

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson Representative Kenny Wilk at 9:30 a.m. on May 4, 2002, in Room 514-S of the Capitol.

All members were present except: Representative Peterson, Excused
Representative Pottorff, Excused
Representative Hermes, Excused

Committee staff present: Amy Kramer, Legislative Research
Alan Conroy, Legislative Research
Julian Efird, Legislative Research
Deb Hollon, Legislative Research
Becky Krahl, Legislative Research
Audrey Nogle, Legislative Research
Robert Waller, Legislative Research
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Jamie Clover Adams, Secretary of Agriculture

Discussion and action on SB 652--Establishment and presumption of inmate security status

The bill was explained as allowing returning prisoners who have violated their parole or early release in some way but had not committed another crime to be classified as minimum security when they are returned to the prison system.

Representative Minor moved that the bill be reported favorably for passage. Motion was seconded by Representative Campbell. Motion carried.

Discussion and action on SB 499--Establishing the technology communications fee fund

An amendment was proposed which would add sections doubling the rate of franchise taxes. These fees were last adjusted in 1972. The proposed increase would raise approximately \$18 million in additional taxes. With the amendment the bill would become House Substitute for **SB 499**.

Representative Wilk moved for the adoption of the amendment for House Substitute for **SB 499**. Motion was seconded by Representative Stone. Motion carried. Representative Spangler requested to be recorded as a "no" vote.

Representative Stone moved for the bill to be reported favorably as amended. Motion was seconded by Representative Bethell. Motion carried. Representative Spangler requested to be recorded as a "no" vote.

Discussion and action on SB 438--Powers, duties and responsibilities of Secretary of Agriculture related to fees and penalties

Jamie Clover Adams, Secretary of Agriculture, explained that increasing the fees would raise \$800,000 of which \$300,000 would remain with the Department of Agriculture. This proposed increase could be used to fund much needed additional dairy inspectors as there has been a sizeable increase in the size and numbers of dairy herds in the western part of the state. The Department of Agriculture no longer makes inspections of dairy equipment (ice cream machines) in restaurants as this program has been turned over to the Department of Health and Environment. It was pointed out that owners with small scales are required to hire a private entity to check their scales annually.

Representative Schwartz moved for the adoption of the amendments as presented in Attachment 1. Motion was seconded by Representative Klein. Motion carried.

Representative Schwartz moved for the bill to be reported favorably as amended. Motion was seconded by Representative Klein. Motion carried.

Discussion and Action on SB 422—Reimbursement by Department of Social and Rehabilitation Services for certain prescription drugs

A comparison sheet of **Senate Sub for SB 422**, **Senate Sub for SB 603**, and the proposed **House Sub for Senate Sub for SB 422** was presented to the Committee and explained by Representative Neufeld, Chairperson of the Social Services Budget Committee (Attachment 2). The Committee expressed concern that physicians may override the use of generics by adding DAW (Dispense as Written) for certain Medicaid patients who make such requests. This has not been a problem in Kansas as 82 percent of the physicians have been compliant in prescribing generics. Soon the profiling of physicians and their patients will be available through SRS. It was pointed out that even by educating and attempting to persuade physicians and patients regarding generic versus formulary prescriptions, there should still be a freedom of choice.

Representative Neuld moved to amend SB 422 by House Substitute for SB 422 (Attachment 3). Motion was seconded by Representative Landwehr. Motion carried.

Representative Shriver moved to amend the bill by adding to Section 5, line 11 after thereto, "or the prescriber is receiving a stipend, benefit or rebate from the pharmaceutical company." Motion was seconded by Representative Klein. Motion failed.

Representative Neufeld moved to amend the bill by making technical amendments regarding the advisory committee pursuant to K.S.A. 75-5313. Motion was seconded by Representative Bethell. Motion carried.

Representative Neufeld moved to pass the bill out favorably as amended. Motion was seconded by Representative Landwehr. Motion carried.

The meeting was adjourned at 10:55 a.m. by Chairman Wilk.

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: ⁵4/4/02

NAME	REPRESENTING
Jacque Dickes	SQE
Dosie Torres	KCDD
Craig Kuhn	KCDD
Russ Reynolds	KDHR
Dan Carter	KDOT
Jim Conant	KDOR
Steve Solomon	The Farm, Inc
Christi Stewart	KMCA
Kathy Dameron	The Farm, Inc.
Kathy Ponder	Judicial Branch
Jerry Sloan	Judicial Branch
Don Ryan	S.E.A.K
Jon Josseland	Univ of K's
Andy Sanchez	KAPE
Keith Haxton	SEAK
Bill Watts	KDOT
Dave Wylser	KAC
Bruce Link	Children's Alliance
Juice Mussimanno	Children's Cabinet

**AGRICULTURE AND NATURAL RESOURCES
BUDGET COMMITTEE REPORT ON
SENATE BILL NO. 438**

The Agriculture and Natural Resources Budget Committee considered SB 438 and makes the following recommendations to the House Appropriations Committee.

1. The Budget Committee recommends striking the fee portions of sections 14, 27, and 29. This would strike all new fees contained in the bill which includes fees in the water appropriations, weight and measures, and pesticide and fertilizer subprograms.
2. The Budget Committee recommends adding language requiring the agency establish a time limit in which water rights applications will be processed. Those applicants whose applications are not processed within this time frame will be reimbursed by the agency for the cost of the application fee. *150 days*

3. *Technical amendments
definitions*

Recommended by Agriculture and Natural
Resources Budget Committee

Representative Sharon Schwartz, Chair
Representative Bill McCreary
Representative Carl Holmes
Representative Don Myers
Representative Tom Klein
Representative Vaughn Flora
Representative Alan Goering

1-2

1 mits for domestic use, shall be accompanied by an application fee fixed
2 by this section for the appropriate category of acre feet in accordance
3 with the following:

4	<i>Acre Feet</i>	
5	0 to 100	Fee
6	101 to 320	\$100
7	More than 320	\$150
8		\$150 + \$10
9		for each additional 100
		acre feet or any part thereof

10 *Commencing July 1, 2002, and ending June 30, 2005, the appli-*
11 *cation fee shall be fixed by this section for the appropriate category*
12 *of acre feet in accordance with the following:*

13	<i>Acre Feet</i>	
14	0 to 100	Fee
15	101 to 320	\$100 \$200
16	More than 320	\$150 \$300
17		\$150 + \$10 \$300 + \$20
18		for each additional 100
		acre feet or any part thereof

19 (c) Except as otherwise provided in subsections (d), (e) and (f), each
20 application for a permit to appropriate water for storage, except appli-
21 cations for permits for domestic use, shall be accompanied by an appli-
22 cation fee fixed by this section for the appropriate category of storage-
23 acre feet in accordance with the following:

24	<i>Storage-Acre Feet</i>	
25	0 to 250	Fee
26	More than 250	\$100
27		\$100 + \$10
28		for each additional 250
29		storage-acre feet
		or any part thereof

30 *Commencing July 1, 2002, and ending June 30, 2005, the appli-*
31 *cation fee shall be fixed by this section for the appropriate category*
32 *of storage-acre feet in accordance with the following:*

33	<i>Storage-Acre Feet</i>	
34	0 to 250	Fee
35	More than 250	\$100 \$200
36		\$100 + \$10 \$200 + \$20
37		for each additional 250
		storage-acre feet or any part thereof

38 (d) Each application for a term permit pursuant to K.S.A. 2001 Supp.
39 82a-736, and amendments thereto, shall be accompanied by an applica-
40 tion fee established by rules and regulations of the chief engineer in an
amount not to exceed \$400 for the five-year period covered by the permit.

43 (e) For any application for a permit to appropriate water, except ap-
plications for permits for domestic use, which proposes to appropriate by

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in regulation K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application the application fee is subject to refund upon request.

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in regulation K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application the application fee is subject to refund upon request.

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1 both direct flow and storage, the fee charged shall be the fee under sub-
2 section (b) or subsection (c), whichever is larger, but not both fees.

3 (f) Each application for a permit to appropriate water for water power
4 or dewatering purposes shall be accompanied by an application fee of
5 \$100 plus \$200 for each 100 cubic feet per second, or part thereof, of the
6 diversion rate requested in the application for the proposed project.

7 (g) All fees collected by the chief engineer pursuant to this section
8 shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and
9 amendments thereto.

10 Sec. 24. K.S.A. 2001 Supp. 82a-708b is hereby amended to read as
11 follows: 82a-708b. (a) Any owner of a water right may change the place
12 of use, the point of diversion or the use made of the water, without losing
13 priority of right, provided such owner shall: (1) Apply in writing to the
14 chief engineer for approval of any proposed change; (2) demonstrate to
15 the chief engineer that any proposed change is reasonable and will not
16 impair existing rights; (3) demonstrate to the chief engineer that any pro-
17 posed change relates to the same local source of supply as that to which
18 the water right relates; and (4) receive the approval of the chief engineer
19 with respect to any proposed change. The chief engineer shall approve
20 or reject the application for change in accordance with the provisions and
21 procedures prescribed for processing original applications for permission
22 to appropriate water. If the chief engineer disapproves the application for
23 change, the rights, priorities and duties of the applicant shall remain un-
24 changed. Any person aggrieved by an order or decision by the chief en-
25 gineer relating to an application for change may petition for review
26 thereof in accordance with the provisions of K.S.A. 2001 Supp. 82a-1901
27 and amendments thereto.

28 (b) Each application to change the place of use, the point of diversion
29 or the use made of the water under this section shall be accompanied by
30 the application fee set forth in the schedule below:

31	(1) Application to change a point of diversion 300 feet or less	\$50
32	(2) Application to change a point of diversion more than 300	
33	feet	100
34	(3) Application to change the place of use	100
35	(4) Application to change the use made of water	150

36 **Commencing July 1, 2002, and ending June 30, 2005, the appli-**
37 **cation fee shall be set forth in the schedule below:**

38	(1) Application to change a point of diversion 300 feet or less	50 \$100
39	(2) Application to change a point of diversion more than 300 feet ..	100 200
40	(3) Application to change the place of use	100 200
41	(4) Application to change the use made of the water	150 300
	(5) Application to change ownership	100

42 Any application submitted which requests two of the types of changes set

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in regulation K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application the application fee is subject to refund upon request.

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category of chemigation pursuant to the Kansas pesticide law.

(d) The chemigation equipment operator certification shall expire on December 31 of the fourth calendar year after the year of issue. A chemigation equipment operator certification shall be renewed for a succeeding five year period upon payment of the certification fee and passing the examination specified in either subsection (b) or (c).

(e) The fee for certification as a chemigation equipment operator or for renewal of such certification **shall be \$10, or commencing July 1, 2002, and ending June 30, 2005, such certification** shall be \$10 \$25.

Sec. 14. K.S.A. 2-3318 is hereby amended to read as follows: 2-3318.

(a) Regardless of whether irrigation water is added, whenever swine waste is applied to crops or land, the secretary is authorized to investigate, inspect or conduct any manner of examination or review of the application of swine waste. No swine waste shall be applied to crops or land in excess of agronomic application rates.

(b) The secretary shall review and approve all nutrient utilization plans that provide for the application of swine waste to crops or land and that are submitted by swine confined feeding facilities pursuant to K.S.A. 2001 Supp. 65-1,182 and amendments thereto if the plans demonstrate that swine waste will be applied pursuant to agronomic application rates *and include all required information*. Nutrient utilization plans shall be submitted in the on a form required by the secretary

and, commencing July 1, 2002, and ending June 30, 2005, shall include an annual inspection fee determined by the permitted capacity in animal units of the facility submitting the plan required by the corresponding waste control permit. Nutrient utilization plans for facilities of 3,725 animal units or greater shall submit a fee of \$200 annually. Nutrient utilization plans for facilities of less than 3,725 animal units shall submit a fee of \$100 annually. Fees shall be due on or before March 1, each year.

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The secretary shall notify the secretary of health and environment when a nutrient utilization plan has been approved and whether the approval is conditioned on any amendments or revisions to the plan.

(c) ~~Any soil tests required by the secretary to evaluate whether agronomic application rates are being met must be paid for by the swine confined feeding facility regardless of whether the soil to be tested is from land owned by such facility.~~

(d) Failure of the operator of a swine confined feeding facility to implement a nutrient utilization plan approved by the secretary shall be considered a violation of the Kansas chemigation safety law for which the secretary may suspend a permit pursuant to K.S.A. 2-3310 and amendments thereto or may impose a civil penalty pursuant to K.S.A. 2-3317 and amendments thereto, or both. **Failure of the operator to submit the annual fee as provided in subsection (b) in a timely manner shall be a**

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1 *[basis for suspension or forfeiture of the plan approval of the secretary.]*

2 ~~(c)~~ (d) This section shall be part of and supplemental to the Kansas
3 chemigation safety law.

4 Sec. 15. K.S.A. 2001 Supp. 65-6a18 is hereby amended to read as
5 follows: 65-6a18. As used in this act:

6 (a) "Secretary" means the secretary of the state ~~board~~ *department* of
7 agriculture.

8 (b) "Person" means any individual, partnership, firm, corporation, as-
9 sociation or other business unit or governmental entity.

10 (c) "Meat broker" means any person, firm or corporation engaged in
11 the business of buying or selling carcasses, parts of carcasses, meat or
12 meat food products of livestock on commission, or otherwise negotiating
13 purchases or sales of such articles other than for the person's own account
14 or as an employee of another person.

15 (d) "Poultry products broker" means any person engaged in the busi-
16 ness of buying or selling poultry products on commission, or otherwise
17 negotiating purchases or sales of such articles other than for the person's
18 own account or as an employee of another person.

19 (e) "Animal food manufacturer" means any person engaged in the
20 business of manufacturing or processing animal food derived wholly or
21 in part from carcasses, or parts or products of the carcasses, of livestock,
22 domestic rabbits or poultry.

23 (f) "Intrastate commerce" means commerce within the state of
24 Kansas.

25 (g) "Meat food product" means any product capable of use as human
26 food which is made wholly or in part from any meat or other portions of
27 the carcasses of any livestock or domestic rabbits, excepting products
28 which contain meat or other portions of such carcasses only in a relatively
29 small proportion or historically have not been considered by consumers
30 as products of the meat food industry and which are exempted from
31 definition as a meat food product by the secretary under such conditions
32 as the secretary may prescribe to assure that the meat or other portions
33 of such carcasses contained in such product are not adulterated and that
34 such products are not represented as meat food products.

35 (h) "Poultry" means any domesticated bird, whether live or dead.

36 (i) "Poultry product" means any poultry carcass, or part thereof or
37 any product which is made wholly or in part from any poultry carcass or
38 part thereof, excepting products which contain poultry ingredients only
39 in a relatively small proportion or historically have not been considered
40 by consumers as products of the poultry food industry and which are
41 exempted by the secretary from definition as a poultry product under
42 such conditions as the secretary may prescribe to assure that the poultry
43 ingredients in such products are not adulterated and that such products

1-6

1 amendments thereto.

2 Sec. 27. K.S.A. 82a-732 is hereby amended to read as follows: 82a-

3 732. (a) The owner of a water right or permit to appropriate water for
4 beneficial use, except for domestic use, shall file an annual water use
5 report on a form prescribed by the chief engineer of the division of water
6 resources of the state board department of agriculture ~~and, commencing~~

7 ~~July 1, 2002, and ending June 30, 2005, submit an administration fee~~
8 ~~of \$20 per as established in this act, for each water right or permit to~~
9 ~~appropriate water on or before March 1 following the end of the previous~~
10 ~~calendar year. Such fee shall be based upon the authorized quantity~~
11 ~~for each water right number as follows:~~

Delete

12 "Authorized quantity	Annual Administration Fee
13 0-100 acre feet	\$10
14 101 to 320 acre feet	\$15
15 321-1,000 acre feet	\$20
16 1,001-5,000 acre feet	\$30
17 over 5,000 acre feet.....	\$200

18 The report shall completely and accurately set forth such water use in-
19 formation as requested by the chief engineer.

20 (b) Any person failing to file a ~~(complete, accurate and timely)~~ water
21 use report or other documents ~~(or to submit the administration fee)~~ re-
22 quired under the provisions of subsection (a) shall be subject to a civil
23 penalty in an amount not to exceed \$250. The chief engineer upon a
24 finding that the owner of a water right or permit to appropriate water for
25 beneficial use has failed to file such a ~~(complete, accurate and timely)~~ report
26 ~~(or to submit the administration fee)~~ may impose a civil penalty as provided
27 in this section. Any person filing a document knowing it to contain any
28 false information as to a material matter shall be guilty of a class C mis-
29 demenor.

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30 (c) All fines collected by the chief engineer pursuant to this subsec-
31 tion shall be remitted to the state treasurer as provided in K.S.A. 82a-
32 731, and amendments thereto.

33 Sec. 28. K.S.A. 83-201 is hereby amended to read as follows: 83-201.
34 As used in article 2 of chapter 83 of the Kansas Statutes Annotated and
35 K.S.A. 83-502, and amendments thereto:

36 (a) "Weights and measures" means all commercial weights or meas-
37 ures of every kind, instruments and devices for weighing and measuring,
38 and any appliance and accessories associated with any or all such instru-
39 ments and devices and any point-of-sale system.

40 (b) "Weight" as used in connection with any commodity means net
41 weight, except if the label declares that the product is sold by drained
weight, the term means net drained weight.

(c) "Correct" as used in connection with weights and measures means

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1 (p) "Large scale" means a weighing device with a capacity of greater
2 than 2000 pounds.

3 (q) "Small scale" means a weighing device with a capacity of 2000
4 pounds or less.

5 Sec. 29. K.S.A. 83-205 is hereby amended to read as follows: 83-205.

6 (a) There is hereby established in the department of agriculture a weights
7 and measures inspection program to enforce the provisions of chapter 83
8 of the Kansas Statutes Annotated, and amendments thereto or any rules
9 and regulations adopted thereunder. The program shall be under the
10 supervision of the secretary, and the secretary shall employ an adminis-
11 trator of the program and appoint such personnel as may be necessary
12 for the proper administration of chapter 83 of the Kansas Statutes An-
13 notated, and amendments thereto. The administrator shall be in the un-
14 classified service of the Kansas civil service act.

15 (b) The weights and measures inspection program shall perform the
16 following functions:

17 (1) Assure that weights and measures in commercial service within
18 the state are suitable for their intended use, properly installed, accurate
19 and are so maintained by their owner or user;

20 (2) prevent unfair or deceptive dealing by weight or measure in any
21 commodity or service advertised, packaged, sold or purchased within this
22 state;

23 (3) make available to all users of physical standards or weighing and
24 measuring equipment the precision calibration and related metrological
25 certification capabilities of the weights and measures facilities of the de-
26 partment of agriculture;

27 (4) promote uniformity, to the extent such conformance is practicable
28 and desirable, between weights and measures requirements of this state
29 and those of other states and federal agencies;

30 (5) encourage desirable economic growth while protecting the con-
31 sumer through the adoption by rule and regulation of weights and meas-
32 ures requirements as necessary to assure equity among buyers and sellers;

33 and
34 (6) **commencing July 1, 2002, and ending June 30, 2005, assess**
35 **an authorization fee to provide for the administration of this act. Such**
36 **fee shall be assessed on every place of business or person who operates a**
37 **weighing or measuring device, a scanning device, a point of sale system,**
38 **or metering device for commercial purposes or measuring commodities,**
39 **which are subject to the jurisdiction of the secretary. For the purposes**
40 **of this fee, metering device shall not include dispensing devices as**
41 **defined by K.S.A. 83-401, and amendments thereto. The fee shall be**
due March 1 and shall be assessed as follows:

Delete

42 (A) small scales per facility - 1 \$15/facility;

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- 1 (B) *small scales per facility - 2-3* \$25/facility;
- 2 (C) *small scales per facility - 4 or more* \$40/facility;
- 3 (D) *large scales per facility - 1* ~~\$60/facility~~ **\$25/facility;**
- 4 (E) *large scales per facility - 2-3* ~~\$115/facility~~ **\$50/facility;**
- 5 (F) *large scales per facility - 4 or more* ~~\$170/facility~~ **\$75/facility;**
- 6 (G) *scanning devices or point of sale system - 1-3* \$30/facility;
- 7 (H) *scanning devices or point of sale systems - 4 or more* \$60/facility; or
- 8 (I) *metering device* \$25/facility;
- 9 **(J) *facility fee cap (any combination)* \$120/facility**

Delete

10 (7) *The secretary shall remit all moneys received under this section*
 11 *to the state treasurer in accordance with the provisions of K.S.A. 75-4215,*
 12 *and amendments thereto. Upon receipt of each such remittance, the state*
 13 *treasurer shall deposit the entire amount in the state treasury to the credit*
 14 *of the weights and measures fee fund; and*

15 (8) *such other functions as may be specified by law or deemed nec-*
 16 *essary by the secretary to carry out the duties and functions of chapter*
 17 *83 of the Kansas Statutes Annotated, and amendments thereto or any*
 18 *rules and regulations adopted thereunder.*

19 Sec. 30. K.S.A. 2001 Supp. 83-302 is hereby amended to read as
 20 follows: 83-302. (a) Each person, other than an authorized representative
 21 of the secretary or an authorized representative of a city or county de-
 22 partment of public inspection of weights and measures established pur-
 23 suant to K.S.A. 83-210, and amendments thereto, desiring to operate and
 24 perform testing and other services as a company in Kansas shall apply to
 25 the secretary for a service company license, on a form to be supplied by
 26 the secretary, and shall obtain such license from the secretary before
 27 operating and performing testing or other services as a service company.
 28 Each service company shall obtain a license for each place of business
 29 maintained in Kansas and shall pay a license application fee **of \$50, or**
 30 **commencing July 1, 2002, and ending June 30, 2005, a fee** of \$50
 31 \$100 and thereafter an annual license renewal application fee **of \$50, or**
 32 **commencing July 1, 2002, and ending June 30, 2005, a fee** of \$50
 33 \$100 for each place of business. Each service company license shall expire
 34 on June 30 following issuance, shall be void unless renewed prior to the
 35 expiration and shall not be transferable.

36 (b) If any service company maintains any out-of-state places of busi-
 37 ness which the company operates in serving Kansas patrons, the service
 38 company seeking to obtain or renew a license under this section shall list
 39 in the application such places of business and the firm names under which
 40 the company operates at each such place of business. If any out-of-state
 41 place of business is established by a service company after being licensed
 under this section, the licensee shall supply such information to the sec-
 retary before any work is performed in Kansas from such out-of-state

New SB 422 Comparison		
Senate Sub. For SB 422	Senate Sub. For 603	House Sub. For Senate Sub. For SB 422
1 Mandates the use of generics	Not included	Included
2 Allows Dispense as Written (DAW) override	Not included	Included, with a one year sunset provision.
Changes Prior Authorization (PA) process to allow temporary PA for 120 Days	Not included	No temporary PA changes, however, permanent PA regulations are expedited from 60 to 30 days
Drug Utilization Review (DUR) Committee must give notice and hearing prior to recommending PA	Not included	Included
5 DUR Board review of temporary PA required	DUR Board review of preferred formulary required	DUR Board review of PA and voluntary drug list required
6 Not included	Creates preferred drug formulary committee and specified members	Creates voluntary drug list advisory committee without specifying membership
7 Not included	Standard for determining preferred drug list "safety, efficacy and clinical outcomes"	Included
8 Not included	Formulary committee may consider economic impact and other factors	Secretary of SRS shall consider economic impact and other factors
9 Not included	SRS given authority to accept discounts, rebates, services, etc.	SRS given the authority to accept services
10 Not included	Exception from PA for mental health drugs	Included
11 Not included	"Grandfather clause" only for mental health patients	"Grandfather clause" for all patients currently using drugs subject to new PA requirements
12 Not included	Not included	Review of beneficiary profiles with multiple prescriptions by DUR Board
13 Not included	Not included	Recorded voter required for DUR Board
14 Not included	Not included	Reconstitutes DUR Board
15 Not included	Not Included	Creates starter dose program 10 day dose
16 Not included	Not included	Creates differential dispensing fee program for adult care homes using unit dose system

HOUSE APPROPRIATIONS

DATE 5/4/02
ATTACHMENT 2

SRS to use 10 positions available in SRS.

unit dose

can refund on unopened blister packs.

Druggists must participate in refund program to get paid extra for blister packs. Generic &

By Committee on Appropriations

1 AN ACT concerning the department of social and rehabilitation
 2 services; relating to prescription drugs under the state
 3 medicaid program; providing for a state medicaid preferred
 4 drug formulary and an advisory committee therefor; medicaid
 5 drug utilization review board duties, procedures and
 6 composition; amending K.S.A. 39-7,118, 39-7,119 and 39-7,120
 7 and K.S.A. 2001 Supp. 77-421 and repealing the existing
 8 sections.

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

10 New Section 1. (a) The secretary of social and
 11 rehabilitation services may establish an advisory committee to
 12 advise the secretary in the development of a preferred formulary
 13 listing of covered drugs by the state medicaid program.

14 (b) The secretary of social and rehabilitation services
 15 shall evaluate drugs and drug classes for inclusion in the state
 16 medicaid preferred drug formulary based on safety, effectiveness
 17 and clinical outcomes of such treatments. In addition, the
 18 secretary shall evaluate drugs and drug classes to determine
 19 whether inclusion of such drugs or drug classes in a starter dose
 20 program would be clinically efficacious and cost effective. If
 21 the factors of safety, effectiveness and clinical outcomes among
 22 drugs being considered in the same class indicate no therapeutic
 23 advantage, then the secretary shall consider the cost
 24 effectiveness and the net economic impact of such drugs in making
 25 recommendations for inclusion in the state medicaid preferred
 26 drug formulary. Drugs which do not have a significant, clinically
 27 meaningful therapeutic advantage in terms of safety,
 28 effectiveness or clinical outcomes over other drugs in the same
 29 class which have been selected for the preferred drug formulary
 30 may be excluded from the preferred drug formulary and may be
 31 subject to prior authorization in accordance with state and
 32 federal law, except, prior to July 1, 2003, where a prescriber
 33 has personally written "dispense as written" or "D.A.W.", or has
 34 signed the prescriber's name on the "dispense as written"
 35 signature line in accordance with K.S.A. 65-1637, and amendments
 36 thereto.

37 (c) The secretary of social and rehabilitation services

1 shall consider the net economic impact of drugs selected or
2 excluded from the preferred formulary and may gather information
3 on the costs of specific drugs, rebates or discounts pursuant to
4 42 U.S.C. 1396r-8, dispensing costs, dosing requirements and
5 utilization of other drugs or other medicaid health care
6 services.

7 (d) The secretary of social and rehabilitation services may
8 accept all services, including, but not limited to, disease state
9 management, associated with the delivery of pharmacy benefits
10 under the state medicaid program having a determinable cost
11 effect in addition to the medicaid prescription drug rebates
12 required pursuant to 42 U.S.C. section 1396r-8.

13 (e) The state medicaid preferred drug formulary shall be
14 submitted to the medicaid drug utilization review board for
15 review and policy recommendations.

16 New Sec. 2. No requirements for prior authorization or other
17 restrictions on medications used to treat mental illnesses such
18 as schizophrenia, depression or bipolar disorder may be imposed
19 on medicaid recipients. Medications that will be available under
20 the state medicaid plan without restriction for persons with
21 mental illnesses shall include atypical antipsychotic
22 medications, conventional antipsychotic medications and other
23 medications used for the treatment of mental illnesses.

24 New Sec. 3. A prescription medication prescribed for a
25 medicaid recipient or a person becomes eligible for medicaid
26 assistance shall not be subject to any requirement for prior
27 authorization under the state medicaid plan unless (a) such
28 prescription, including all authorized refills, has expired, or
29 (b) the practitioner who prescribed the medication for such
30 recipient prescribes a different medication.

31 New Sec. 4. (a) The state medicaid plan shall include
32 provisions for a program of differential dispensing fees for
33 pharmacies that provide prescriptions for adult care homes under
34 a unit dose system in accordance with rules and regulations of
35 the state board of pharmacy and that participate in the return of

1 unused medications program under the state medicaid plan.

2 (b) The state medicaid plan shall include provisions for
3 differential ingredient cost reimbursement of generic and brand
4 name pharmaceuticals. The secretary of social and rehabilitation
5 services shall set the rates for differential cost reimbursement
6 of generic and brand name pharmaceuticals by rules and
7 regulations.

8 New Sec. 5. (a) Except where a prescriber has personally
9 written "dispense as written" or "D.A.W.," or has signed the
10 prescriber's name on the "dispense as written" signature line in
11 accordance with K.S.A. 65-1637 and amendments thereto, the
12 secretary of social and rehabilitation services may limit
13 reimbursement for a prescription under the medicaid program to
14 the multisource generic equivalent drug.

15 (b) No pharmacist participating in the medical assistance
16 program shall be required to dispense a prescription-only drug
17 that will not be reimbursed by the medical assistance program.

18 Sec. 6. K.S.A. 39-7,118 is hereby amended to read as
19 follows: 39-7,118. The secretary of social and rehabilitation
20 services shall implement a drug utilization review program with
21 the assistance of a medicaid drug utilization review board as
22 provided in K.S.A. 39-7,119 and amendments thereto to assure the
23 appropriate utilization of drugs by patients receiving medical
24 assistance under the medicaid program. The drug utilization
25 review program shall include:

26 (a) Monitoring of prescription information including
27 overutilization and underutilization of prescription-only drugs;

28 (b) making periodic reports of findings and recommendations
29 to the secretary of social and rehabilitation services and the
30 United States department of health and human services regarding
31 the activities of the board, drug utilization review programs,
32 summary of interventions, assessments of education interventions
33 and drug utilization review cost estimates;

34 (c) providing for prospective and retrospective drug
35 utilization review, as specified in the federal omnibus budget

1 reconciliation act of 1990 (public law 101-508);

2 (d) monitoring provider and recipient compliance with
3 program objectives;

4 (e) providing educational information on state program
5 objectives, directly or by contract, to private and public sector
6 health care providers to improve prescribing and dispensing
7 practices;

8 (f) reviewing the increasing costs of purchasing
9 prescription drugs and making recommendations on cost
10 containment; and

11 (g) reviewing profiles of medicaid beneficiaries who have
12 multiple prescriptions above a level specified by the board; and

13 (h) recommending any modifications or changes to the
14 medicaid prescription drug program.

15 Sec. 7. K.S.A. 39-7,119 is hereby amended to read as
16 follows: 39-7,119. (a) There is hereby created the medicaid drug
17 utilization review board which shall be responsible for the
18 implementation of retrospective and prospective drug utilization
19 programs under the Kansas medicaid program.

20 (b) Except as provided in subsection (i), the board shall
21 consist of at least seven members appointed as follows:

22 (1) Two licensed physicians actively engaged in the practice
23 of medicine, nominated by the Kansas medical society and
24 appointed by the secretary of social and rehabilitation services
25 from a list of four nominees;

26 (2) one licensed physician actively engaged in the practice
27 of osteopathic medicine, nominated by the Kansas association of
28 osteopathic medicine and appointed by the secretary of social and
29 rehabilitation services from a list of four nominees;

30 (3) two licensed pharmacists actively engaged in the
31 practice of pharmacy, nominated by the Kansas pharmacy
32 association and appointed by the secretary of social and
33 rehabilitation services from a list of four nominees;

34 (4) one person licensed as a pharmacist and actively engaged
35 in academic pharmacy, appointed by the secretary of social and

1 rehabilitation services from a list of four nominees provided by
2 the university of Kansas; and

3 (5) one licensed professional nurse actively engaged in
4 long-term care nursing, nominated by the Kansas state nurses
5 association and appointed by the secretary of social and
6 rehabilitation services from a list of four nominees.

7 (c) The secretary of social and rehabilitation services may
8 add two additional members so long as no class of professional
9 representatives exceeds 51% of the membership.

10 (d) The physician and pharmacist members shall have
11 expertise in the clinically appropriate prescribing and
12 dispensing of outpatient drugs.

13 (e) The appointments to the board shall be for terms of
14 ~~three years, except that for the initial appointments to the~~
15 ~~board one physician and one pharmacist, as designated by the~~
16 ~~secretary of social and rehabilitation services, shall be~~
17 ~~appointed for two years. Thereafter, all appointments shall be~~
18 ~~for three years.~~ In making the appointments, the secretary of
19 social and rehabilitation services shall provide for geographic
20 balance in the representation on the board to the extent
21 possible. Subject to the provisions of subsection (i), members
22 may be reappointed.

23 (f) The board shall elect a chairperson from among board
24 members who shall serve a one-year term. The chairperson may
25 serve consecutive terms.

26 (g) The board, in accordance with K.S.A. 75-4319 and
27 amendments thereto, may recess for a closed or executive meeting
28 when it is considering matters relating to identifiable patients
29 or providers.

30 (h) All actions of the medicaid drug utilization review
31 board shall be upon the affirmative vote of five members of the
32 board and the vote of each member present when action was taken
33 shall be recorded by roll call vote.

34 (i) Upon the expiration of the term of office of any member
35 of the medicaid drug utilization review board on or after the

1 effective date of this act and in any case of a vacancy existing
2 in the membership position of any of member of the medicaid drug
3 utilization review board on or after the effective date of this
4 act, a successor shall be appointed by the secretary of social
5 and rehabilitation services so that as the terms of members
6 expire, or vacancies occur, members are appointed and the
7 composition of the board is changed in accordance with the
8 following and such appointment shall be made by the secretary in
9 the following order of priority:

10 (1) One member shall be a licensed pharmacist who is
11 actively performing or who has experience performing medicaid
12 pharmacy services for a hospital and who is nominated by the
13 Kansas hospital association and appointed by the secretary from a
14 list of two or more nominees;

15 (2) one member shall be a licensed pharmacist who is
16 actively performing or who has experience performing medicaid
17 pharmacy services for a licensed adult care home and who is
18 nominated by the state board of pharmacy and appointed by the
19 secretary from a list of two or more nominees;

20 (3) one member shall be a licensed physician who is actively
21 engaged in the general practice of allopathic medicine and who
22 has practice experience with the state medicaid plan and who is
23 nominated by the Kansas medical society and appointed by the
24 secretary from a list of two or more nominees;

25 (4) one member shall be a licensed physician who is actively
26 engaged in mental health practice providing care and treatment to
27 persons with mental illness, who has practice experience with the
28 state medicaid plan and who is nominated by the Kansas
29 psychiatric society and appointed by the secretary from a list of
30 two or more nominees;

31 (5) one member shall be a licensed physician who is the
32 medical director of a nursing facility, who has practice
33 experience with the state medicaid plan and who is nominated by
34 the Kansas medical society and appointed by the secretary from a
35 list of two or more nominees;

1 (6) one member shall be a licensed physician who is actively
2 engaged in the general practice of osteopathic medicine, who has
3 practice experience with the state medicaid plan and who is
4 nominated by the Kansas association of osteopathic medicine and
5 who is appointed by the secretary from a list of two or more
6 nominees;

7 (7) one member shall be a licensed pharmacist who is
8 actively engaged in retail pharmacy, who has practice experience
9 with the state medicaid plan and who is nominated by the state
10 board of pharmacy and appointed by the secretary from a list of
11 two or more nominees;

12 (8) one member shall be a licensed pharmacist who is
13 actively engaged in or who has experience in research pharmacy
14 and who is nominated jointly by the Kansas task force for the
15 pharmaceutical research and manufacturers association and the
16 university of Kansas and appointed by the secretary from a list
17 of two or more jointly nominated persons; and

18 (9) one member shall be a licensed advanced registered nurse
19 practitioner or physician assistant actively engaged in the
20 practice of providing the health care and treatment services such
21 person is licensed to perform, who has practice experience with
22 the state medicaid plan and who is nominated jointly by the
23 Kansas state nurses' association and the Kansas academy of
24 physician assistants and appointed by the secretary from a list
25 of two or more jointly nominated persons.

26 Sec. 8. K.S.A. 39-7,120 is hereby amended to read as
27 follows: 39-7,120. (a) The department secretary of social and
28 rehabilitation services shall not restrict patient access to
29 prescription-only drugs pursuant to a program of prior
30 authorization or a restrictive formulary except by rules and
31 regulations adopted in accordance with K.S.A. 77-415 et seq., and
32 amendments thereto. Prior to the promulgation of any such rules
33 and regulations, the department secretary of social and
34 rehabilitation services shall submit such proposed rules and
35 regulations to the medicaid drug utilization review board for

1 written comment. The secretary of social and rehabilitation
2 services may not implement permanent prior authorization until 30
3 days after receipt of comments by the drug utilization review
4 board.

5 (b) When considering recommendations from the medicaid drug
6 utilization review board regarding the prior authorization of a
7 drug, the secretary of social and rehabilitation services shall
8 consider the net economic impact of such prior authorization,
9 including, but not limited to, the costs of specific drugs,
10 rebates or discounts pursuant to 42 U.S.C. 1396r-8, dispensing
11 costs, dosing requirements and utilization of other drugs or
12 other medicaid health care services which may be related to the
13 prior authorization of such drug.

14 Sec. 9. K.S.A. 2001 Supp. 77-421 is hereby amended to read
15 as follows: 77-421. (a) (1) Except as provided by subsection
16 (a)(2) or subsection (a)(3), prior to the adoption of any
17 permanent rule and regulation or any temporary rule and
18 regulation which is required to be adopted as a temporary rule
19 and regulation in order to comply with the requirements of the
20 statute authorizing the same and after any such rule and
21 regulation has been approved by the secretary of administration
22 and the attorney general, the adopting state agency shall give at
23 least 60 days' notice of its intended action in the Kansas
24 register and to the secretary of state and to the joint committee
25 on administrative rules and regulations established by K.S.A.
26 77-436, and amendments thereto. The notice shall be mailed to the
27 secretary of state and to the chairperson of the joint committee
28 and shall be published in the Kansas register. A complete copy of
29 all proposed rules and regulations and the complete economic
30 impact statement required by K.S.A. 77-416, and amendments
31 thereto, shall accompany the notice sent to the secretary of
32 state. The notice shall contain: (A) A summary of the substance
33 of the proposed rules and regulations; (B) a summary of the
34 economic impact statement indicating the estimated economic
35 impact on governmental agencies or units, persons subject to the

1 proposed rules and regulations and the general public; (C) a
2 summary of the environmental benefit statement, if applicable,
3 indicating the need for the proposed rules and regulations; (D)
4 the address where a complete copy of the proposed rules and
5 regulations, the complete economic impact statement, the
6 environmental benefit statement, if applicable, required by
7 K.S.A. 77-416, and amendments thereto, may be obtained; (E) the
8 time and place of the public hearing to be held; the manner in
9 which interested parties may present their views; and (F) a
10 specific statement that the period of 60 days' notice constitutes
11 a public comment period for the purpose of receiving written
12 public comments on the proposed rules and regulations and the
13 address where such comments may be submitted to the state agency.
14 Publication of such notice in the Kansas register shall
15 constitute notice to all parties affected by the rules and
16 regulations.

17 (2) Prior to adopting any rule and regulation which
18 establishes seasons and fixes bag, creel, possession, size or
19 length limits for the taking or possession of wildlife and after
20 such rule and regulation has been approved by the secretary of
21 administration and the attorney general, the secretary of the
22 department of wildlife and parks shall give at least 30 days'
23 notice of its intended action in the Kansas register and to the
24 secretary of state and to the joint committee on administrative
25 rules and regulations created pursuant to K.S.A. 77-436, and
26 amendments thereto. All other provisions of subsection (a)(1)
27 shall apply to such rules and regulations, except that the
28 statement required by subsection (a)(1)(E) shall state that the
29 period of 30 days' notice constitutes a public comment period on
30 such rules and regulations.

31 (3) Prior to adopting any rule and regulation which
32 establishes any permanent prior authorization on a
33 prescription-only drug pursuant to K.S.A. 39-7,120, and
34 amendments thereto, or which concerns coverage or reimbursement
35 for pharmaceuticals under the pharmacy program of the state

1 medicaid plan, and after such rule and regulation has been
2 approved by the secretary of administration and the attorney
3 general, the secretary of social and rehabilitation services
4 shall give at least 30 days' notice of such secretary's intended
5 action in the Kansas register and to the secretary of state and
6 to the joint committee on administrative rules and regulations
7 created pursuant to K.S.A. 77-436, and amendments thereto. All
8 other provisions of subsection (a)(1) shall apply to such rules
9 and regulations, except that the statement required by subsection
10 (a)(1)(E) shall state that the period of 30 days' notice
11 constitutes a public comment period on such rules and
12 regulations.

13 (b) On the date of the hearing, all interested parties shall
14 be given reasonable opportunity to present their views or
15 arguments on adoption of the rule and regulation, either orally
16 or in writing. When requested to do so, the state agency shall
17 prepare a concise statement of the principal reasons for adopting
18 the rule and regulation or amendment thereto. Whenever a state
19 agency is required by any other statute to give notice and hold a
20 hearing before adopting, amending, reviving or revoking a rule
21 and regulation, the state agency, in lieu of following the
22 requirements or statutory procedure set out in such other law,
23 may give notice and hold hearings on proposed rules and
24 regulations in the manner prescribed by this section.
25 Notwithstanding the other provisions of this section, the Kansas
26 parole board and the secretary of corrections, may give notice or
27 an opportunity to be heard to any inmate in the custody of the
28 secretary of corrections with regard to the adoption of any rule
29 and regulation, but the secretary shall not be required to give
30 such notice or opportunity.

31 (c) When, pursuant to this or any other statute, a state
32 agency holds a hearing on the adoption of a proposed rule and
33 regulation, the agency shall cause written minutes or other
34 records, including a record maintained on sound recording tape or
35 on any electronically accessed media or any combination of

1 written or electronically accessed media records of the hearing
2 to be made. If the proposed rule and regulation is adopted and
3 becomes effective, the state agency shall maintain, for not less
4 than three years after its effective date, such minutes or other
5 records, together with a list of all persons who appeared at the
6 hearing and who they represented, any written testimony presented
7 at the hearing and any written comments submitted during the
8 public comment period.

9 (d) No rule and regulation shall be adopted by a board,
10 commission, authority or other similar body except at a meeting
11 which is open to the public and notwithstanding any other
12 provision of law to the contrary, no rule and regulation shall be
13 adopted by a board, commission, authority or other similar body
14 unless it receives approval by roll call vote of a majority of
15 the total membership thereof.

16 Sec. 10. K.S.A. 39-7,118, 39-7,119 and 39-7,120 and K.S.A.
17 2001 Supp. 77-421 are hereby repealed.

18 Sec. 11. This act shall take effect and be in force from and
19 after its publication in the Kansas register.