addresses potential procedural issues to allow the extended juvenile jurisdiction prosecution to be effectively used by practitioners without challenge for obvious defects.

House Judiciary
2-2-98
Attachment 1

AGENCY

Kansas Juvenile Justice Authority
Proposal #2 – Juvenile jurisdiction

SUMMARY

The Authority proposes to amend K.S.A. 38-1604 as amended by 1996 Session Laws of Kansas Chapter 156, Section 46, to eliminate adult admissions to juvenile correctional facilities except the juvenile under the age of 16 at the time of sentencing and who was convicted as an adult or under extended juvenile jurisdiction and has been placed in the custody of the secretary of Corrections, which requires admission to a juvenile correctional facility as per K.S.A. 38-16,111. This would eliminate conflicts in supervision and assure that a youth convicted as an adult is not also put on supervision as a juvenile for a previous case. It also ensures that the juvenile system deals only with juveniles.

FISCAL IMPACT

Little, if any, fiscal impact.

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This proposal is directly supportive of the goals of the agency's strategic plan to operate the juvenile correctional facilities as professional corrections operations that continue to maintain full American Correctional Association accreditation and that assures public safety, juvenile offender well-being, and promote the rehabilitation of juvenile offenders, as well as to develop a comprehensive system of community-based services and programs consistent with the JJA's statutory mandate, and that reflect the unique resources and different needs of the various local communities. The proposed legislation assists the agency in developing programs both in juvenile correctional facilities and in the community that are geared to juvenile offender needs and ensures with certain exceptions, that adults are not placed with juvenile offenders in juvenile correctional facilities.

AGENCY

Kansas Juvenile Justice Authority

Proposal #3 – Commissioner of juvenile justice; powers and duties

SUMMARY

This proposed amendment of 75-7024(a) as amended by Ch 156, Section 99 gives greater latitude to the Commissioner in developing the divisions within the agency. Recommend replacing "Establish the following divisions in the juvenile justice authority" with "Establish divisions which include the following functions in the juvenile justice authority"

FISCAL IMPACT

None.

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This proposal is directly supportive of the goal of the agency's strategic plan to provide leadership, support, and oversight necessary for the juvenile justice system to carry out its mission and meet its objectives. The proposed legislation allows the Commissioner flexibility in determining size, functions and duties within the agency, thereby maximizing the effectiveness of the agency in serving communities.

AGENCY

Kansas Juvenile Justice Authority
Proposal #4 – Appointment of personnel for JJA

SUMMARY

The proposal requests an amendment designating specific staff as unclassified for the department. Included is amendment of the classified/unclassified service statute, K.S.A. 75-2935 (t) and (w), as amended by Ch. 156, Section 88 of the 1997 Session Laws of Kansas, to include, "the commissioner of juvenile justice". Also included is deletion of the following phrase in Ch. 156, Section 99(t)(4), amending K.S.A. 75-7024:

The commissioner may appoint a deputy commissioner to head each division in the juvenile justice authority and such deputy shall serve at the pleasure of the commissioner. Any such deputy commissioner shall be in the unclassified service under the Kansas civil service act.

Wording for a separate statute should appear as follows:

The commissioner of juvenile justice may appoint deputy commissioners and assistant commissioners as determined necessary by the commissioner to effectively carry out the mission of the agency. All deputy commissioners and assistant commissioners shall serve at the pleasure of the commissioner, shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary and approved by the governor. The commissioner may appoint a public information officer, a chief attorney, other attorneys, and an executive secretary for the juvenile justice authority. These employees shall serve at the pleasure of the commissioner and shall be in unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the commissioner and approved by the governor. All other employees of the juvenile justice authority unless otherwise designated shall be in the classified service.

FISCAL IMPACT

None.

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This proposal is directly supportive of the goal of the agency's strategic plan to provide leadership, support, and oversight necessary for the juvenile justice system to carry out its mission and meet its objectives. The proposed legislation addresses the issue of agency flexibility. This proposal increases the number of staff in the agency who are unclassified, allowing the commissioner discretion and flexibility in hiring staff best suited to fulfill the needs

of the agency. A statute separate from the unclassified employee statute, K.S.A. 75-2935 is requested to be consistent with past practice, as other agencies are included in the K.S.A. 75-2935 as well as in their own statute. K.S.A. 76-3201 allows for juvenile correctional facility superintendents to be in the unclassified service, and would remain unchanged.

AGENCY

Kansas Juvenile Justice Authority
Proposal #5 – Aggravated juvenile delinquency

SUMMARY

The Authority proposes to amend K.S.A. 21-3611, as amended by 1996 Session Laws of Kansas Chapter 229, Section 24, aggravated juvenile delinquency to strike language "training or rehabilitation" and replace with "state juvenile correctional facilities". Also strike language relating to "delinquent or miscreant under the ..." This statute refers to training schools, of which there are none. The amendment corrects the language to allow juvenile offenders 16 or more years of age escaping from a juvenile correctional facility to be charged after having a previous escape.

FISCAL IMPACT

This amendment is technical in nature, so there is no fiscal impact.

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This amendment is technical in nature, and does not affect the strategic plan of the agency.

AGENCY

Kansas Juvenile Justice Authority
Proposal #6 – Juvenile dispositions

SUMMARY

The Authority proposes to amend K.S.A. 38-1663(a)(9)(A) from "Has previously been adjudged as a juvenile offender under this code" to add "or under the Kansas Juvenile Offender code" at the end of the sentence. This allows for the court to consider adjudications that were determined at the time the juvenile offender code, which preceded the present juvenile justice code, was in place. These adjudications can be used to determine whether an offender possesses a previous adjudication or conviction for direct commitment to a juvenile correctional facility.

FISCAL IMPACT

Passage of this amendment will result in no fiscal change from the previous system. Failure to pass this amendment will result in only those offenders who have previous adjudications or convictions under the code passed in 1997 to be admitted to the juvenile correctional facility, resulting in fewer offenders being admitted.

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This amendment cures what may have been an oversight from the 1997 legislative session. This amendment does not affect the strategic plan of the agency.

AGENCY

Kansas Juvenile Justice Authority
Proposal #7 – Drug screening program
SUMMARY

The Authority proposes to amend K.S.A. 75-4362, the State Drug Screening Program, to include agency staff, and juvenile correctional facility staff in the definition of safety sensitive positions. These agencies would then have the ability to test and discipline, including termination from employment, of employees in safety sensitive positions who test positive for illegal drug use. This would allow the agency and the juvenile correctional facilities under its umbrella the ability to adopt and enforce a zero tolerance for illegal drug usage.

FISCAL IMPACT

The proposal would result in additional expenditures of \$1,725 from the State General Fund for all facilities in FY 1999. The estimate assumes drug screening on a "suspected abuse" basis, rather than random testing. Larned Juvenile Correctional Facility has access to a drug screening contract through Larned State Hospital that provides drug screening at a cost significantly lower than the other facilities. The other facilities rely on local hospitals or medical facilities. In the event the proposal is adopted, access to a state-wide contract for all facilities should be pursued.

	Projected Incidents	Cost per Incident	Total Cost (\$)
BJCF	2	150	300
AJCF	3	150	450
TJCF	6	150	900
LJCF	3	25	75
Total			1,725

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This proposal is directly supportive of the goal of the agency's strategic plan to operate the juvenile correctional facilities as professional corrections operations that continue to maintain full American Correctional Association accreditation and that assures public safety, juvenile offender well-being, and promote the rehabilitation of juvenile offenders. The proposed legislation addresses the issue of having drug-free employees working in the juvenile offender environment. The agency proposes this legislation to have a means at its disposal to discover and discipline employees that may be illegal users themselves, who may put other staff in danger as well as functioning at less than full capacity on the job because of illegal drug use.

AGENCY

Kansas Juvenile Justice Authority
Proposal #8 – Involuntary HIV testing of juvenile offenders

SUMMARY

The Authority proposes to amend K.S.A. 65-6001, Definitions, and 65-6008, Infectious disease testing to include JJA employees in the group of people who can, if they come in contact with or are otherwise exposed to the transmission of body fluids within the scope of duty, may apply to the court for an order requiring such person to submit to infectious disease tests. K.S.A. 65-6008 presently allows court-ordered testing of offenders when certain officers or employees are exposed to body fluids while performing under their scope of duty. If JJA staff were included in this group, then they would have the ability to request court-ordered testing of offenders who have taken some action resulting in the transmission of body fluids.

FISCAL IMPACT

A total of \$4,080 from the State General Fund in FY 1999 would be required. Larned Juvenile Correctional Facility's costs are significantly lower than the other facilities, since support is provided through Larned State Hospital. The other facilities rely on local hospitals or medical facilities.

	Projected Incidents	Cost per Incident	Total Cost (\$)
BJCF	6	120	720
AJCF	8	120	960
TJCF	16	120	1,920
LJCF	24	20	480
Total			4,080

POLICY IMPLICATIONS AND IMPACT ON THE AGENCY STRATEGIC PLAN

This proposal is directly supportive of the goal of the agency's strategic plan to operate the juvenile correctional facilities as professional corrections operations that continue to maintain full American Correctional Association accreditation and that assures public safety, juvenile

offender well-being, and promote the rehabilitation of juvenile offenders. The proposed legislation addresses a safety and moral issue among employees working in the juvenile offender environment. The agency proposes this legislation to have a means at its disposal to discover whether an offender is HIV positive and to let the affected staff know the outcome of testing, so that both can get proper treatment as early as possible.

House Judiciary
2-2-98
Attachment 2

HOUSE BILL No. 2367

By Representatives Ballou, Beggs, Bradley, Campbell, Cox, Dahl, Dreher, Faber, Farmer, Franklin, Geringer, Glasscock, Hayzlett, Horst, Huff, Humerickhouse, Hutchins, Johnson, Landwehr, Lloyd, P. Long, Mayans, Mays, McCreary, Mollenkamp, Myers, Palmer, J. Peterson, Powers, Shore, Sloan, Stone, Tanner, Toplikar, Vickrey, Vin- ing, Wilk and Wilson

2-14

14 AN ACT concerning crimes and punishment; relating to the unlawful sale
15 and manufacturing of controlled substances; amending K.S.A. ~~1996~~
16 Supp. 21-4705, 22-3717, 65-4159, 65-4161 and 65-4163 and repealing
17 the existing sections.
18

1997

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

20 New Section 1. (a) For purposes of sentencing pursuant to this act,
21 substances and quantities shall be as follows:

22 (1) 100 grams or more of a mixture or substance containing a de-
23 tectable amount of heroin;

24 (2) 500 grams or more of a mixture or substance containing a de-
25 tectable amount of:

26 (A) Coca leaves, except coca leaves and extracts of coca leaves from
27 which cocaine, ecgonine and derivatives of ecgonine or their salts have
28 been removed;

29 (B) cocaine, its salts, optical and geometric isomers, and salts of iso-
30 mers;

31 (C) ecgonine, its derivatives, their salts, isomers and salts of isomers;
32 or

33 (D) any compound, mixture or preparation which contains any quan-
34 tity of any of the substances referred to in subparagraph (A) through (C);

(2)

35 (3) five grams or more of a mixture or substance described in clause
36 ~~(ii)~~ which contains cocaine base;

37 (4) 10 grams or more of phencyclidine (PCP) or 100 grams or more
38 of a mixture or substance containing a detectable amount of phencyclidine
39 (PCP);

100 dosage units

40 (5) ~~5 gram~~ or more of a mixture or substance containing a detectable
41 amount of lysergic acid diethylamide (LSD);

? (6) 40 grams or more of a mixture or substance containing a detect-
able amount of N-phenyl-N- (1- (2-phenylethyl) -4-piperidinyl) propan-

1 amide or 10 grams or more of a mixture or substance containing a de-
2 tectable amount of any analogue of N-pheny propanamide;

3 (7) 100 kilograms or more of a mixture or substance containing a
4 detectable amount of marijuana, or 100 or more marijuana plants regard-
5 less of weight; or

6 (8) 10 grams or more of methamphetamine, its salts, isomers and salts
7 of its isomers or 100 grams or more of a mixture or substance containing
8 a detectable amount of methamphetamine, its salts, isomers or salts of its
9 isomers.

10 (b) The scale amounts for all controlled substances in this section
11 refer to the total weight of the controlled substance. If any mixture of a
12 compound contains any detectable amount of a controlled substance, the
13 entire amount of the mixture or compound shall be considered in meas-
14 uring the quantity. If a mixture or compound contains a detectable
15 amount of more than one controlled substance, the most serious con-
16 trolled substance shall determine the categorization of the entire quantity.

Except as provided further,

17 New Sec. 2. (a) When it is provided by law that a person shall be
18 sentenced pursuant to this section, such person shall be sentenced to
19 imprisonment for life and shall not be eligible for probation or suspension,
20 modification or reduction of sentence.

21 (b) Except as provided in subsection (c) in addition, a person sen-
22 tenced pursuant to this section shall not be eligible for parole prior to
23 serving 15 years' imprisonment, and such 15 years' imprisonment shall
24 not be reduced by the application of good time credits.

Any reduction in sentence may only be given if
the prosecutor certifies to the court that the
defendant has provided substantial assistance
to the state.

25 (c) If the person's crime of conviction and criminal history place such
26 person in grid blocks 1-A, 1-B or 1-C, a person sentenced pursuant to
27 this section shall not be eligible for parole prior to serving the amount of
28 months in such grid blocks sentencing range as established by the sen-
29 tencing judge.

drug

30 (d) Upon sentencing a defendant pursuant to this section, the court
31 shall commit the defendant to the custody of the secretary of corrections
32 and the court shall state in the sentencing order of the judgment form or
33 journal entry, whichever is delivered with the defendant to the correc-
34 tional institution, that the defendant has been sentenced pursuant to this
35 section. The provisions of this section shall be applicable to crimes com-
36 mitted on or after July 1, 1997.

1998

37 ~~Sec. 3. K.S.A. 1996 Supp. 21-4705 is hereby amended to read as~~
38 ~~follows: 21-4705. (a) For the purpose of sentencing, the following sen-~~
39 ~~tencing guidelines grid for drug crimes shall be applied in felony cases~~
40 ~~under the uniform controlled substances act for crimes committed on or~~
41 ~~after July 1, 1993:~~

SENTENCING RANGE - DRUG OFFENSES

HB 2367

Category	A			B			C			D			E			F			G			H			I		
Severity Level	3+ Person Felonies			2 Person Felonies			1 Person & 1 Nonperson Felonies			1 Person Felony			3+ Nonperson Felonies			2 Nonperson Felonies			1 Nonperson Felony			2+ Misdemeanors			1 Misdemeanor No Record		
I	204	194	185	196	186	176	187	178	169	179	170	161	170	162	154	167	158	150	162	154	146	161	150	142	154	146	138
II	83	78	74	77	73	68	72	68	65	68	64	60	62	59	55	59	56	52	57	54	51	54	51	49	51	49	46
III	51	49	46	47	44	41	42	40	37	36	34	32	32 30 28			29 27 25			28 26 24			27 25 23			26 24 22		
IV	42	40	37	36	34	32	32	30	28	26	24	23	22 20 18			20 18 17			14 13 12			14 12 12			12 11 10		

3

LEGEND
Presumptive Probation
Presumptive Imprisonment

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history ~~place~~ places such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F shall not be considered a departure and shall not be subject to appeal.

(e) *The sentence for a violation of subsection (e) of K.S.A. 65-4159, subsection (g) of K.S.A. 1996 Supp. 65-4161 and subsection (e) of K.S.A. 1996 Supp. 65-4163, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall*

1 ~~not be subject to the provisions of this section or K.S.A. 21-4708, and~~
2 ~~amendments thereto.~~

3 ~~Sec. 4. K.S.A. 1996 Supp. 22-3717 is hereby amended to read as~~
4 ~~follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A.~~
5 ~~1993 Supp. 21-4628 prior to its repeal and, K.S.A. 21-4635 through 21-~~
6 ~~4638 and section 2 and amendments thereto, an inmate, including an~~
7 ~~inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto,~~
8 ~~shall be eligible for parole after serving the entire minimum sentence~~
9 ~~imposed by the court, less good time credits.~~

10 ~~(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and~~
11 ~~amendments thereto, an inmate sentenced to imprisonment for the crime~~
12 ~~of capital murder, or an inmate sentenced for the crime of murder in the~~
13 ~~first degree based upon a finding of premeditated murder, committed on~~
14 ~~or after July 1, 1994, shall be eligible for parole after serving 25 years of~~
15 ~~confinement, without deduction of any good time credits.~~

16 ~~(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993~~
17 ~~Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,~~
18 ~~and amendments thereto, an inmate sentenced to imprisonment for an~~
19 ~~off-grid offense committed on or after July 1, 1993, shall be eligible for~~
20 ~~parole after serving 15 years of confinement, without deduction of any~~
21 ~~good time credits.~~

22 ~~(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its~~
23 ~~repeal, an inmate sentenced for a class A felony committed before July~~
24 ~~1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and~~
25 ~~amendments thereto, shall be eligible for parole after serving 15 years of~~
26 ~~confinement, without deduction of any good time credits.~~

27 ~~(4) An inmate sentenced to imprisonment for a violation of subsec-~~
28 ~~tion (a) of K.S.A. 21-3402 and amendments thereto committed on or after~~
29 ~~July 1, 1996, shall be eligible for parole after serving 10 years of confine-~~
30 ~~ment without deduction of any good time credits.~~

31 ~~(c) Except as provided in subsection (e), if an inmate is sentenced to~~
32 ~~imprisonment for more than one crime and the sentences run consec-~~
33 ~~utively, the inmate shall be eligible for parole after serving the total of:~~

34 ~~(1) The aggregate minimum sentences, as determined pursuant to~~
35 ~~K.S.A. 21-4608 and amendments thereto, less good time credits for those~~
36 ~~crimes which are not class A felonies; and~~

37 ~~(2) an additional 15 years, without deduction of good time credits,~~
38 ~~for each crime which is a class A felony.~~

39 ~~(d) (1) Persons sentenced for crimes, other than off-grid crimes,~~
40 ~~committed on or after July 1, 1993, will not be eligible for parole, but will~~
41 ~~be released to a mandatory period of postrelease supervision upon com-~~
42 ~~pletion of the prison portion of their sentence as follows:~~

~~(A) Except as provided in subparagraphs (C) and (D), persons sen-~~

1 sentenced for nondrug severity level 1 through 6 crimes and drug severity
2 levels 1 through 3 crimes must serve 36 months, plus the amount of good
3 time earned and retained pursuant to K.S.A. 21-4722 and amendments
4 thereto, on postrelease supervision.

5 (B) Except as provided in subparagraphs (C) and (D), persons sen-
6 tenced for nondrug severity level 7 through 10 crimes and drug severity
7 level 4 crimes must serve 24 months, plus the amount of good time earned
8 and retained pursuant to K.S.A. 21-4722 and amendments thereto, on
9 postrelease supervision.

10 (C) (i) The sentencing judge shall impose the postrelease supervision
11 period provided in subparagraph (d)(1)(A) or (d)(1)(B), unless the judge
12 finds substantial and compelling reasons to impose a departure based
13 upon a finding that the current crime of conviction was sexually violent
14 or sexually motivated. In that event, departure may be imposed to extend
15 the postrelease supervision to a period of up to 60 months.

16 (ii) If the sentencing judge departs from the presumptive postrelease
17 supervision period, the judge shall state on the record at the time of
18 sentencing the substantial and compelling reasons for the departure. De-
19 partures in this section are subject to appeal pursuant to K.S.A. 21-4721
20 and amendments thereto.

21 (iii) In determining whether substantial and compelling reasons exist,
22 the court shall consider:

23 (a) Written briefs or oral arguments submitted by either the defen-
24 dant or the state;

25 (b) any evidence received during the proceeding;

26 (c) the presentence report, the victim's impact statement and any
27 psychological evaluation as ordered by the court pursuant to subsection
28 (e) of K.S.A. 21-4714 and amendments thereto; and

29 (d) any other evidence the court finds trustworthy and reliable.

30 (iv) The sentencing judge may order that a psychological evaluation
31 be prepared and the recommended programming be completed by the
32 offender. The department of corrections or the parole board shall ensure
33 that court ordered sex offender treatment be carried out.

34 (v) In carrying out the provisions of subparagraph (d)(1)(C), the court
35 shall refer to K.S.A. 21-4718 and amendments thereto.

36 (vi) Upon petition, the parole board may provide for early discharge
37 from the postrelease supervision period upon completion of court-or-
38 dered programs and completion of the presumptive postrelease super-
39 vision period, as determined by the crime of conviction, pursuant to sub-
40 paragraph (d)(1)(A) or (B). Early discharge from postrelease supervision
41 is at the discretion of the parole board.

42 (vii) Persons convicted of crimes deemed sexually violent or sexually
43 motivated, shall be registered according to the habitual sex offender reg-

1 stration act, K.S.A. 22-4901 through 22-4910 and amendments thereto,
2 (D) The period of postrelease supervision provided in subparagraphs
3 (A) and (B) may be reduced by up to 12 months based on the offender's
4 compliance with conditions of supervision and overall performance while
5 on postrelease supervision. The reduction in the supervision period shall
6 be on an earned basis pursuant to rules and regulations adopted by the
7 secretary of corrections.
8 (E) In cases where sentences for crimes from more than one severity
9 level have been imposed, the highest severity level offense will dictate
10 the period of postrelease supervision. Supervision periods will not aggregate.
11
12 (2) As used in this section, "sexually violent crime" means:
13 (A) Rape, K.S.A. 21-3502, and amendments thereto;
14 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
15 thereto;
16 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
17 amendments thereto;
18 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
19 and amendments thereto;
20 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
21 thereto;
22 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments
23 thereto;
24 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and
25 amendments thereto;
26 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments
27 thereto;
28 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments
29 thereto;
30 (J) any conviction for a felony offense in effect at any time prior to
31 the effective date of this act, that is comparable to a sexually violent crime
32 as defined in subparagraphs (A) through (I), or any federal or other state
33 conviction for a felony offense that under the laws of this state would be
34 a sexually violent crime as defined in this section;
35 (K) an attempt, conspiracy or criminal solicitation, as defined in
36 K.S.A. 21-3301, 21-3302, and 21-3303, and amendments thereto, of a
37 sexually violent crime as defined in this section; or
38 (L) any act which at the time of sentencing for the offense has been
39 determined beyond a reasonable doubt to have been sexually motivated.
40 As used in this subparagraph, "sexually motivated" means that one of the
41 purposes for which the defendant committed the crime was for the purpose
of the defendant's sexual gratification.
(e) If an inmate is sentenced to imprisonment for a crime committed

1 while on parole or conditional release, the inmate shall be eligible for
2 parole as provided by subsection (c), except that the Kansas parole board
3 may postpone the inmate's parole eligibility date by assessing a penalty
4 not exceeding the period of time which could have been assessed if the
5 inmate's parole or conditional release had been violated for reasons other
6 than conviction of a crime.

7 (f) If a person is sentenced to prison for a crime committed on or
8 after July 1, 1993, while on probation, parole, conditional release or in a
9 community corrections program, for a crime committed prior to July 1,
10 1993, and the person is not eligible for retroactive application of the
11 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
12 4724 and amendments thereto, the new sentence shall not be aggregated
13 with the old sentence, but shall begin when the person is paroled or
14 reaches the conditional release date on the old sentence. If the offender
15 was past the offender's conditional release date at the time the new of-
16 fense was committed, the new sentence shall not be aggregated with the
17 old sentence but shall begin when the person is ordered released by the
18 Kansas parole board or reaches the maximum sentence expiration date
19 on the old sentence, whichever is earlier. The new sentence shall then
20 be served as otherwise provided by law. The period of postrelease su-
21 pervision shall be based on the new sentence, except that those offenders
22 whose old sentence is a term of imprisonment for life, imposed pursuant
23 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate
24 sentence with a maximum term of life imprisonment, for which there is
25 no conditional release or maximum sentence expiration date, shall remain
26 on postrelease supervision for life or until discharged from supervision
27 by the Kansas parole board.

28 (g) Subject to the provisions of this section, the Kansas parole board
29 may release on parole those persons confined in institutions who are el-
30 igible for parole when: (1) The board believes that the inmate should be
31 released for hospitalization, for deportation or to answer the warrant or
32 other process of a court and is of the opinion that there is reasonable
33 probability that the inmate can be released without detriment to the com-
34 munity or to the inmate; or (2) the secretary of corrections has reported
35 to the board in writing that the inmate has satisfactorily completed the
36 programs required by any agreement entered under K.S.A. 75-5210a and
37 amendments thereto, or any revision of such agreement, and the board
38 believes that the inmate is able and willing to fulfill the obligations of a
39 law abiding citizen and is of the opinion that there is reasonable proba-
40 bility that the inmate can be released without detriment to the community
41 or to the inmate. Parole shall not be granted as an award of clemency and
42 shall not be considered a reduction of sentence or a pardon.

43 (h) The Kansas parole board shall hold a parole hearing during the

1 month prior to the month an inmate will be eligible for parole under
2 subsections (a), (b) and (c). At least the month preceding the parole hear-
3 ing, the county or district attorney of the county where the inmate was
4 convicted shall give written notice of the time and place of the public
5 comment sessions for the inmate to any victim of the inmate's crime who
6 is alive and whose address is known to the county or district attorney or,
7 if the victim is deceased, to the victim's family if the family's address is
8 known to the county or district attorney. Except as otherwise provided,
9 failure to notify pursuant to this section shall not be a reason to postpone
10 a parole hearing. In the case of any inmate convicted of a class A felony,
11 the secretary of corrections shall give written notice of the time and place
12 of the public comment session for such inmate at least one month pre-
13 ceding the public comment session to any victim of such inmate's crime
14 or the victim's family pursuant to K.S.A. 74-7338 and amendments
15 thereto. If notification is not given to such victim or such victim's family
16 in the case of any inmate convicted of a class A felony, the board shall
17 postpone a decision on parole of the inmate to a time at least 30 days
18 after notification is given as provided in this section. Nothing in this sec-
19 tion shall create a cause of action against the state or an employee of the
20 state acting within the scope of the employee's employment as a result
21 of the failure to notify pursuant to this section. If granted parole, the
22 inmate may be released on parole on the date specified by the board, but
23 not earlier than the date the inmate is eligible for parole under subsec-
24 tions (a), (b) and (c). At each parole hearing and, if parole is not granted,
25 at such intervals thereafter as it determines appropriate, the Kansas parole
26 board shall consider: (1) Whether the inmate has satisfactorily completed
27 the programs required by any agreement entered under K.S.A. 75-5210a
28 and amendments thereto, or any revision of such agreement; and (2) all
29 pertinent information regarding such inmate, including, but not limited
30 to, the circumstances of the offense of the inmate; the presentence report;
31 the previous social history and criminal record of the inmate; the conduct,
32 employment; and attitude of the inmate in prison; the reports of such
33 physical and mental examinations as have been made; comments of the
34 victim and the victim's family; comments of the public; official comments;
35 and capacity of state correctional institutions.

36 (i) In those cases involving inmates sentenced for a crime committed
37 after July 1, 1993, the parole board will review the inmates' proposed
38 release plan. The board may schedule a hearing if they desire. The board
39 may impose any condition they deem necessary to ~~insure~~ ensure public
40 safety, aid in the reintegration of the inmate into the community, or items
41 not completed under the agreement entered into under K.S.A. 75-5210a
42 and amendments thereto. The board may not advance or delay an in-
43 mate's release date. Every inmate while on postrelease supervision shall

1 remain in the legal custody of the secretary of corrections and is subject
2 to the orders of the secretary.

3 (j) Within a reasonable time after an inmate is committed to the cus-
4 tody of the secretary of corrections, a member of the Kansas parole board,
5 or a designee of the board, shall hold an initial informational hearing with
6 such inmate and other inmates.

7 (k) Before ordering the parole of any inmate, the Kansas parole board
8 shall have the inmate appear before it and shall interview the inmate
9 unless impractical because of the inmate's physical or mental condition
10 or absence from the institution. Every inmate while on parole shall remain
11 in the legal custody of the secretary of corrections and is subject to the
12 orders of the secretary. Whenever the Kansas parole board formally con-
13 siders placing an inmate on parole and no agreement has been entered
14 into with the inmate under K.S.A. 75-5210a and amendments thereto,
15 the board shall notify the inmate in writing of the reasons for not granting
16 parole. If an agreement has been entered under K.S.A. 75-5210a and
17 amendments thereto and the inmate has not satisfactorily completed the
18 programs specified in the agreement, or any revision of such agreement,
19 the board shall notify the inmate in writing of the specific programs the
20 inmate must satisfactorily complete before parole will be granted. If pa-
21 role is not granted only because of a failure to satisfactorily complete such
22 programs, the board shall grant parole upon the secretary's certification
23 that the inmate has successfully completed such programs. If an agree-
24 ment has been entered under K.S.A. 75-5210a and amendments thereto
25 and the secretary of corrections has reported to the board in writing that
26 the inmate has satisfactorily completed the programs required by such
27 agreement, or any revision thereof, the board shall not require further
28 program participation. However, if the board determines that other per-
29 tinent information regarding the inmate warrants the inmate's not being
30 released on parole, the board shall state in writing the reasons for not
31 granting the parole. If parole is denied for an inmate sentenced for a
32 crime other than a class A or class B felony or an off-grid felony, the
33 board shall hold another parole hearing for the inmate not later than one
34 year after the denial unless the parole board finds that it is not reasonable
35 to expect that parole would be granted at a hearing if held in the next
36 three years or during the interim period of a deferral. In such case, the
37 parole board may defer subsequent parole hearings for up to three years
38 but any such deferral by the board shall require the board to state the
39 basis for its findings. If parole is denied for an inmate sentenced for a
40 class A or class B felony or an off-grid felony, the board shall hold another
41 parole hearing for the inmate not later than three years after the denial
42 unless the parole board finds that it is not reasonable to expect that parole
43 would be granted at a hearing if held in the next 10 years or during the

1 interim period of a deferral. In such case, the parole board may defer
2 subsequent parole hearings for up to 10 years but any such deferral shall
3 require the board to state the basis for its findings.

4 (l) Parolees and persons on postrelease supervision shall be assigned,
5 upon release, to the appropriate level of supervision pursuant to the cri-
6 teria established by the secretary of corrections.

7 (m) The Kansas parole board shall adopt rules and regulations in
8 accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not in-
9 consistent with the law and as it ~~may deem~~ *deems* proper or necessary,
10 with respect to the conduct of parole hearings, postrelease supervision
11 reviews, revocation hearings, orders of restitution and other conditions to
12 be imposed upon parolees or releasees. Whenever an order for parole or
13 postrelease supervision is issued it shall recite the conditions thereof.

14 (n) Whenever the Kansas parole board orders the parole of an inmate
15 or establishes conditions for an inmate placed on postrelease supervision,
16 the board:

17 (1) Unless it finds compelling circumstances which would render a
18 plan of payment unworkable, shall order as a condition of parole or post-
19 release supervision that the parolee or the person on postrelease super-
20 vision pay any transportation expenses resulting from returning the pa-
21 rolee or the person on postrelease supervision to this state to answer
22 criminal charges or a warrant for a violation of a condition of probation,
23 assignment to a community correctional services program, parole, con-
24 ditional release or postrelease supervision;

25 (2) to the extent practicable, shall order as a condition of parole or
26 postrelease supervision that the parolee or the person on postrelease su-
27 pervision ~~make~~ *makes* progress ~~towards~~ *toward* or successfully ~~complete~~
28 *completes* the equivalent of a secondary education if the inmate has not
29 previously completed such educational equivalent and is capable of doing
30 so; and

31 (3) may order that the parolee or person on postrelease supervision
32 perform community or public service work for local governmental agen-
33 cies, private corporations organized not-for-profit or charitable or social
34 service organizations performing services for the community.

35 (o) If the court which sentenced an inmate specified at the time of
36 sentencing the amount and the recipient of any restitution ordered as a
37 condition of parole or postrelease supervision, the Kansas parole board
38 shall order as a condition of parole or postrelease supervision that the
39 inmate pay restitution in the amount and manner provided in the journal
40 entry unless the board finds compelling circumstances which would ren-
41 der a plan of restitution unworkable. If the parolee was sentenced before
42 July 1, 1986, and the court did not specify at the time of sentencing the
amount and the recipient of any restitution ordered as a condition of

2-11

1 parole, the parole board shall order as a condition of parole that the
 2 parolee make restitution for the damage or loss caused by the parolee's
 3 crime in an amount and manner determined by the board unless the
 4 board finds compelling circumstances which would render a plan of res-
 5 titution unworkable. If the parolee was sentenced on or after July 1, 1986,
 6 and the court did not specify at the time of sentencing the amount and
 7 the recipient of any restitution ordered as a condition of parole or post-
 8 release supervision, the parole board shall not order restitution as a con-
 9 dition of parole or postrelease supervision unless the board finds com-
 10 pelling circumstances which justify such an order.

11 (p) Whenever the Kansas parole board grants the parole of an inmate,
 12 the board, within 10 days of the date of the decision to grant parole, shall
 13 give written notice of the decision to the county or district attorney of the
 14 county where the inmate was sentenced.

15 (q) When an inmate is to be released on postrelease supervision, the
 16 secretary, within 30 days prior to release, shall provide the county or
 17 district attorney of the county where the inmate was sentenced written
 18 notice of the release date.

19 (r) Inmates shall be released on postrelease supervision upon the ter-
 20 mination of the prison portion of their sentence. Time served while on
 21 postrelease supervision will vest.

22 (s) An inmate who is allocated regular good time credits as provided
 23 in K.S.A. 22-3725 and amendments thereto may receive meritorious good
 24 time credits in increments of not more than 90 days per meritorious act.
 25 These credits may be awarded by the secretary of corrections when an
 26 inmate has acted in a heroic or outstanding manner in coming to the
 27 assistance of another person in a life threatening situation, preventing
 28 injury or death to a person, preventing the destruction of property or
 29 taking actions which result in a financial savings to the state.

30 Sec. 5. K.S.A. ~~1996~~ Supp. 65-4159 is hereby amended to read as
 31 follows: 65-4159. (a) Except as authorized by the uniform controlled sub-
 32 stances act, it shall be unlawful for any person to manufacture any con-
 33 trolled substance or controlled substance analog.

34 (b) *Except as otherwise provided*, any person violating the provisions
 35 of this section with respect to the unlawful manufacturing or attempting
 36 to unlawfully manufacture any controlled substance or controlled sub-
 37 stance analog, upon conviction, is guilty of:

- 38 (1) A drug severity level 2 felony upon conviction for a first offense;
- 39 (2) a drug severity level 1 felony upon conviction for a second offense
- 40 or subsequent offense and the sentence for which shall not be subject to
- 41 statutory provisions for suspended sentence, community work service, or
- probation.

(c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-

See attachment

1997

Sec. 3. K.S. 1997 Supp. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

SENTENCING RANGE - DRUG OFFENSES

Category	A			B		C		D		E		F		G		H		I									
Severity Level	3 Person Felonies			2 Person Felonies		1 Person & 1 Nonperson Felonies		1 Person Felony		3 Nonperson Felonies		2 Nonperson Felonies		1 Nonperson Felony		2 Misdemeanors		1 Misdemeanor No Record									
I	204	194	185	196	186	176	187	178	169	179	170	161	170	162	154	167	158	150	162	154	146	161	150	142	154	146	138
II	83	78	74	77	73	68	72	68	65	68	64	60	62	59	55	59	56	52	57	54	51	54	51	49	51	49	46
III	51	49	46	47	44	41	42	40	37	36	34	32	32	30	28	26	24	23	23	22	20	20	19	17	18	17	16
IV	42	40	37	36	34	32	32	30	28	26	24	23	23	20	18	18	17	16	16	15	14	14	13	12	12	11	10

LEGEND
Presumptive Probation
(diagonal lines)
Presumptive Imprisonment

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place places such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F shall not be considered a departure and shall not be subject to appeal.

(e) The sentence for a violation of subsection (e) of K.S.A. 65-4159, subsection (g) of K.S.A. 1997 Supp. 65-4161 and subsection (e) of K.S.A. 1997 Supp. 65-4163, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A 21-4708, and amendments thereto.

Sec. 4. K.S. , 1997 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A. 1993 Supp. 21-4628 prior to its repeal and, K.S.A. 21-4635 through 21-4638 and section 2 and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402 and amendments thereto committed on or after July 1, 1996, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(c) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime--and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 crimes must serve 36 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 24 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(C) (i) The sentencing judge shall impose the postrelease

supervision period provided in subparagraph (d)(1)(A) or (d)(1)(B), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually violent or sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721 and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714 and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(C), the court shall refer to K.S.A. 21-4718 and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A) or (B). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the habitual sex offender registration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.

(D) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(E) In cases where sentences for crimes from more than one severity level have been imposed, the highest severity level offense will dictate the period of postrelease supervision. Supervision periods will not aggregate.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (A) through (I), or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302, and 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(L) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724 and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence

expiration date, all remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal

record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the victim and the victim's family; comments of the public; official comments; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to ~~insure~~ ensure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three

years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may ~~deem~~ deems proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision ~~make~~ makes progress ~~towards~~ toward or successfully ~~complete~~ completes the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 1997 Supp. 22-4529 unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the

amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522 and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

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1 ments thereto, shall not apply to a violation of attempting to unlawfully
2 manufacture any controlled substance pursuant to this section.

3 (d) Notwithstanding any other provision of law, upon conviction of
4 any person for violating subsection (a), such person shall be guilty of a
5 drug severity level 1 felony if such person is 18 or more years of age and
6 the substances involved were manufactured within 1,000 feet of any
7 school property upon which is located a structure used by a unified school
8 district or an accredited nonpublic school for student instruction or at-
9 tendance or extracurricular activities of pupils enrolled in kindergarten
10 or any of the grades one through 12.

11 Nothing in this subsection shall be construed as requiring that school
12 be in session or that classes are actually being held at the time of the
13 offense or that children must be present within the structure or on the
14 property during the time of any alleged criminal act. If the structure or
15 property meets the description above, the actual use of that structure or
16 property at the time alleged shall not be a defense to the crime charged
17 or the sentence imposed.

18 (e) Notwithstanding any other provision of law, upon conviction of
19 any person for violating subsection (a) in which the substances involved
20 were equal to or greater than the amounts for such substances as specified
21 in section 1, and amendments thereto, the person shall be sentenced to
22 imprisonment for life pursuant to section 2, and amendments thereto.

23 Sec. 6. K.S.A. ~~1996~~ Supp. 65-4161 is hereby amended to read as
24 follows: 65-4161. (a) Except as otherwise provided or as authorized by
25 the uniform controlled substances act, it shall be unlawful for any person
26 to sell, offer for sale or have in such person's possession with intent to
27 sell, deliver or distribute; prescribe; administer; deliver; distribute; dis-
28 pense or compound any opiates, opium or narcotic drugs, or any stimulant
29 designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and
30 amendments thereto. Except as provided in subsections (b), (c) and (d),
31 any person who violates this subsection shall be guilty of a drug severity
32 level 3 felony.

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33 (b) If any person who violates this section has one prior conviction
34 under this section or a conviction for a substantially similar offense from
35 another jurisdiction, then that person shall be guilty of a drug severity
36 level 2 felony.

37 (c) If any person who violates this section has two or more prior
38 convictions under this section or substantially similar offenses under the
39 laws of another jurisdiction, then such person shall be guilty of a drug
40 severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of
any person for a first offense pursuant to subsection (a), such person shall
be guilty of a drug severity level 2 felony if such person is 18 or more

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1 years of age and the substances involved were possessed with intent to
2 sell, deliver or distribute; sold or offered for sale in or on, or within 1,000
3 feet of any school property upon which is located a structure used by a
4 unified school district or an accredited nonpublic school for student in-
5 struction or attendance or extracurricular activities of pupils enrolled in
6 kindergarten or any of the grades one through 12.

7 Nothing in this subsection shall be construed as requiring that school
8 be in session or that classes are actually being held at the time of the
9 offense or that children must be present within the structure or on the
10 property during the time of any alleged criminal act. If the structure or
11 property meets the description above, the actual use of that structure or
12 property at the time alleged shall not be a defense to the crime charged
13 or the sentence imposed.

14 (e) It shall not be a defense to charges arising under this section that
15 the defendant was acting in an agency relationship on behalf of any other
16 party in a transaction involving a controlled substance.

17 (f) For purposes of the uniform controlled substances act, the pro-
18 hibitions contained in this section shall apply to controlled substance an-
19 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
20 thereto.

21 (g) Notwithstanding any other provision of law, upon conviction of
22 any person for violating subsection (a) in which the substances involved
23 were equal to or greater than the amounts for such substances as specified
24 in section 1, and amendments thereto, the person shall be sentenced to
25 imprisonment for life pursuant to section 2, and amendments thereto.

26 (h) The provisions of this section shall be part of and supplemental
27 to the uniform controlled substances act.

28 Sec. 7. K.S.A. ~~1996~~ Supp. 65-4163 is hereby amended to read as
29 follows: 65-4163. (a) Except as otherwise provided or as authorized by
30 the uniform controlled substances act, it shall be unlawful for any person
31 to sell, offer for sale or have in such person's possession with the intent
32 to sell, deliver or distribute; cultivate; prescribe; administer; deliver; dis-
33 tribute; dispense or compound:

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

37 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
38 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
39 65-4109, and amendments thereto;

40 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
41 4105, and amendments thereto or designated in subsection (g) of K.S.A.
65-4107 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and

23

1 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)
2 of K.S.A. 65-4111, and amendments thereto; or

3 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
4 4109, and amendments thereto.

5 Except as provided in subsection (b), any person who violates this sub-
6 section shall be guilty of a drug severity level 3 felony.

7 (b) Notwithstanding any other provision of law, upon conviction of
8 any person pursuant to subsection (a) for an offense in which the sub-
9 stances involved were possessed with intent to sell, sold or offered for
10 sale in or on, or within 1,000 feet of any school property upon which is
11 located a structure used by a unified school district or an accredited non-
12 public school for student instruction or attendance or extracurricular ac-
13 tivities of pupils enrolled in kindergarten or any of the grades one through
14 12 and such person is 18 or more years of age, such person shall be guilty
15 of a drug severity level 2 felony.

16 Nothing in this subsection shall be construed as requiring that school
17 be in session or that classes are actually being held at the time of the
18 offense or that children must be present within the structure or on the
19 property during the time of any alleged criminal act. If the structure or
20 property meets the description above, the actual use of that structure or
21 property at the time alleged shall not be a defense to the crime charged
22 or the sentence imposed.

23 (c) It shall not be a defense to charges arising under this section that
24 the defendant was acting in an agency relationship on behalf of any other
25 party in a transaction involving a controlled substance.

26 (d) For purposes of the uniform controlled substances act, the pro-
27 hibitions contained in this section shall apply to controlled substance an-
28 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
29 thereto.

30 (e) *Notwithstanding any other provision of law, upon conviction of*
31 *any person for violating subsection (a) in which the substances involved*
32 *were equal to or greater than the amounts for such substances as specified*
33 *in section 1, and amendments thereto, the person shall be sentenced to*
34 *imprisonment for life pursuant to section 2, and amendments thereto.*

35 (f) The provisions of this section shall be part of and supplemental
36 to the uniform controlled substances act.

37 Sec. 8. K.S.A. ~~1996~~ Supp. 21-4705, 22-3717, 65-4159, 65-4161 and
38 65-4163 are hereby repealed.

39 Sec. 9. This act shall take effect and be in force from and after its
40 publication in the statute book.

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House Judiciary
2-2-98
Attachment 3

SENATE BILL No. 9

By Special Committee on Judiciary

12-17

amending K.S.A. 17-2708, 56-1a604 and 60-2313 and K.S.A. 1997 Supp. 17-5903, 47-816 and 58-3062 and repealing the existing sections; also

56-347

10 AN ACT enacting the uniform partnership act (1994); repealing K.S.A.
11 56-301 through [56-344]

12
13 *Be it enacted by the Legislature of the State of Kansas:*

Section 1. (UPA 101). In this act:

- 15 (a) "Business" includes every trade, occupation, and profession.
- 16 (b) "Debtor in bankruptcy" means a person who is the subject of:
 - 17 (1) An order for relief under title 11 of the United States code or a
 - 18 comparable order under a successor statute of general application; or
 - 19 (2) a comparable order under federal, state, or foreign law governing
 - 20 insolvency.
- 21 (c) "Distribution" means a transfer of money or other property from
- 22 a partnership to a partner in the partner's capacity as a partner or to the
- 23 partner's transferee.
- 24 (d) "*Foreign limited liability partnership*" means a partnership
- 25 that:
 - 26 (1) *Is formed under laws other than the laws of this state; and*
 - 27 (2) *has the status of a limited liability partnership under those*
 - 28 *laws.*
- 29 (e) "*Limited liability partnership*" means a partnership that has
- 30 *filed a statement of qualification under section 53 and does not have*
- 31 *a similar statement in effect in any other jurisdiction.*
- 32 (d) (f) "Partnership" means an association of two or more persons to
- 33 carry on as co-owners a business for profit formed under section 9, pred-
- 34 ecessor law, or comparable law of another jurisdiction.
- 35 (e) (g) "Partnership agreement" means the agreement, whether writ-
- 36 ten, oral, or implied, among the partners concerning the partnership,
- 37 including amendments to the partnership agreement.
- 38 (f) (h) "Partnership at will" means a partnership in which the partners
- 39 have not agreed to remain partners until the expiration of a definite term
- 40 or the completion of a particular undertaking.
- 41 (g) (i) "Partnership interest" or "partner's interest in the partnership"
- 42 means all of a partner's interests in the partnership, including the part-
- ner's transferable interest and all management and other rights.

1 (h) (j) "Person" means an individual, corporation, business trust, es-
 2 tate, trust, partnership, association, joint venture, government, govern-
 3 mental subdivision, agency, or instrumentality, or any other legal or com-
 4 mercial entity.

5 (h) (k) "Property" means all property, real, personal, or mixed, tan-
 6 gible or intangible, or any interest therein.

7 (h) (l) "State" means a state of the United States, the District of Co-
 8 lumbia, the commonwealth of Puerto Rico, or any territory or insular
 9 possession subject to the jurisdiction of the United States.

10 (h) (m) "Statement" means a statement of partnership authority un-
 11 der section 14, a statement of denial under section 15, a statement of
 12 dissociation under section 36, a statement of dissolution under section
 13 42, a statement of merger under section 51, *a statement of qualification*
 14 *under section 53, a statement of foreign qualification under section*
 15 *57* or an amendment or cancellation of any of the foregoing.

16 (h) (n) "Transfer" includes an assignment, conveyance, lease, mort-
 17 gage, deed, and encumbrance.

18 Sec. 2. (UPA 102). (a) A person knows a fact if the person has ac-
 19 tual knowledge of it.

20 (b) A person has notice of a fact if the person:

21 (1) Knows of it;

22 (2) has received a notification of it; or

23 (3) has reason to know it exists from all of the facts known to the
 24 person at the time in question.

25 (c) A person notifies or gives a notification to another by taking steps
 26 reasonably required to inform the other person in ordinary course,
 27 whether or not the other person learns of it.

28 (d) A person receives a notification when the notification:

29 (1) Comes to the person's attention; or

30 (2) is duly delivered at the person's place of business or at any other
 31 place held out by the person as a place for receiving communications.

32 (e) Except as otherwise provided in subsection (f), a person other
 33 than an individual knows, has notice, or receives a notification of a fact
 34 for purposes of a particular transaction when the individual conducting
 35 the transaction knows, has notice, or receives a notification of the fact, or
 36 in any event when the fact would have been brought to the individual's
 37 attention if the person had exercised reasonable diligence. The person
 38 exercises reasonable diligence if it maintains reasonable routines for com-
 39 municating significant information to the individual conducting the trans-
 40 action and there is reasonable compliance with the routines. Reasonable
 41 diligence does not require an individual acting for the person to com-
 42 municate information unless the communication is part of the individual's
 43 regular duties or the individual has reason to know of the transaction and

that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Sec. 3. (UPA 103). (a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under section 5 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict the right of access to books and records under subsection (b) of section 22;

(3) eliminate the duty of loyalty under subsection (b) of section 23 or subsection (b)(3) section of 32, but:

(i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) all of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) unreasonably reduce the duty of care under subsection (c) of section 23 or subsection (b)(3) of section 32;

(5) eliminate the obligation of good faith and fair dealing under subsection (d) of section 23, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) vary the power to dissociate as a partner under subsection (a) of section 31, except to require the notice under subsection (a) of section 30 to be in writing;

(7) vary the right of a court to expel a partner in the events specified in subsection (e) of section 30;

(8) vary the requirement to wind up the partnership business in cases specified in subsection (4), (5) or (6) of section 38; or

(9) vary the law applicable to a limited liability partnership under subsection (b) of section 6; or

(10) restrict rights of third parties under this act.

Sec. 4. (UPA 104). (a) Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

1 (b) If an obligation to pay interest arises under this act and the rate
2 is not specified, the rate is that specified in applicable statute.

3 Sec. 5. (UPA 105). (a) A statement may be filed in the office of the
4 secretary of state. A certified copy of a statement that is filed in an office
5 in another state may be filed in the office of the secretary of state. Either
6 filing has the effect provided in this act with respect to partnership prop-
7 erty located in or transactions that occur in this state.

8 (b) A certified copy of a statement that has been filed in the office
9 of the secretary of state and recorded in the office for recording transfers
10 of real property has the effect provided for recorded statements in this
11 act. A recorded statement that is not a certified copy of a statement filed
12 in the office of the secretary of state does not have the effect provided
13 for recorded statements in this act.

14 (c) A statement filed by a partnership must be executed by at least
15 two partners. Other statements must be executed by a partner or other
16 person authorized by this act. An individual who executes a statement as,
17 or on behalf of, a partner or other person named as a partner in a state-
18 ment shall personally declare under penalty of perjury that the contents
19 of the statement are accurate.

20 (d) A person authorized by this act to file a statement may amend or
21 cancel the statement by filing an amendment or cancellation that names
22 the partnership, identifies the statement, and states the substance of the
23 amendment or cancellation.

24 (e) A person who files a statement pursuant to this section shall
25 promptly send a copy of the statement to every nonfiling partner and to
26 any other person named as a partner in the statement. Failure to send a
27 copy of a statement to a partner or other person does not limit the ef-
28 fectiveness of the statement as to a person not a partner.

29 (f) The secretary of state may collect a fee for filing or providing a
30 certified copy of a statement. The officer responsible for recording trans-
31 fers of real property may collect a fee for recording a statement.

32 (g) The secretary of state shall set by rules and regulations any fees
33 provided by this act.

34 Sec. 6. (UPA 106). *The (a) Except as otherwise provided in sub-*
35 *section (b), the law of the jurisdiction in which a partnership has its chief*
36 *executive principal office governs relations among the partners and be-*
37 *tween the partners and the partnership.*

38 *(b) The law of this state governs relations among the partners*
39 *and between the partners and the partnership and the liability of*
40 *partners for an obligation of a limited liability partnership.*

41 Sec. 7. (UPA 107). A partnership governed by this act is subject to
42 any amendment to or repeal of this act.

Sec. 8. (UPA 201). (a) A partnership is an entity distinct from its

partners.

2 (b) *A limited liability partnership continues to be the same en-*
 3 *tity that existed before the filing of a statement of qualification un-*
 4 *der section 53.*

5 Sec. 9. (UPA 202). (a) Except as otherwise provided in subsection
 6 (b), the association of two or more persons to carry on as co-owners a
 7 business for profit forms a partnership, whether or not the persons intend
 8 to form a partnership.

9 (b) An association formed under a statute other than this act, a pred-
 10 ecessor statute, or a comparable statute of another jurisdiction is not a
 11 partnership under this act.

12 (c) In determining whether a partnership is formed, the following
 13 rules apply:

14 (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint
 15 property, common property, or part ownership does not by itself establish
 16 a partnership, even if the co-owners share profits made by the use of the
 17 property.

18 (2) The sharing of gross returns does not by itself establish a part-
 19 nership, even if the persons sharing them have a joint or common right
 20 or interest in property from which the returns are derived.

21 (3) A person who receives a share of the profits of a business is pre-
 22 sumed to be a partner in the business, unless the profits were received
 23 in payment:

24 (i) Of a debt by installments or otherwise;

25 (ii) for services as an independent contractor or of wages or other
 26 compensation to an employee;

27 (iii) of rent;

28 (iv) of an annuity or other retirement or health benefit to a benefi-
 ciary, representative, or designee of a deceased or retired partner;

29 (v) of interest or other charge on a loan, even if the amount of pay-
 30 ment varies with the profits of the business, including a direct or indirect
 31 present or future ownership of the collateral, or rights to income, pro-
 32 ceeds, or increase in value derived from the collateral; or

33 (vi) for the sale of the goodwill of a business or other property by
 34 installments or otherwise.

35 Sec. 10. (UPA 203). Property acquired by a partnership is property
 36 of the partnership and not of the partners individually.

37 Sec. 11. (UPA 204). (a) Property is partnership property if ac-
 38 quired in the name of:

39 (1) The partnership; or

40 (2) one or more partners with an indication in the instrument trans-
 41 ferring title to the property of the person's capacity as a partner or of the
 existence of a partnership but without an indication of the name of the

1 partnership.

2 (b) Property is acquired in the name of the partnership by a transfer
3 to:

4 (1) The partnership in its name; or

5 (2) one or more partners in their capacity as partners in the partner-
6 ship, if the name of the partnership is indicated in the instrument trans-
7 ferring title to the property.

8 (c) Property is presumed to be partnership property if purchased with
9 partnership assets, even if not acquired in the name of the partnership
10 or of one or more partners with an indication in the instrument transfer-
11 ring title to the property of the person's capacity as a partner or of the
12 existence of a partnership.

13 (d) Property acquired in the name of one or more of the partners,
14 without an indication in the instrument transferring title to the property
15 of the person's capacity as a partner or of the existence of a partnership
16 and without use of partnership assets, is presumed to be separate prop-
17 erty, even if used for partnership purposes.

18 Sec. 12. (UPA 301). Subject to the effect of a statement of part-
19 nership authority under section 14:

20 (a) Each partner is an agent of the partnership for the purpose of its
21 business. An act of a partner, including the execution of an instrument in
22 the partnership name, for apparently carrying on in the ordinary course
23 the partnership business or business of the kind carried on by the part-
24 nership binds the partnership, unless the partner had no authority to act
25 for the partnership in the particular matter and the person with whom
26 the partner was dealing knew or had received a notification that the part-
27 ner lacked authority.

28 (b) An act of a partner which is not apparently for carrying on in the
29 ordinary course the partnership business or business of the kind carried
30 on by the partnership binds the partnership only if the act was authorized
31 by the other partners.

32 Sec. 13. (UPA 302). (a) Partnership property may be transferred as
33 follows:

34 (1) Subject to the effect of a statement of partnership authority under
35 section 14, partnership property held in the name of the partnership may
36 be transferred by an instrument of transfer executed by a partner in the
37 partnership name.

38 (2) Partnership property held in the name of one or more partners
39 with an indication in the instrument transferring the property to them of
40 their capacity as partners or of the existence of a partnership, but without
41 an indication of the name of the partnership, may be transferred by an
42 instrument of transfer executed by the persons in whose name the prop-
3 erty is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 12 and:

(1) As to a subsequent transferee who gave value for property transferred under subsection (a)(1) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Sec. 14. (UPA 303). (a) A partnership may file a statement of partnership authority, which:

(1) Must include:

(i) The name of the partnership;

(ii) the street address of its chief executive *principal* office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause

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1 shown.

2 (c) If a filed statement of partnership authority is executed pursuant
3 to subsection (c) of section 5 and states the name of the partnership but
4 does not contain all of the other information required by subsection (a),
5 the statement nevertheless operates with respect to a person not a partner
6 as provided in subsections (d) and (e).

7 (d) Except as otherwise provided in subsection (g), a filed statement
8 of partnership authority supplements the authority of a partner to enter
9 into transactions on behalf of the partnership as follows:

10 (1) Except for transfers of real property, a grant of authority con-
11 tained in a filed statement of partnership authority is conclusive in favor
12 of a person who gives value without knowledge to the contrary, so long
13 as and to the extent that a limitation on that authority is not then contained
14 in another filed statement. A filed cancellation of a limitation on authority
15 revives the previous grant of authority.

16 (2) A grant of authority to transfer real property held in the name of
17 the partnership contained in a certified copy of a filed statement of part-
18 nership authority recorded in the office for recording transfers of that
19 real property is conclusive in favor of a person who gives value without
20 knowledge to the contrary, so long as and to the extent that a certified
21 copy of a filed statement containing a limitation on that authority is not
22 then of record in the office for recording transfers of that real property.
23 The recording in the office for recording transfers of that real property
24 of a certified copy of a filed cancellation of a limitation on authority revives
25 the previous grant of authority.

26 (e) A person not a partner is deemed to know of a limitation on the
27 authority of a partner to transfer real property held in the name of the
28 partnership if a certified copy of the filed statement containing the limi-
29 tation on authority is of record in the office for recording transfers of that
30 real property.

31 (f) Except as otherwise provided in subsections (d) and (e) and sec-
32 tions 36 and 42, a person not a partner is not deemed to know of a
33 limitation on the authority of a partner merely because the limitation is
34 contained in a filed statement.

35 (g) Unless earlier canceled, a filed statement of partnership authority
36 is canceled by operation of law five years after the date on which the
37 statement, or the most recent amendment, was filed with the secretary
38 of state.

39 Sec. 15. (UPA 304). A partner or other person named as a partner
40 in a filed statement of partnership authority or in a list maintained by an
41 agent pursuant to subsection (b) of section 14 may file a statement of
42 denial stating the name of the partnership and the fact that is being de-
43 nied, which may include denial of a person's authority or status as a part-

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1 ner. A statement of denial is a limitation on authority as provided in
2 subsections (d) and (e) of section 14.

3 Sec. 16. (UPA 305). (a) A partnership is liable for loss or injury
4 caused to a person, or for a penalty incurred, as a result of a wrongful act
5 or omission, or other actionable conduct, of a partner acting in the or-
6 dinary course of business of the partnership or with authority of the part-
7 nership.

8 (b) If, in the course of the partnership's business or while acting with
9 authority of the partnership, a partner receives or causes the partnership
10 to receive money or property of a person not a partner, and the money
11 or property is misapplied by a partner, the partnership is liable for the
12 loss.

13 Sec. 17. (UPA 306). (a) Except as otherwise provided in subsection
14 subsections (b) and (c), all partners are liable jointly and severally for
15 all obligations of the partnership unless otherwise agreed by the claimant
16 or provided by law.

17 (b) A person admitted as a partner into an existing partnership is not
18 personally liable for any partnership obligation incurred before the per-
19 son's admission as a partner.

20 (c) *An obligation of a partnership incurred while the partner-
21 ship is a limited liability partnership, whether arising in contract,
22 tort, or otherwise, is solely the obligation of the partnership. A part-
23 ner is not personally liable, directly or indirectly, by way of con-
24 tribution or otherwise, for such a partnership obligation solely by
25 reason of being or so acting as a partner. This subsection applies
26 notwithstanding anything inconsistent in the partnership agreement
27 that existed immediately before the vote required to become a lim-
28 ited liability partnership under subsection (b) of section 53.*

29 Sec. 18. (UPA 307). (a) A partnership may sue and be sued in the
30 name of the partnership.

31 (b) An action may be brought against the partnership and, *to the*
32 *extent not inconsistent with section 17 and amendments thereto*, any
33 or all of the partners in the same action or in separate actions.

34 (c) A judgment against a partnership is not by itself a judgment
35 against a partner. A judgment against a partnership may not be satisfied
36 from a partner's assets unless there is also a judgment against the partner.

37 (d) A judgment creditor of a partner may not levy execution against
38 the assets of the partner to satisfy a judgment based on a claim against
39 the partnership unless *the partner is personally liable for the claim*
40 *under section 17 and amendments thereto and:*

41 (1) A judgment based on the same claim has been obtained against
the partnership and a writ of execution on the judgment has been re-
turned unsatisfied in whole or in part;

- 1 (2) the partnership is a debtor in bankruptcy;
2 (3) the partner has agreed that the creditor need not exhaust part-
3 nership assets;
4 (4) a court grants permission to the judgment creditor to levy exe-
5 cution against the assets of a partner based on a finding that partnership
6 assets subject to execution are clearly insufficient to satisfy the judgment,
7 that exhaustion of partnership assets is excessively burdensome, or that
8 the grant of permission is an appropriate exercise of the court's equitable
9 powers; or

10 (5) liability is imposed on the partner by law or contract independent
11 of the existence of the partnership.

12 (e) This section applies to any partnership liability or obligation re-
13 sulting from a representation by a partner or purported partner under
14 section 19.

15 Sec. 19. (UPA 308). (a) If a person, by words or conduct, purports
16 to be a partner, or consents to being represented by another as a partner,
17 in a partnership or with one or more persons not partners, the purported
18 partner is liable to a person to whom the representation is made, if that
19 person, relying on the representation, enters into a transaction with the
20 actual or purported partnership. If the representation, either by the pur-
21 ported partner or by a person with the purported partner's consent, is
22 made in a public manner, the purported partner is liable to a person who
23 relies upon the purported partnership even if the purported partner is
24 not aware of being held out as a partner to the claimant. If partnership
25 liability results, the purported partner is liable with respect to that liability
26 as if the purported partner were a partner. If no partnership liability
27 results, the purported partner is liable with respect to that liability jointly
28 and severally with any other person consenting to the representation.

29 (b) If a person is thus represented to be a partner in an existing
30 partnership, or with one or more persons not partners, the purported
31 partner is an agent of persons consenting to the representation to bind
32 them to the same extent and in the same manner as if the purported
33 partner were a partner, with respect to persons who enter into transac-
34 tions in reliance upon the representation. If all of the partners of the
35 existing partnership consent to the representation, a partnership act or
36 obligation results. If fewer than all of the partners of the existing part-
37 nership consent to the representation, the person acting and the partners
38 consenting to the representation are jointly and severally liable.

39 (c) A person is not liable as a partner merely because the person is
40 named by another in a statement of partnership authority.

41 (d) A person does not continue to be liable as a partner merely be-
42 cause of a failure to file a statement of dissociation or to amend a state-
43 ment of partnership authority to indicate the partner's dissociation from

the partnership.

(e) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

Sec. 20. (UPA 401). (a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to

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1 other persons under section 12.

2 Sec. 21. (UPA 402). A partner has no right to receive, and may not
3 be required to accept, a distribution in kind.

4 Sec. 22. (UPA 403). (a) A partnership shall keep its books and re-
5 cords, if any, at its chief executive *principal* office.

6 (b) A partnership shall provide partners and their agents and attor-
7 neys access to its books and records. It shall provide former partners and
8 their agents and attorneys access to books and records pertaining to the
9 period during which they were partners. The right of access provides the
10 opportunity to inspect and copy books and records during ordinary busi-
11 ness hours. A partnership may impose a reasonable charge, covering the
12 costs of labor and material, for copies of documents furnished.

13 (c) Each partner and the partnership shall furnish to a partner, and
14 to the legal representative of a deceased partner or partner under legal
15 disability:

16 (1) Without demand, any information concerning the partnership's
17 business and affairs reasonably required for the proper exercise of the
18 partner's rights and duties under the partnership agreement or this act;
19 and

20 (2) on demand, any other information concerning the partnership's
21 business and affairs, except to the extent the demand or the information
22 demanded is unreasonable or otherwise improper under the circum-
23 stances.

24 Sec. 23. (UPA 404). (a) The only fiduciary duties a partner owes to
25 the partnership and the other partners are the duty of loyalty and the
26 duty of care set forth in subsections (b) and (c).

27 (b) A partner's duty of loyalty to the partnership and the other part-
28 ners is limited to the following:

29 (1) To account to the partnership and hold as trustee for it any prop-
30 erty, profit, or benefit derived by the partner in the conduct and winding
31 up of the partnership business or derived from a use by the partner of
32 partnership property, including the appropriation of a partnership op-
33 portunity;

34 (2) to refrain from dealing with the partnership in the conduct or
35 winding up of the partnership business as or on behalf of a party having
36 an interest adverse to the partnership; and

37 (3) to refrain from competing with the partnership in the conduct of
38 the partnership business before the dissolution of the partnership.

39 (c) A partner's duty of care to the partnership and the other partners
40 in the conduct and winding up of the partnership business is limited to
41 refraining from engaging in grossly negligent or reckless conduct, inten-
42 tional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the

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other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Sec. 24. (UPA 405). (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) enforce the partner's rights under this act, including:

(i) The partner's rights under sections 20, 22 or 23;

(ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 33 or enforce any other right under article 6 or 7; or

(iii) the partner's right to compel a dissolution and winding up of the partnership business under section 38 or enforce any other right under article 8; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Sec. 25. (UPA 406). (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have

1 agreed that the partnership will continue.

2 Sec. 26. (UPA 501). A partner is not a co-owner of partnership
3 property and has no interest in partnership property which can be trans-
4 ferred, either voluntarily or involuntarily.

5 Sec. 27. (UPA 502). The only transferable interest of a partner in
6 the partnership is the partner's share of the profits and losses of the
7 partnership and the partner's right to receive distributions. The interest
8 is personal property.

9 Sec. 28. (UPA 503). (a) A transfer, in whole or in part, of a partner's
10 transferable interest in the partnership:

11 (1) Is permissible;

12 (2) does not by itself cause the partner's dissociation or a dissolution
13 and winding up of the partnership business; and

14 (3) does not, as against the other partners or the partnership, entitle
15 the transferee, during the continuance of the partnership, to participate
16 in the management or conduct of the partnership business, to require
17 access to information concerning partnership transactions, or to inspect
18 or copy the partnership books or records.

19 (b) A transferee of a partner's transferable interest in the partnership
20 has a right:

21 (1) To receive, in accordance with the transfer, distributions to which
22 the transferor would otherwise be entitled;

23 (2) to receive upon the dissolution and winding up of the partnership
24 business, in accordance with the transfer, the net amount otherwise dis-
25 tributable to the transferor; and

26 (3) to seek under subsection (6) of section 38 a judicial determination
27 that it is equitable to wind up the partnership business.

28 (c) In a dissolution and winding up, a transferee is entitled to an
29 account of partnership transactions only from the date of the latest ac-
30 count agreed to by all of the partners.

31 (d) Upon transfer, the transferor retains the rights and duties of a
32 partner other than the interest in distributions transferred.

33 (e) A partnership need not give effect to a transferee's rights under
34 this section until it has notice of the transfer.

35 (f) A transfer of a partner's transferable interest in the partnership in
36 violation of a restriction on transfer contained in the partnership agree-
37 ment is ineffective as to a person having notice of the restriction at the
38 time of transfer.

39 Sec. 29. (UPA 504). (a) On application by a judgment creditor of
40 a partner or of a partner's transferee, a court having jurisdiction may
41 charge the transferable interest of the judgment debtor to satisfy the
42 judgment. The court may appoint a receiver of the share of the distri-
43 butions due or to become due to the judgment debtor in respect of the

1 partnership and make all other orders, directions, accounts, and inquiries
2 the judgment debtor might have made or which the circumstances of the
3 case may require.

4 (b) A charging order constitutes a lien on the judgment debtor's
5 transferable interest in the partnership. The court may order a foreclosure
6 of the interest subject to the charging order at any time. The purchaser
7 at the foreclosure sale has the rights of a transferee.

8 (c) At any time before foreclosure, an interest charged may be re-
9 deemed:

10 (1) By the judgment debtor;

11 (2) with property other than partnership property, by one or more of
12 the other partners; or

13 (3) with partnership property, by one or more of the other partners
14 with the consent of all of the partners whose interests are not so charged.

15 (d) This act does not deprive a partner of a right under exemption
16 laws with respect to the partner's interest in the partnership.

17 (e) This section provides the exclusive remedy by which a judgment
18 creditor of a partner or partner's transferee may satisfy a judgment out
19 of the judgment debtor's transferable interest in the partnership.

20 Sec. 30. (UPA 601). A partner is dissociated from a partnership
21 upon the occurrence of any of the following events:

22 (a) The partnership's having notice of the partner's express will to
23 withdraw as a partner or on a later date specified by the partner;

24 (b) an event agreed to in the partnership agreement as causing the
25 partner's dissociation;

26 (c) the partner's expulsion pursuant to the partnership agreement;

27 (d) the partner's expulsion by the unanimous vote of the other part-
28 ners if:

9 (1) It is unlawful to carry on the partnership business with that part-
30 ner;

31 (2) there has been a transfer of all or substantially all of that partner's
32 transferable interest in the partnership, other than a transfer for security
33 purposes, or a court order charging the partner's interest, which has not
34 been foreclosed;

35 (3) within 90 days after the partnership notifies a corporate partner
36 that it will be expelled because it has filed a certificate of dissolution or
37 the equivalent, its charter has been revoked, or its right to conduct busi-
38 ness has been suspended by the jurisdiction of its incorporation, there is
39 no revocation of the certificate of dissolution or no reinstatement of its
40 charter or its right to conduct business; or

41 (4) a partnership that is a partner has been dissolved and its business
is being wound up;

42 (e) on application by the partnership or another partner, the partner's

1 expulsion by judicial determination because:

2 (1) The partner engaged in wrongful conduct that adversely and ma-
3 terially affected the partnership business;

4 (2) the partner willfully or persistently committed a material breach
5 of the partnership agreement or of a duty owed to the partnership or the
6 other partners under section 23; or

7 (3) the partner engaged in conduct relating to the partnership busi-
8 ness which makes it not reasonably practicable to carry on the business
9 in partnership with the partner;

10 (f) the partner's:

11 (1) Becoming a debtor in bankruptcy;

12 (2) executing an assignment for the benefit of creditors;

13 (3) seeking, consenting to, or acquiescing in the appointment of a
14 trustee, receiver, or liquidator of that partner or of all or substantially all
15 of that partner's property; or

16 (4) failing, within 90 days after the appointment, to have vacated or
17 stayed the appointment of a trustee, receiver, or liquidator of the partner
18 or of all or substantially all of the partner's property obtained without the
19 partner's consent or acquiescence, or failing within 90 days after the ex-
20 piration of a stay to have the appointment vacated;

21 (g) in the case of a partner who is an individual:

22 (1) The partner's death;

23 (2) the appointment of a guardian or general conservator for the part-
24 ner; or

25 (3) a judicial determination that the partner has otherwise become
26 incapable of performing the partner's duties under the partnership agree-
27 ment;

28 (h) in the case of a partner that is a trust or is acting as a partner by
29 virtue of being a trustee of a trust, distribution of the trust's entire trans-
30 ferable interest in the partnership, but not merely by reason of the sub-
31 stitution of a successor trustee;

32 (i) in the case of a partner that is an estate or is acting as a partner
33 by virtue of being a personal representative of an estate, distribution of
34 the estate's entire transferable interest in the partnership, but not merely
35 by reason of the substitution of a successor personal representative; or

36 (j) termination of a partner who is not an individual, partnership,
37 corporation, trust, or estate.

38 Sec. 31. (UPA 602). (a) A partner has the power to dissociate at
39 any time, rightfully or wrongfully, by express will pursuant to subsection
40 (a) of section 30.

41 (b) A partner's dissociation is wrongful only if:

? (1) It is in breach of an express provision of the partnership agree-
ment; or

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1 (2) in the case of a partnership for a definite term or particular un-
2 dertaking, before the expiration of the term or the completion of the
3 undertaking;

4 (i) The partner withdraws by express will, unless the withdrawal fol-
5 lows within 90 days after another partner's dissociation by death or oth-
6 erwise under subsection (f) through (j) of section 30 or wrongful disso-
7 ciation under this subsection;

8 (ii) the partner is expelled by judicial determination under subsection
9 (e) of section 30;

10 (iii) the partner is dissociated by becoming a debtor in bankruptcy;
11 or

12 (iv) in the case of a partner who is not an individual, trust other than
13 a business trust, or estate, the partner is expelled or otherwise dissociated
14 because it willfully dissolved or terminated.

15 (c) A partner who wrongfully dissociates is liable to the partnership
16 and to the other partners for damages caused by the dissociation. The
17 liability is in addition to any other obligation of the partner to the part-
18 nership or to the other partners.

19 Sec. 32. (UPA 603). (a) If a partner's dissociation results in a dis-
20 solution and winding up of the partnership business, article 8 applies;
21 otherwise, article 7 applies.

22 (b) Upon a partner's dissociation:

23 (1) The partner's right to participate in the management and conduct
24 of the partnership business terminates, except as otherwise provided in
25 section 40;

26 (2) the partner's duty of loyalty under subsection (b)(3) of section 23
27 terminates; and

28 (3) the partner's duty of loyalty under subsection (b)(1) and (2) of
29 section 23 and duty of care under subsection (c) of section 23 continue
30 only with regard to matters arising and events occurring before the part-
31 ner's dissociation, unless the partner participates in winding up the part-
32 nership's business pursuant to section 40.

33 Sec. 33. (UPA 701). (a) If a partner is dissociated from a partner-
34 ship without resulting in a dissolution and winding up of the partnership
35 business under section 38, the partnership shall cause the dissociated
36 partner's interest in the partnership to be purchased for a buyout price
37 determined pursuant to subsection (b).

38 (b) The buyout price of a dissociated partner's interest is the amount
39 that would have been distributable to the dissociating partner under sub-
40 section (b) of section 44 if, on the date of dissociation, the assets of the
41 partnership were sold at a price equal to the greater of the liquidation
42 value or the value based on a sale of the entire business as a going concern
43 without the dissociated partner and the partnership were wound up as of

1 that date. Interest must be paid from the date of dissociation to the date
2 of payment.

3 (c) Damages for wrongful dissociation under subsection (b) of section
4 31, and all other amounts owing, whether or not presently due, from the
5 dissociated partner to the partnership, must be offset against the buyout
6 price. Interest must be paid from the date the amount owed becomes
7 due to the date of payment.

8 (d) A partnership shall indemnify a dissociated partner whose interest
9 is being purchased against all partnership liabilities, whether incurred
10 before or after the dissociation, except liabilities incurred by an act of the
11 dissociated partner under section 34.

12 (e) If no agreement for the purchase of a dissociated partner's interest
13 is reached within 120 days after a written demand for payment, the part-
14 nership shall pay, or cause to be paid, in cash to the dissociated partner
15 the amount the partnership estimates to be the buyout price and accrued
16 interest, reduced by any offsets and accrued interest under subsection
17 (c).

18 (f) If a deferred payment is authorized under subsection (h), the part-
19 nership may tender a written offer to pay the amount it estimates to be
20 the buyout price and accrued interest, reduced by any offsets under sub-
21 section (c), stating the time of payment, the amount and type of security
22 for payment, and the other terms and conditions of the obligation.

23 (g) The payment or tender required by subsection (e) or (f) must be
24 accompanied by the following:

25 (1) A statement of partnership assets and liabilities as of the date of
26 dissociation;

27 (2) the latest available partnership balance sheet and income state-
28 ment, if any;

29 (3) an explanation of how the estimated amount of the payment was
30 calculated; and

31 (4) written notice that the payment is in full satisfaction of the obli-
32 gation to purchase unless, within 120 days after the written notice, the
33 dissociated partner commences an action to determine the buyout price,
34 any offsets under subsection (c), or other terms of the obligation to pur-
35 chase.

36 (h) A partner who wrongfully dissociates before the expiration of a
37 definite term or the completion of a particular undertaking is not entitled
38 to payment of any portion of the buyout price until the expiration of the
39 term or completion of the undertaking, unless the partner establishes to
40 the satisfaction of the court that earlier payment will not cause undue
41 hardship to the business of the partnership. A deferred payment must be
adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partner-

1 ship, pursuant to subsection (b)(2)(ii) of section 24, to determine the
2 buyout price of that partner's interest, any offsets under subsection (c),
3 or other terms of the obligation to purchase. The action must be com-
4 menced within 120 days after the partnership has tendered payment or
5 an offer to pay or within one year after written demand for payment if
6 no payment or offer to pay is tendered. The court shall determine the
7 buyout price of the dissociated partner's interest, any offset due under
8 subsection (c), and accrued interest, and enter judgment for any addi-
9 tional payment or refund. If deferred payment is authorized under sub-
10 section (h), the court shall also determine the security for payment and
11 other terms of the obligation to purchase. The court may assess reason-
12 able attorney's fees and the fees and expenses of appraisers or other ex-
13 perts for a party to the action, in amounts the court finds equitable, against
14 a party that the court finds acted arbitrarily, vexatiously, or not in good
15 faith. The finding may be based on the partnership's failure to tender
16 payment or an offer to pay or to comply with subsection (g).

17 Sec. 34. (UPA 702). (a) For two years after a partner dissociates
18 without resulting in a dissolution and winding up of the partnership busi-
19 ness, the partnership, including a surviving partnership under article 9, is
20 bound by an act of the dissociated partner which would have bound the
21 partnership under section 12 before dissociation only if at the time of
22 entering into the transaction the other party:

- 23 (1) Reasonably believed that the dissociated partner was then a part-
24 ner;
25 (2) did not have notice of the partner's dissociation; and
26 (3) is not deemed to have had knowledge under subsection (e) of
27 section 14 or notice under subsection (c) of section 36.

28 (b) A dissociated partner is liable to the partnership for any damage
29 caused to the partnership arising from an obligation incurred by the dis-
30 sociated partner after dissociation for which the partnership is liable un-
31 der subsection (a).

32 Sec. 35. (UPA 703). (a) A partner's dissociation does not of itself
33 discharge the partner's liability for a partnership obligation incurred be-
34 fore dissociation. A dissociated partner is not liable for a partnership ob-
35 ligation incurred after dissociation, except as otherwise provided in sub-
36 section (b).

37 (b) A partner who dissociates without resulting in a dissolution and
38 winding up of the partnership business is liable as a partner to the other
39 party in a transaction entered into by the partnership, or a surviving part-
40 nership under article 9, within two years after the partner's dissociation,
41 only if *the partner is liable for the obligation under section 17 and*
amendments thereto and at the time of entering into the transaction
the other party:

1 (1) Reasonably believed that the dissociated partner was then a part-
2 ner;

3 (2) did not have notice of the partner's dissociation; and

4 (3) is not deemed to have had knowledge under subsection (e) of
5 section 14 or notice under subsection (c) of section 36.

6 (c) By agreement with the partnership creditor and the partners con-
7 tinuing the business, a dissociated partner may be released from liability
8 for a partnership obligation.

9 (d) A dissociated partner is released from liability for a partnership
10 obligation if a partnership creditor, with notice of the partner's dissocia-
11 tion but without the partner's consent, agrees to a material alteration in
12 the nature or time of payment of a partnership obligation.

13 Sec. 36. (UPA 704). (a) A dissociated partner or the partnership
14 may file a statement of dissociation stating the name of the partnership
15 and that the partner is dissociated from the partnership.

16 (b) A statement of dissociation is a limitation on the authority of a
17 dissociated partner for the purposes of subsection (d) and (e) of section
18 14.

19 (c) For the purposes of subsection (a)(3) of section 34 and subsection
20 (b)(3) of section 35, a person not a partner is deemed to have notice of
21 the dissociation 90 days after the statement of dissociation is filed.

22 Sec. 37. (UPA 705). Continued use of a partnership name, or a
23 dissociated partner's name as part thereof, by partners continuing the
24 business does not of itself make the dissociated partner liable for an ob-
25 ligation of the partners or the partnership continuing the business.

26 Sec. 38. (UPA 801). A partnership is dissolved, and its business
27 must be wound up, only upon the occurrence of any of the following
28 events:

29 (1) In a partnership at will, the partnership's having notice from a
30 partner, other than a partner who is dissociated under subsections (b)
31 through (j) of section 30; of that partner's express will to withdraw as a
32 partner, or on a later date specified by the partner;

33 (2) in a partnership for a definite term or particular undertaking:

34 (i) ~~The expiration of~~ *Within* 90 days after a partner's dissociation by
35 death or otherwise under subsections (f) through (j) of section 30 or
36 wrongful dissociation under subsection (b) of section 31, ~~unless before~~
37 ~~that time a majority in interest of the remaining partners, including part-~~
38 ~~ners who have rightfully dissociated pursuant to subsection (b)(2)(i) of~~
39 ~~section 31, agree to continue the partnership~~ *the express will of at least*
40 *half of the remaining partners to wind up the partnership business,*
41 *for which purpose a partner's rightful disassociation pursuant to*
42 *subsection (b)(2)(i) of section 31 and amendments thereto consti-*
43 *tutes the expression of that partner's will to wind up the partnership*

business;

- 2 (ii) the express will of all of the partners to wind up the partnership
 3 business; or
- 4 (iii) the expiration of the term or the completion of the undertaking;
- 5 (3) an event agreed to in the partnership agreement resulting in the
 6 winding up of the partnership business;
- 7 (4) an event that makes it unlawful for all or substantially all of the
 8 business of the partnership to be continued, but a cure of illegality within
 9 90 days after notice to the partnership of the event is effective retroac-
 10 tively to the date of the event for purposes of this section;
- 11 (5) on application by a partner, a judicial determination that:
- (i) The economic purpose of the partnership is likely to be unreason-
 12 ably frustrated;
- 14 (ii) another partner has engaged in conduct relating to the partner-
 15 ship business which makes it not reasonably practicable to carry on the
 16 business in partnership with that partner; or
- 17 (iii) it is not otherwise reasonably practicable to carry on the part-
 18 nership business in conformity with the partnership agreement; or
- 19 (6) on application by a transferee of a partner's transferable interest,
 20 a judicial determination that it is equitable to wind up the partnership
 21 business:
- (i) After the expiration of the term or completion of the undertaking,
 22 if the partnership was for a definite term or particular undertaking at the
 23 time of the transfer or entry of the charging order that gave rise to the
 24 transfer; or
- 26 (ii) at any time, if the partnership was a partnership at will at the time
 27 of the transfer or entry of the charging order that gave rise to the transfer.
- 28 Sec. 39. (UPA 802). (a) Subject to subsection (b), a partnership
 29 continues after dissolution only for the purpose of winding up its business.
 30 The partnership is terminated when the winding up of its business is
 31 completed.
- 32 (b) At any time after the dissolution of a partnership and before the
 33 winding up of its business is completed, all of the partners, including any
 34 dissociating partner other than a wrongfully dissociating partner, may
 35 waive the right to have the partnership's business wound up and the
 36 partnership terminated. In that event:
- 37 (1) The partnership resumes carrying on its business as if dissolution
 38 had never occurred, and any liability incurred by the partnership or a
 39 partner after the dissolution and before the waiver is determined as if
 40 dissolution had never occurred; and
- 41 (2) the rights of a third party accruing under subsection (1) of section
 42 or arising out of conduct in reliance on the dissolution before the third
 43 party knew or received a notification of the waiver may not be adversely

3-22

affected.

2 Sec. 40. (UPA 803). (a) After dissolution, a partner who has not
3 wrongfully dissociated may participate in winding up the partnership's
4 business, but on application of any partner, partner's legal representative,
5 or transferee, the ~~designate the appropriate~~ court, for good cause shown,
6 may order judicial supervision of the winding up.

district

7 (b) The legal representative of the last surviving partner may wind
8 up a partnership's business.

9 (c) A person winding up a partnership's business may preserve the
10 partnership business or property as a going concern for a reasonable time,
11 prosecute and defend actions and proceedings, whether civil, criminal, or
12 administrative, settle and close the partnership's business, dispose of and
13 transfer the partnership's property, discharge the partnership's liabilities,
14 distribute the assets of the partnership pursuant to section 44, settle dis-
15 putes by mediation or arbitration, and perform other necessary acts.

16 Sec. 41. (UPA 804). Subject to section 42, a partnership is bound
17 by a partner's act after dissolution that:

- 18 (1) Is appropriate for winding up the partnership business; or
- 19 (2) would have bound the partnership under section 12 before dis-
20 solution, if the other party to the transaction did not have notice of the
21 dissolution.

22 Sec. 42. (UPA 805). (a) After dissolution, a partner who has not
23 wrongfully dissociated may file a statement of dissolution stating the name
24 of the partnership and that the partnership has dissolved and is winding
25 up its business.

26 (b) A statement of dissolution cancels a filed statement of partnership
27 authority for the purposes of subsection (d) of section 14 and is a limi-
28 tation on authority for the purposes of subsection (e) of section 14.

29 (c) For the purposes of sections 12 and 41, a person not a partner is
30 deemed to have notice of the dissolution and the limitation on the part-
31 ners' authority as a result of the statement of dissolution 90 days after it
32 is filed.

33 (d) After filing and, if appropriate, recording a statement of dissolu-
34 tion, a dissolved partnership may file and, if appropriate, record a state-
35 ment of partnership authority which will operate with respect to a person
36 not a partner as provided in subsections (d) and (e) of section 14 in any
37 transaction, whether or not the transaction is appropriate for winding up
38 the partnership business.

39 Sec. 43. (UPA 806). (a) Except as otherwise provided in subsection
40 (b) and section 17 and amendments thereto, after dissolution a partner
41 is liable to the other partners for the partner's share of any partnership
42 liability incurred under section 41.

43 (b) A partner who, with knowledge of the dissolution, incurs a part-

1 nership liability under subsection (2) of section 41 by an act that is not
2 appropriate for winding up the partnership business is liable to the part-
3 nership for any damage caused to the partnership arising from the liabil-
4 ity.

5 Sec. 44. (UPA 807). (a) In winding up a partnership's business, the
6 assets of the partnership, including the contributions of the partners re-
7 quired by this section, must be applied to discharge its obligations to
8 creditors, including, to the extent permitted by law, partners who are
9 creditors. Any surplus must be applied to pay in cash the net amount
10 distributable to partners in accordance with their right to distributions
11 under subsection (b).

12 (b) Each partner is entitled to a settlement of all partnership accounts
13 upon winding up the partnership business. In settling accounts among
14 the partners, the profits and losses that result from the liquidation of the
15 partnership assets must be credited and charged to the partners' accounts.
16 The partnership shall make a distribution to a partner in an amount equal
17 to any excess of the credits over the charges in the partner's account. A
18 partner shall contribute to the partnership an amount equal to any excess
19 of the charges over the credits in the partner's account *but excluding*
20 *from the calculation charges attributable to an obligation for which*
21 *the partner is not personally liable under section 17 and amend-*
22 *ments thereto.*

23 (c) If a partner fails to contribute *the full amount required under*
24 *subsection (b)*, all of the other partners shall contribute, in the propor-
25 tions in which those partners share partnership losses, the additional
26 amount necessary to satisfy the partnership obligations *for which they*
27 *are personally liable under section 17 and amendments thereto.* A
28 partner or partner's legal representative may recover from the other part-
29 ners any contributions the partner makes to the extent the amount con-
30 tributed exceeds that partner's share of the partnership obligations *for*
31 *which the partner is personally liable under section 17 and amend-*
32 *ments thereto.*

33 (d) After the settlement of accounts, each partner shall contribute, in
34 the proportion in which the partner shares partnership losses, the amount
35 necessary to satisfy partnership obligations that were not known at the
36 time of the settlement *and for which the partner is personally liable*
37 *under section 17 and amendments thereto.*

38 (e) The estate of a deceased partner is liable for the partner's obli-
39 gation to contribute to the partnership.

40 (f) An assignee for the benefit of creditors of a partnership or a part-
41 ner, or a person appointed by a court to represent creditors of a partner-
ship or a partner, may enforce a partner's obligation to contribute to the
partnership.

1 Sec. 45. (UPA 901). In this article:

2 (a) "General partner" means a partner in a partnership and a general
3 partner in a limited partnership.

4 (b) "Limited partner" means a limited partner in a limited partner-
5 ship.

6 (c) "Limited partnership" means a limited partnership created under
7 the state limited partnership act, predecessor law, or comparable law of
8 another jurisdiction.

9 (d) "Partner" includes both a general partner and a limited partner.

10 Sec. 46. (UPA 902). (a) A partnership may be converted to a lim-
11 ited partnership pursuant to this section.

12 (b) The terms and conditions of a conversion of a partnership to a
13 limited partnership must be approved by all of the partners or by a num-
14 ber or percentage specified for conversion in the partnership agreement.

15 (c) After the conversion is approved by the partners, the partnership
16 shall file a certificate of limited partnership in the jurisdiction in which
17 the limited partnership is to be formed. The certificate must include:

18 (1) A statement that the partnership was converted to a limited part-
19 nership from a partnership;

20 (2) its former name; and

21 (3) a statement of the number of votes cast by the partners for and
22 against the conversion and, if the vote is less than unanimous, the number
23 or percentage required to approve the conversion under the partnership
24 agreement.

25 (d) The conversion takes effect when the certificate of limited part-
26 nership is filed or at any later date specified in the certificate.

27 (e) A general partner who becomes a limited partner as a result of
28 the conversion remains liable as a general partner for an obligation in-
29 curred by the partnership before the conversion takes effect. If the other
30 party to a transaction with the limited partnership reasonably believes
31 when entering the transaction that the limited partner is a general part-
32 ner, the limited partner is liable for an obligation incurred by the limited
33 partnership within 90 days after the conversion takes effect. The limited
34 partner's liability for all other obligations of the limited partnership in-
35 curred after the conversion takes effect is that of a limited partner as
36 provided in the revised uniform limited partnership act, K.S.A. 56-1a01
37 *et seq.* and amendments thereto.

38 Sec. 47. (UPA 903). (a) A limited partnership may be converted to
39 a partnership pursuant to this section.

40 (b) Notwithstanding a provision to the contrary in a limited part-
41 nership agreement, the terms and conditions of a conversion of a limited
42 partnership to a partnership must be approved by all of the partners.

43 (c) After the conversion is approved by the partners, the limited part-

and for which the partner is personally liable
under section 17 and amendments thereto

, provided the obligation is one for which the
partner would have been personally liable under
section 17 and amendments thereto if the
partnership had not been converted to a limited
partnership

1 nership shall cancel its certificate of limited partnership.

2 (d) The conversion takes effect when the certificate of limited part-
3 nership is canceled.

4 (e) A limited partner who becomes a general partner as a result of
5 the conversion remains liable only as a limited partner for an obligation
6 incurred by the limited partnership before the conversion takes effect.
7 *The Except as otherwise provided in section 17 and amendments*
8 *thereto, the partner is liable as a general partner for an obligation of the*
9 *partnership incurred after the conversion takes effect.*

10 Sec. 48. (UPA 904). (a) A partnership or limited partnership that
11 has been converted pursuant to this article is for all purposes the same
12 entity that existed before the conversion.

13 (b) When a conversion takes effect:

14 (1) All property owned by the converting partnership or limited part-
15 nership remains vested in the converted entity;

16 (2) all obligations of the converting partnership or limited partnership
17 continue as obligations of the converted entity; and

18 (3) an action or proceeding pending against the converting partner-
19 ship or limited partnership may be continued as if the conversion had not
20 occurred.

21 Sec. 49. (UPA 905). (a) Pursuant to a plan of merger approved as
22 provided in subsection (c), a partnership may be merged with one or more
23 partnerships or limited partnerships.

24 (b) The plan of merger must set forth:

25 (1) The name of each partnership or limited partnership that is a
26 party to the merger;

27 (2) the name of the surviving entity into which the other partnerships
28 or limited partnerships will merge;

29 (3) whether the surviving entity is a partnership or a limited partner-
30 ship and the status of each partner;

31 (4) the terms and conditions of the merger;

32 (5) the manner and basis of converting the interests of each party to
33 the merger into interests or obligations of the surviving entity, or into
34 money or other property in whole or part; and

35 (6) the street address of the surviving entity's chief executive prin-
36 cipal office.

37 (c) The plan of merger must be approved:

38 (1) In the case of a partnership that is a party to the merger, by all
39 of the partners, or a number or percentage specified for merger in the
40 partnership agreement; and

(2) in the case of a limited partnership that is a party to the merger,
by the vote required for approval of a merger by the law of the state or
foreign jurisdiction in which the limited partnership is organized and, in

1 the absence of such a specifically applicable law, by all of the partners,
2 notwithstanding a provision to the contrary in the partnership agreement.

3 (d) After a plan of merger is approved and before the merger takes
4 effect, the plan may be amended or abandoned as provided in the plan.

5 (e) The merger takes effect on the later of:

6 (1) The approval of the plan of merger by all parties to the merger,
7 as provided in subsection (c);

8 (2) the filing of all documents required by law to be filed as a con-
9 dition to the effectiveness of the merger; or

10 (3) any effective date specified in the plan of merger.

11 Sec. 50. (UPA 906). (a) When a merger takes effect:

12 (1) The separate existence of every partnership or limited partnership
13 that is a party to the merger, other than the surviving entity, ceases;

14 (2) all property owned by each of the merged partnerships or limited
15 partnerships vests in the surviving entity;

16 (3) all obligations of every partnership or limited partnership that is
17 a party to the merger become the obligations of the surviving entity; and

18 (4) an action or proceeding pending against a partnership or limited
19 partnership that is a party to the merger may be continued as if the merger
20 had not occurred, or the surviving entity may be substituted as a party to
21 the action or proceeding.

22 (b) The secretary of state of this state is the agent for service of proc-
23 ess in an action or proceeding against a surviving foreign partnership or
24 limited partnership to enforce an obligation of a domestic partnership or
25 limited partnership that is a party to a merger. The surviving entity shall
26 promptly notify the secretary of state of the mailing address of its chief
27 executive *principal* office and of any change of address. Upon receipt of
28 process, the secretary of state shall mail a copy of the process to the
29 surviving foreign partnership or limited partnership.

30 (c) A partner of the surviving partnership or limited partnership is
31 liable for:

32 (1) All obligations of a party to the merger for which the partner was
33 personally liable before the merger;

34 (2) all other obligations of the surviving entity incurred before the
35 merger by a party to the merger, but those obligations may be satisfied
36 only out of property of the entity; and

37 (3) *except as otherwise provided in section 17 and amendments*
38 *thereto*, all obligations of the surviving entity incurred after the merger
39 takes effect, but those obligations may be satisfied only out of property
40 of the entity if the partner is a limited partner.

41 (d) If the obligations incurred before the merger by a party to the
42 merger are not satisfied out of the property of the surviving partnership
43 or limited partnership, the general partners of that party immediately

1 before the effective date of the merger shall contribute the amount nec-
2 essary to satisfy that party's obligations to the surviving entity, in the
3 manner provided in section 44 or in the limited partnership act of the
4 jurisdiction in which the party was formed, as the case may be, as if the
5 merged party were dissolved.

6 (e) A partner of a party to a merger who does not become a partner
7 of the surviving partnership or limited partnership is dissociated from the
8 entity, of which that partner was a partner, as of the date the merger takes
9 effect. The surviving entity shall cause the partner's interest in the entity
10 to be purchased under section 33 or another statute specifically applicable
11 to that partner's interest with respect to a merger. The surviving entity is
12 bound under section 34 by an act of a general partner dissociated under
13 this subsection, and the partner is liable under section 35 for transactions
14 entered into by the surviving entity after the merger takes effect.

15 Sec. 51. (UPA 907). (a) After a merger, the surviving partnership
16 or limited partnership may file a statement that one or more partnerships
17 or limited partnerships have merged into the surviving entity.

18 (b) A statement of merger must contain:

19 (1) The name of each partnership or limited partnership that is a
20 party to the merger;

21 (2) the name of the surviving entity into which the other partnerships
22 or limited partnership were merged;

23 (3) the street address of the surviving entity's principal office and of
24 an office in this state, if any; and

25 (4) whether the surviving entity is a partnership or a limited partner-
26 ship.

27 (c) Except as otherwise provided in subsection (d), for the purposes
28 of section 13, property of the surviving partnership or limited partnership
29 which before the merger was held in the name of another party to the
30 merger is property held in the name of the surviving entity upon filing a
31 statement of merger.

32 (d) For the purposes of section 13, real property of the surviving
33 partnership or limited partnership which before the merger was held in
34 the name of another party to the merger is property held in the name of
35 the surviving entity upon recording a certified copy of the statement of
36 merger in the office for recording transfers of that real property.

37 (e) A filed and, if appropriate, recorded statement of merger, exe-
38 cuted and declared to be accurate pursuant to subsection (c) of section
39 5, stating the name of a partnership or limited partnership that is a party
40 to the merger in whose name property was held before the merger and
41 the name of the surviving entity, but not containing all of the other in-
formation required by subsection (b), operates with respect to the part-
nerships or limited partnerships named to the extent provided in subsec-

1 tions (c) and (d).

2 Sec. 52. (UPA 908). This article is not exclusive. Partnerships or
3 limited partnerships may be converted or merged in any other manner
4 provided by law.

5 Sec. 53. (UPA 1001). (a) A partnership may become a limited
6 liability partnership pursuant to this section.

7 (b) The terms and conditions on which a partnership becomes
8 a limited liability partnership must be approved by the vote nec-
9 essary to amend the partnership agreement except, in the case of a
10 partnership agreement that expressly considers contribution obli-
11 gations, the vote necessary to amend those provisions.

12 (c) After the approval required by subsection (b), a partnership
13 may become a limited liability partnership by filing a statement of
14 qualification. The statement must contain:

15 (1) The name of the partnership;

16 (2) the street address of the partnership's principal office and,
17 if different, the street address of an office in this state, if any;

18 (3) if there is no office in this state, the name and street address
19 of the partnership's agent for service of process who must be an
20 individual resident of this state or any other person authorized to
21 do business in this state;

22 (4) a statement that the partnership elects to be a limited lia-
23 bility partnership; and

24 (5) a deferred effective date, if any.

25 (d) The status of a partnership as a limited liability partnership
26 is effective on the later of the filing of the statement or a date spec-
27 ified in the statement. The status remains effective, regardless of
28 changes in the partnership, until it is canceled pursuant to subsec-
29 tion (d) of section 5 or revoked pursuant to section ~~54~~.

30 (e) The status of a partnership as a limited liability partnership
31 and the liability of its partners is not affected by errors or later
32 changes in the information required to be contained in the state-
33 ment of qualification under subsection (c).

34 (f) The filing of a statement of qualification establishes that a
35 partnership has satisfied all conditions precedent to the qualifica-
36 tion of the partnership as a limited liability partnership.

37 (g) An amendment or cancellation of a statement of qualifica-
38 tion is effective when it is filed or on a deferred effective date spec-
39 ified in the amendment or cancellation.

40 Sec. 54. (UPA 1002). The name of a limited liability partner-
41 ship must end with "registered limited liability partnership," "lim-
42 ited liability partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP."

43 Sec. 55. (UPA 1003). (a) A limited liability partnership, and a

foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the secretary of state which contains:

(1) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) the current street address of the partnership's principal office and, if different, the current street address of an office in this state, if any; and

(3) if there is no current office in this state, the name and street address of the partnership's current agent for service of process who must be an individual resident of this state or any other person authorized to do business in this state.

(b) An annual report must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(c) The secretary of state may administratively revoke the statement of qualification of a partnership that fails to file an annual report when due or to pay the required filing fee. The secretary of state shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its principal office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under subsection (c) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been administratively revoked may apply to the secretary of state for reinstatement within two years after the effective date of the revocation. The application must state:

(1) The name of the partnership and the effective date of the revocation; and

(2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under subsection (e) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

New Sec. 55. (a) Every limited liability partnership organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability partnership at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability partnership's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability partnership's annual Kansas income tax return. If the limited liability partnership applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

(1) The name of the limited liability partnership;

(2) a reconciliation of the capital accounts for the preceding taxable year as required to be reported on the federal partnership return of income; and

(3) a list of the partners owning at least 5% of the capital of the partnership, with the post office address of each.

(c) The annual report shall be signed by a partner of the limited liability partnership and forwarded to the secretary of state. At the time of filing the report, the limited liability partnership shall pay to the secretary of state an annual franchise tax in an amount equal to \$1 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$20 or more than \$2,500.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510 and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, shall be applicable to the statement of qualification of any limited liability partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the statement of qualification of a limited liability partnership is forfeited for failure to file an annual report or to pay the required franchise tax, the limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed

by K.S.A. 17-106, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

New Sec. 56. (a) Every foreign limited liability partnership shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the foreign limited liability partnership at the close of business on the last day of its tax period next preceding the date of filing. If the foreign limited liability partnership's tax period is other than the calendar year, it shall give notice in writing of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the foreign limited liability partnership's annual Kansas income tax return. If the foreign limited liability partnership applies for an extension of time for filing its annual income tax return under the internal revenue code, the foreign limited liability partnership shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

(1) The name of the foreign limited liability partnership; and

(2) a reconciliation of the capital accounts for the preceding taxable year as required to be reported on the federal partnership return of income.

(c) The annual report shall be signed by a partner of the foreign limited liability partnership and forwarded to the secretary of state. At the time of filing the report, the foreign limited liability partnership shall pay to the secretary of state an annual franchise tax in an amount equal to \$1 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$20 or more than \$2,500.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, shall be applicable to the statement of foreign qualification of any foreign limited liability partnership which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the statement of foreign qualification of a foreign limited liability partnership is forfeited for failure to file an annual report or to pay the required franchise tax, the statement of foreign qualification of the foreign limited liability partnership may be reinstated by filing a certificate of

reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation.

New Sec. 57. No limited liability partnership or foreign limited liability partnership shall be required to file its first annual report under this act, or pay any annual franchise tax required to accompany such report, unless such partnership has filed its statement of qualification or foreign qualification at least six months prior to the last day of its tax period. If any such partnership files with the secretary of state a notice of change in its tax period and the next annual report filed by such partnership subsequent to such notice is based on a tax period of less than 12 months, the annual tax liability shall be determined by multiplying the annual franchise tax liability for such year by a fraction, the numerator of which is the number of months or any portion thereof covered by the annual report and the denominator of which is 12, except that the tax shall not be less than \$20.

Renumber remaining sections accordingly.

1 **Sec. 56. (UPA 1101). (a) The laws under which a foreign limited**
 2 **liability partnership is formed govern relations among the part-**
 3 **ners and between the partners and the partnership and the liability**
 4 **of partners for obligations of the partnership.**

5 **(b) A foreign limited liability partnership may not be denied a**
 6 **statement of foreign qualification by reason of any difference be-**
 7 **tween the laws under which the partnership was formed and the**
 8 **laws of this state.**

9 **(c) A statement of foreign qualification does not authorize a for-**
 10 **ign limited liability partnership to engage in any business or ex-**
 11 **ercise any power that a partnership may not engage in or exercise**
 12 **in this state as a limited liability partnership.**

13 **Sec. 57. (UPA 1102). (a) Before transacting business in this**
 14 **state, a foreign limited liability partnership must file a statement of**
 15 **foreign qualification. The [state] must contain:**

statement

16 **(1) The name of the foreign limited liability partnership which**
 17 **satisfies the requirements of the state or other jurisdiction under**
 18 **whose laws it is formed and ends with "registered limited liability**
 19 **partnership", "limited liability partnership," "R.L.L.P.," "L.L.P.,"**
 20 **"RLLP" or "LLP;"**

21 **(2) the street address of the partnership's principal office and,**
 22 **if different, the street address of an office in this state, if any;**

23 **(3) if there is no office in this state, the name and street address**
 24 **of the partnership's agent for service of process who must be an**
 25 **individual resident of this state or any other person authorized to**
 26 **do business in this state; and**

27 **(4) a deferred effective date, if any.**

28 **(b) The status of a partnership as a foreign limited liability part-**
 29 **nership is effective on the later of the filing of the statement of for-**
 30 **ign qualification or a date specified in the statement. The status**
 31 **remains effective, regardless of changes in the partnership, until it**
 32 **is canceled pursuant to subsection (d) of section 5 or revoked pur-**
 33 **suant to section [56]**

56

34 **(c) An amendment or cancellation of a statement of foreign**
 35 **qualification is effective when it is filed or on a deferred effective**
 36 **date specified in the amendment or cancellation.**

37 **Sec. 58. (UPA 1103). (a) A foreign limited liability partnership**
 38 **transacting business in this state may not maintain an action or**
 39 **proceeding in this state unless it has in effect a statement of foreign**
 40 **qualification.**

41 **(b) The failure of a foreign limited liability partnership to have**
 42 **in effect a statement of foreign qualification does not impair the**
 43 **validity of a contract or act of the foreign limited liability partner-**

1 ship or preclude it from defending an action or proceeding in this
2 state.

3 (c) Limitations on personal liability of partners are not waived
4 solely by transacting business in this state without a statement of
5 foreign qualification.

6 (d) If a foreign limited liability partnership transacts business
7 in this state without a statement of foreign qualification, the sec-
8 retary of state is its agent for service of process with respect to
9 claims for relief arising out of the transaction of business in this
10 state.

11 Sec. 59. (UPA 1104). (a) Activities of a foreign limited liability
12 partnership which do not constitute transacting business within the
13 meaning of sections ~~56~~ through ~~60~~ include:

14 (1) Maintaining, defending or settling an action or proceeding;

15 (2) holding meetings of its partners or carrying on any other
16 activity concerning its internal affairs;

17 (3) maintaining bank accounts;

18 (4) maintaining offices or agencies for the transfer, exchange
19 and registration of the partnership's own securities or maintaining
20 trustees or depositories with respect to those securities;

21 (5) selling through independent contractors;

22 (6) soliciting or obtaining orders, whether by mail or through
23 employees or agents or otherwise, if the orders require acceptance
24 outside this state before they become contracts;

25 (7) creating or acquiring indebtedness, mortgages or security
26 interests in real or personal property;

27 (8) securing or collecting debts or foreclosing mortgages or
28 other security interests in property securing the debts, and holding,
29 protecting and maintaining property so acquired;

30 (9) conducting an isolated transaction that is completed within
31 30 days and is not one in the course of similar transactions of like
32 nature; and

33 (10) transacting business in interstate commerce.

34 (b) For purposes of sections ~~56~~ through ~~60~~ the ownership in
35 this state of income producing real property or tangible personal
36 property, other than property excluded under subsection (a), con-
37 stitutes transacting business in this state.

38 (c) This section does not apply in determining the contacts or
39 activities that may subject a foreign limited liability partnership to
40 service of process, taxation or regulation under any other law of
41 this state.

42 Sec. 60. (UPA 1105). The attorney general may maintain an
43 action to restrain a foreign limited liability partnership from trans-

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acting business in this state in violation of sections ~~56~~ through ~~60~~.

See Attachment B

Sec. ~~53 61~~. (UPA ~~1001 1201~~). This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Sec. ~~54 62~~. (UPA ~~1002 1202~~). [This act] may be cited as the uniform partnership act ~~[1994]~~.

Sections 1 through 67, and amendments thereto

Kansas

Sec. ~~55 63~~. (UPA ~~1003 1203~~). If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. ~~56 64~~. (UPA ~~1006 1206~~). (a) Before July 1, ~~1997~~ ~~[1999]~~, this act governs only a partnership formed:

1999

(1) After the effective date of this act, unless that partnership is continuing the business of a dissolved partnership under the provisions of the prior uniform partnership act, K.S.A. 56-301 et seq. and amendments thereto; and

1999

(2) before the effective date of this act, that elects, as provided by subsection (c), to be governed by this act.

(b) On and after July 1, ~~1997~~ ~~[1999]~~, this act governs all partnerships.

(c) Before July 1, ~~1997~~ ~~[1999]~~, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this act. The provisions of this act relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by this act, only if the third party knows or has received a notification of the partnership's election to be governed by this act.

1999

17-2708, 56-1a604,

56-347

and 60-2313 and K.S.A. 1997 Supp. 17-5903, 47-816 and 58-3062

Sec. ~~57 65~~. (UPA ~~1007 1207~~). This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

1999

Sec. ~~58 66~~. K.S.A. 56-301 through ~~56-344~~ are hereby repealed.

Sec. ~~59 67~~. This act shall take effect and be in force from and after January 1, ~~1998~~ and its publication in the statute book.

On and after July 1, 1999,

See Sections 68 through 73 attached

Sec. 63.

A partner may not receive a distribution from a limited liability partnership to the extent that, after giving effect to the distribution, all liabilities of the limited liability partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

Sec. 64. (a) If a partner has received the return of any part of the partner's contribution without violation of the partnership agreement or this act, the partner is liable to the limited liability partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited liability partnership's liabilities to creditors who extended credit to the limited liability partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or this act, the partner is liable to the limited liability partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited liability partnership below the value, as set forth in the records of the limited liability partnership, of the partner's contribution which has not been distributed to the partner.

Renumber remaining sections accordingly.

(Professor Hecker believes these 2 sections should be included to govern distributions from limited liability partnerships. The ULC did not include the distribution section because they believe that point is covered by SB8, the Uniform Fraudulent Transfers Act. If you make a transfer that renders you insolvent, it is a fraudulent transfer and would be covered by SB8.)

Sec. 68. K.S.A. 17-2708 is hereby amended to read as follows: 17-2708. Except as otherwise provided, the Kansas general corporation code contained in K.S.A. 17-6001 et seq., and amendments thereto, shall apply to a professional corporation organized pursuant to this chapter. Any provisions of the professional corporation law of Kansas shall take precedence over any provision of the Kansas general corporation code which conflicts with it. The provisions of the professional corporation law of Kansas shall take precedence over any law which prohibits a corporation from rendering any type of professional service. Any person authorized to form a professional corporation under K.S.A. 17-2701 et seq. and amendments thereto also may incorporate under the Kansas general corporation code contained in K.S.A. 17-6001 et seq., and amendments thereto, or organize under the Kansas limited liability company act contained in K.S.A. 17-7601 et seq., and amendments thereto, or organize as a registered limited liability partnership as defined in K.S.A. 56-302 section 1 and amendments thereto.

Sec. 69. K.S.A. 1997 Supp. 17-5903 is hereby amended to read as follows: 17-5903. As used in this act:

(a) "Corporation" means a domestic or foreign corporation organized for profit or nonprofit purposes.

(b) "Nonprofit corporation" means a corporation organized not for profit and which qualifies under section 501(c)(3) of the federal internal revenue code of 1986 as amended.

(c) "Limited partnership" has the meaning provided by K.S.A. 56-1a01, and amendments thereto.

(d) "Limited agricultural partnership" means a limited partnership founded for the purpose of farming and ownership of agricultural land in which:

(1) The partners do not exceed 10 in number;

(2) the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

(3) at least one of the general partners is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one partner is meeting the requirement of this provision and such partner dies, the requirement of this provision does not apply for the period of time that the partner's estate is being administered in any district court in Kansas.

(e) "Corporate partnership" means a partnership, as defined in K.S.A. 56-306 section 1, and amendments thereto, which has within the association one or more corporations or one or more limited liability companies.

(f) "Feedlot" means a lot, yard, corral, or other area in which livestock fed for slaughter are confined. The term includes within its meaning agricultural land in such acreage as is necessary for the operation of the feedlot.

(g) "Agricultural land" means land suitable for use in farming.

(h) "Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the

production of egg, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming does not include the production of timber, forest products, nursery products or sod, and farming does not include a contract to provide spraying, harvesting or other farm services.

(i) "Fiduciary capacity" means an undertaking to act as executor, administrator, guardian, conservator, trustee for a family trust, authorized trust or testamentary trust or receiver or trustee in bankruptcy.

(j) "Family farm corporation" means a corporation:

(1) Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) all of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the stockholders is a person residing on the farm or actively engaged in the labor or management of the farming operation. A stockholder who is an officer of any corporation referred to in this subsection and who is one of the related stockholders holding a majority of the voting stock shall be deemed to be actively engaged in the management of the farming corporation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

(k) "Authorized farm corporation" means a Kansas corporation, other than a family farm corporation, all of the incorporators of which are Kansas residents, family farm corporations or family farm limited liability agricultural companies or any combination thereof, and which is founded for the purpose of farming and the ownership of agricultural land in which:

(1) The stockholders do not exceed 15 in number; and

(2) the stockholders are all natural persons, family farm corporations, family farm limited liability agricultural companies or persons acting in a fiduciary capacity for the benefit of natural persons, family farm corporations, family farm limited liability agricultural companies or nonprofit corporations; and

(3) if all of the stockholders are natural persons, at least one stockholder must be a person residing on the farm or actively engaged in labor or management of the farming operation. If only one stockholder is meeting the requirement of this provision and such stockholder dies, the requirement of this provision does not apply for the period of time that the stockholder's estate is being administered in any district court in Kansas.

(l) "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an

intention to create it. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact and in any similar capacity.

(m) "Family trust" means a trust in which:

(1) A majority of the equitable interest in the trust is held by and the majority of the beneficiaries are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related; and

(2) all the beneficiaries are natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations.

(n) "Authorized trust" means a trust other than a family trust in which:

(1) The beneficiaries do not exceed 15 in number;

(2) the beneficiaries are all natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations; and

(3) the gross income thereof is not exempt from taxation under the laws of either the United States or the state of Kansas.

For the purposes of this definition, if one of the beneficiaries dies, and more than one person succeeds, by bequest, to the deceased beneficiary's interest in the trust, all of such persons, collectively, shall be deemed to be one beneficiary, and a husband and wife, and their estates, collectively, shall be deemed to be one beneficiary.

(o) "Testamentary trust" means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Kansas probate code.

(p) "Poultry confinement facility" means the structures and related equipment used for housing, breeding, laying of eggs or feeding of poultry in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined poultry from exposure to disease. As used in this subsection, "poultry" means chickens, turkeys, ducks, geese or other fowl.

(q) "Rabbit confinement facility" means the structures and related equipment used for housing, breeding, raising, feeding or processing of rabbits in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined rabbits from exposure to disease.

(r) "Swine marketing pool" means an association whose membership includes three or more business entities or individuals formed for the sale of hogs to buyers but shall not include any trust, corporation, limited partnership or corporate partnership, or limited liability company other than a family farm corporation, authorized farm corporation, limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust.

(s) "Swine production facility" means the land, structures and related equipment owned or leased by a corporation or limited liability company and used for housing, breeding, farrowing or

feeding of swine. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production and to avoid nitrate buildup and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

(t) "Limited liability company" has the meaning provided by K.S.A. 17-7602, and amendments thereto.

(u) "Limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

(1) The members do not exceed 10 in number; and

(2) the members are all natural persons, family farm corporations, family farm limited liability agriculture companies, persons acting in a fiduciary capacity for the benefit of natural persons, family farm corporations, family farm limited liability agricultural companies or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

(3) if all of the members are natural persons, at least one member must be a person residing on the farm or actively engaged in labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas.

(v) "Dairy production facility" means the land, structures and related equipment used for housing, breeding, raising, feeding or milking dairy cows. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined cows from exposure to disease.

(w) "Family farm limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

(1) The majority of the members are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

(2) the members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons; and

(3) at least one of the members is a person residing on the farm or actively engaged in the labor or management of the farming operation. If only one member is meeting the requirement of this provision and such member dies, the requirement of this provision does not apply for the period of time that the member's estate is being administered in any district court in Kansas.

(x) "Hydroponics" means the growing of vegetables, flowers, herbs, or plants used for medicinal purposes, in a growing medium other than soil.

Sec. 70. K.S.A. 1997 Supp. 47-816 is hereby amended to read as follows: 47-816. As used in the Kansas veterinary practice act:

(a) "Animal" means any mammalian animal other than human and any fowl, bird, amphibian, fish or reptile, wild or domestic, living or dead.

(b) "Board" means the state board of veterinary examiners.

(c) "Clock hour of continuing education courses" means 60 minutes of actual attendance at a continuing education course approved by the board.

(d) "Direct supervision" means the supervising licensed veterinarian is on the premises in an animal hospital setting or in the same general area in a range setting, the supervisor is quickly and easily available and that the animal has been examined by a veterinarian at such time as good veterinary medical practice requires, consistent with the particular delegated animal health care task.

(e) "Licensed veterinarian" means a veterinarian who is validly and currently licensed to practice veterinary medicine in this state.

(f) "Indirect supervision" means that the supervising licensed veterinarian is not on the premises, but has given either written or oral instructions for treatment of the animal patient, the animal has been examined by a veterinarian at such times as good veterinary medical practice requires, consistent with the particular delegated animal health care task and the animal is not anesthetized as defined in rules and regulations.

(g) "Practice of veterinary medicine" means any of the following:

(1) To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury or other physical or mental condition; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthesia or other therapeutic or diagnostic substance or technique on any animal including but not limited to acupuncture, surgical or dental operations, animal psychology, animal chiropractic, theriogenology, surgery, including cosmetic surgery, any manual, mechanical, biological or chemical procedure for testing for pregnancy or for correcting sterility or infertility or to render service or recommendations with regard to any of the above and all other branches of veterinary medicine.

(2) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in paragraph (1).

(3) To use any title, words, abbreviation or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraph (1). Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine.

(4) To collect blood or other samples for the purpose of diagnosing disease or conditions. This shall not apply to unlicensed personnel employed by the United States department of agriculture, the Kansas animal health department or the state board of agriculture who are engaged in such personnel's official duties.

(5) To apply principles of environmental sanitation, food inspection, environmental pollution control, animal nutrition, zoonotic disease control and disaster medicine in the promotion and protection of public health in the performance of any

veterinary service or procedure.

(h) "School of veterinary medicine" means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent, which conforms to the standards required for accreditation by the American veterinary medical association and which is recognized and approved by the board.

(i) "Veterinarian" means a person who has received a doctor of veterinary medicine degree or the equivalent from a school of veterinary medicine.

(j) "Veterinary medical specialist" means a person who has completed advanced training in such person's specialty area and is a diplomat of such specialty.

(k) "Veterinary premises" means any premises or facility where the practice of veterinary medicine occurs, including but not limited to, a mobile clinic, outpatient clinic, satellite clinic or veterinary hospital or clinic, but shall not include the premises of a veterinary client, research facility or any premises wherein the practice of veterinary medicine occurs no more than three times per year as a public service outreach of a registered veterinary premises.

(l) "Graduate veterinary technician" means a person who has graduated from an American veterinary medical association accredited school approved by the board, or other board-approved school for the training of veterinary technicians.

(m) "Registered veterinary technician" means a person who is a graduate veterinary technician or any other person who has passed the examinations required by the board for registration and is registered by the board.

(n) "Veterinary-client-patient relationship" means:

(1) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal or animals and the need for medical treatment, and the client, owner or other caretaker has agreed to follow the instruction of the veterinarian;

(2) there is sufficient knowledge of the animal or animals by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal or animals. This means that the veterinarian has recently seen or is personally acquainted with the keeping and care of the animal or animals by virtue of an examination of the animal or animals, or by medically appropriate and timely visits to the premises where the animal or animals are kept, or both; and

(3) the practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy.

(o) "ECFVG certificate" means a certificate issued by the American veterinary medical association education commission for foreign veterinary graduates, indicating that the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.

(p) "Veterinary prescription drugs" means such prescription items as defined by subsection (c) of 21 U.S.C. Sec. 353.

(q) "Veterinary corporation" means a professional corporation of licensed veterinarians incorporated under the professional corporation act of Kansas, cited at K.S.A. 17-2706

et seq., and amendments thereto.

(r) "Veterinary partnership" means a partnership pursuant to the Kansas uniform partnership act, cited at ~~K.S.A.--56-301~~ section 1 et seq., and amendments thereto, formed by licensed veterinarians engaged in the practice of veterinary medicine.

Sec. 71. K.S.A. 56-1a604 is hereby amended to read as follows: 56-1a604. In any case not provided for in the Kansas revised limited partnership act, the provisions of the Kansas uniform partnership act (~~K.S.A.--56-301~~ section 1 et seq., and amendments thereto) shall govern.

Sec. 72. K.S.A. 1997 Supp. 58-3062 is hereby amended to read as follows: 58-3062. (a) No licensee, whether acting as an agent or a principal, shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) Misappropriate moneys required to be deposited in a trust account pursuant to K.S.A. 58-3061 and amendments thereto, convert such moneys to the licensee's personal use or commingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a broker from having funds in an amount not to exceed \$100 in the broker's trust account to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission.

(5) Pay a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the out-of-state licensee.

(6) Represent or attempt to represent a broker without the broker's express knowledge and consent.

(7) Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.

(8) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.

(9) Offer real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

(10) Induce any party to break any contract of sale or lease.

(11) Offer or give prizes, gifts or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate.

(12) Fail to see that financial obligations and commitments

between the parties as to an agreement to sell, exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved.

(13) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

(14) Engage in fraud or make any substantial misrepresentation.

(15) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

(16) Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the licensee will have in the real estate the licensee is purchasing or leasing.

(17) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

(18) Fail without just cause to surrender any document or instrument to the rightful owner.

(19) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement.

(20) Fail to deposit any check or cash received as an earnest money deposit or as a deposit on the purchase of a lot within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.

(21) Fail in response to a request by the commission or the director to produce any document, book or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly, any real estate transaction or the licensee's real estate business.

(22) Refuse to appear or testify under oath at any hearing held by the commission.

(23) Demonstrate incompetency to act as a broker, associate broker or salesperson.

(24) Knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.

(25) Engage in the purchase of one-, two-, three- or four-family dwellings, including condominiums and cooperatives, or the acquisition of any right, title or interest therein,

including any equi / or redemption interests, f:

(A) (i) At the time of such purchase, the dwellings are subject to a right of redemption pursuant to foreclosure of a mortgage on such dwellings; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder or judgment creditor who held such mortgage; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the judgment lien arising from the foreclosure of such mortgage, as payments become due under the loan, regardless of whether the licensee is obligated to do so;

(B) (i) the dwellings are subject to a loan which is secured by a mortgage and which is in default at the time of such purchase or in default within one year after such purchase; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the mortgage as the payments come due, regardless of whether the licensee is obligated on the loan; or

(C) the licensee fails to notify, at the time of rental, any person renting any such dwelling of the extent and nature of the licensee's interest in such dwelling and the probable time until possession will be taken by the mortgage holder or judgment creditor.

(26) Commit forgery or, unless authorized to do so by a duly executed power of attorney, sign or initial any contractual agreement on behalf of another person in a real estate transaction.

(b) No salesperson or associate broker shall:

(1) Except as provided in paragraph (A) or (B), accept a commission or other valuable consideration from anyone other than the broker by whom the licensee is employed or with whom the licensee is associated as an independent contractor.

(A) A salesperson or associate broker may accept a commission or other valuable consideration from a licensee who employs the salesperson or associate broker as a personal assistant provided that: (i) the licensee and the salesperson or associate broker who is employed as a personal assistant are licensed under the supervision of the same broker, and (ii) the supervising broker agrees in writing that the personal assistant may be paid by the licensee.

(B) If a salesperson or associate broker has (i) organized as a professional corporation pursuant to K.S.A. 17-2706 et seq., and amendments thereto, (ii) incorporated under the Kansas general corporation code contained in K.S.A. 17-6001 et seq., and amendments thereto, (iii) organized under the Kansas limited liability company act contained in K.S.A. 17-7601 et seq., and amendments thereto, or (iv) has organized as a registered limited liability partnership as defined in ~~K.S.A.~~ 56-302 section 1 and amendments thereto, the commission or other valuable consideration may be paid by the licensee's broker to such professional corporation, corporation, limited liability company or limited liability partnership. This provision shall not alter any other provisions of this act.

(2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or

associate broker (in the custody of the broker whom the salesperson or associate broker represents.

(c) No broker shall:

(1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker.

(2) Fail to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

(3) Fail to properly supervise the activities of an associated or employed salesperson or associate broker.

(4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker.

(5) Fail to provide to the principal a written report every 30 days, along with a final report, itemizing disbursements made by the broker from advance listing fees.

(d) (1) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker, no listing broker shall:

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

(B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

(2) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker and the property was not listed with a broker, no broker for the buyer shall:

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

(B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

(3) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker and neither the seller nor buyer is represented by a broker, no transaction broker shall:

(A) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the broker shall deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement on the date provided by such written agreement; or

(B) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

The commission may adopt rules and regulations to require that such purchase agreement which provides that the earnest money be held by an escrow agent other than a real estate broker include: (1) notification of whether or not the escrow agent named in the purchase agreement maintains a surety bond, and (2) notification that statutes governing the disbursement of earnest money held in trust accounts of real estate brokers do not apply to earnest money deposited with the escrow agent named in the purchase agreement.

(e) Nothing in this section shall be construed to grant any person a private right of action for damages or to eliminate any right of action pursuant to other statutes or common law.

Sec. 73. K.S.A. 60-2313 is hereby amended to read as follows: 60-2313. (a) Except to the extent otherwise provided by law, every person residing in this state shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state:

(1) Any pension, annuity, retirement, disability, death or other benefit exempt from process pursuant to K.S.A. 12-111a, 12-5005, 13-1246a, 13-14,102, 13-14a10, 14-10a10, 20-2618, 72-1768, 72-5526, 74-4923, 74-4978g, 74-49,105 or 74-49,106, and amendments thereto.

(2) Any public assistance benefits exempt pursuant to K.S.A. 39-717 and amendments thereto.

(3) Any workers' compensation exempt from process pursuant to K.S.A. 44-514 and amendments thereto.

(4) Any unemployment benefits exempt from process pursuant to K.S.A. 44-718 and amendments thereto.

~~(5) Any partnership property exempt from process pursuant to K.S.A. 56-325 and amendments thereto.~~

~~(6)~~ Any crime victims compensation award exempt from process pursuant to K.S.A. 74-7313 and amendments thereto.

~~(7)~~ (6) Any liquor license, club license or cereal malt beverage wholesaler's or distributor's license exempt from process pursuant to K.S.A. 41-326, 41-2629 or 41-2714, and amendments thereto.

~~(8)~~ (7) Any interest in any policy of insurance or beneficiary certificates upon a person's life exempt from process pursuant to K.S.A. 40-414 and amendments thereto.

~~(9)~~ (8) Any fraternal benefit society benefit, charity, relief or aid exempt from process pursuant to K.S.A. 40-711 and amendments thereto.

~~(10)~~ (9) Any trust funds held in a cemetery merchandise trust and exempt from process pursuant to K.S.A. 16-328 and

amendments theret

~~(11)~~ 10) Any funds held in an account or trust established pursuant to a prearranged funeral agreement, plan or contract and exempt from process pursuant to K.S.A. 16-310 and amendments thereto.

(b) This section shall be part of and supplemental to article 23 of chapter 60 of the Kansas Statutes Annotated.

And by numbering remaining sections accordingly.

(Professor Hecker notes that sections 10 and 26 of senate bill 9 take care of this. Pursuant to senate bill 9, a partnership, as an entity, can own property in its own right. Such property is not the property of the individual owner and not subject to seizure or attachment for debts other than partnership debts.)