

KANSAS REGISTER

State of Kansas

BILL GRAVES
Secretary of State

Vol. 7, No. 16

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Pages 699-770

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State of Kansas
DEPARTMENT OF HUMAN RESOURCES
ADVISORY COMMITTEE ON
HISPANIC AFFAIRS

NOTICE OF MEETING

The Advisory Committee on Hispanic Affairs (KACHA) will meet at 10 a.m. Saturday, April 30, at the Reno County Historical Society, 100 S. Walnut, Hutchinson. The meeting is open to the public.

MARC MARCANO
 Executive Director

Doc. No. 006466

State of Kansas
KANSAS ADVOCACY AND PROTECTIVE
SERVICES, INC.

NOTICE OF MEETING

The Kansas Advocacy and Protective Services will conduct its governing board meeting at 6:30 p.m. Monday, April 25, at the Jayhawk Tower, 700 Jackson, Topeka. For further information, call (KANS-A-N) 567-8670 or (913) 776-1541.

JOAN STRICKLER
 Executive Director

Doc. No. 006465

State of Kansas
UNIVERSITY OF KANSAS

NOTICE TO BIDDERS

Sealed bids for items listed below will be received by the University of Kansas Purchasing Office, Lawrence, until 2 p.m. C.D.T. on the date indicated and then will be publicly opened. Interested bidders may call (913) 864-3416 for additional information.

Monday, May 2, 1988

#88 0775

Mass Spectrometer Data System between Nermag R-10-10 Mass Spectrometer and an AT-compatible microcomputer.

GENE PUCKETT, L.C.P.M.
 Director of Purchasing

Doc. No. 006461

State of Kansas
LEGISLATIVE DIVISION OF
POST AUDIT

INVITATION FOR BIDS

Sealed bid proposals on Legislative Division of Post Audit invitation for bids for financial-compliance audit work will be received until 9 a.m. Friday, May 6. This invitation covers audit work for the Department of Transportation (audit of fiscal year 1987) and the Kansas Lottery (audit of fiscal year 1988).

Copies of the invitation for bids may be obtained from the Legislative Division of Post Audit, 109 W. 9th, Suite 301, Topeka 66612, (913) 296-3792.

MEREDITH WILLIAMS
 Legislative Post Auditor

Doc. No. 006458

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 Secretary of State
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Phone: (913) 296-3489

State of Kansas

DEPARTMENT OF ADMINISTRATION
EMPLOYEE AWARD BOARD

NOTICE OF MEETING

The Employee Award Board will meet at 1 p.m. Friday, April 22, in the Division of Personnel Services, Room 951-S, Landon State Office Building, 900 S.W. Jackson, Topeka.

BEN BARRETT
Chairperson

Doc. No. 006463

State of Kansas

STATE CORPORATION COMMISSION
MINED-LAND CONSERVATION AND
RECLAMATION BOARDNOTICE OF COMMENCEMENT OF
NEGOTIATIONS FOR CONSULTING
ENGINEERING SERVICES

The Mined-Land Conservation and Reclamation Board will commence negotiations to obtain three qualified engineering firms, permitted by law to practice engineering in the state of Kansas, for the construction design of three abandoned mined-land reclamation projects (Humble's Farm project, Franklin/Foxtown project and Litchfield project).

It is the intent of the board, pursuant to K.S.A. 75-5801 *et seq.*, to contract for the development of engineering designs for the reclamation of abandoned mined lands located in Crawford County.

Examples of work to be completed in the projects are: road stabilization; guardrail installation; drainage control structures; control of acid seeps; burial of gob material; grading spoils; highwall stabilization; closure of mine openings; and liming, fertilizing, and seeding disturbed areas.

The designs include some or all of the following: topographic maps, cross-sections, grading plans, reports of all hydrological, geological, chemical, and environmental data necessary for engineering design and documents for bidding and reclamation construction.

All interested firms must respond in writing to the Mined-Land office. If not already prequalified, firms must complete and submit four copies of the "Statement of Qualifications" form (ASD-E1) to the Mined-Land office no later than 5 p.m. Friday, May 6.

Submittals and questions should be addressed to the executive director of the Mined-Land Conservation and Reclamation Board, P.O. Box 1418, Pittsburg 66762, (316) 231-8540.

RON FOX
Executive Director

Doc. No. 006471

State of Kansas

SECRETARY OF STATE

EXECUTIVE APPOINTMENTS

Executive appointments made by the Governor, and in some cases by other state officials, are filed with the Secretary of State's office.

Complete listings of state agencies, boards and commissions are included in the Kansas Directory. County officials are listed in the Directory of County Officers. Both directories are published by the Secretary of State's office and are available free of charge.

The following appointments were filed March 14 through April 15:

Coordinating Council for Criminal Justice
(Created by Executive Order No. 88-108)

Sen. Frank Gaines, P.O. Box 219, Augusta 67010. Effective March 31, 1988. Term expires January 9, 1989. Appointed by the Senate Minority Leader.

Rep. Bob Ott, 205 Greenway Road, Salina 67401. Effective March 21, 1988. Term expires January 9, 1989. Appointed by the Speaker of the House.

Rep. Kathleen Sebelius, 224 Greenwood, Topeka 66606. Effective March 21, 1988. Term expires January 9, 1989. Appointed by the House Minority Leader.

Richard B. Walker, 300 Alice Ave., Newton 67114. Effective April 11, 1988. Serves at the pleasure of the Governor.

Decatur County Treasurer

Patricia Fringer, 607 W. Coldren, Oberlin 67749. Effective April 5, 1988. Term expires when a successor is elected and qualifies according to law. Succeeds Mildred Waldo, deceased.

Kansas Technology Enterprise Corporation

Frank Victor Sullivan, 510 Thomas, Pittsburg 66762. Effective April 13, 1988. Subject to Senate confirmation. Term expires April 13, 1992. Reappointment.

Public Employee Relations Board

Michael C. Cavell, 3024 Clark Court, Topeka 66604. Effective April 1, 1988. Subject to Senate confirmation. Term expires March 31, 1992. Succeeds Robert L. Kennedy.

District Judge, 5th Judicial District, Div. 1

John Orla Sanderson, 720 State St., Emporia 66801. Effective April 1, 1988. Term expires when a successor is elected and qualifies according to law. Succeeds Gary Rulon, resigned.

BILL GRAVES
Secretary of State

State of Kansas

BOARD OF ACCOUNTANCY**NOTICE OF MEETING**

The Board of Accountancy will meet at 9 a.m. Tuesday, April 26, in conference room 108, Landon State Office Building, 900 S.W. Jackson, Topeka. Persons interested in agenda items or in attending should contact the board office in Suite 907 of the Landon Office Building.

GLENDIA SHERMAN
Secretary

Doc. No. 006464

State of Kansas

**DEPARTMENT OF ADMINISTRATION
DIVISION OF PURCHASES****NOTICE TO BIDDERS**

Sealed bids for the following items will be received by the Director of Purchases, Landon State Office Building, 900 Jackson, Room 102, Topeka, until 2 p.m. C.D.T. on the date indicated, and then will be publicly opened. Interested bidders may call (913) 296-2377 for additional information.

Monday, May 2, 1988

#27605

Statewide—CONTINUOUS COMPUTER STOCK FORMS

#73645

Department of Corrections—STORM WINDOWS, Osawatomie

Tuesday, May 3, 1988

#27516

Statewide—JUNE (1988) MEAT PRODUCTS

#27676

Statewide—THERMAL BEDSPREADS

#73660

Kansas State University—LAB BALANCE

Wednesday, May 4, 1988

#A-5861(a)

State Board of Agriculture—REROOF LABORATORY BUILDING

#A-5861(b)

State Board of Agriculture—RESURFACE DRIVE AND PARKING LOT

#26816

Department of Revenue—POLICE TYPE UNIFORM COMPONENTS

#27092

University of Kansas Medical Center, University of Kansas, Kansas State University and Wichita State University—BLOOD BANK AND RELATED PRODUCTS

#73665

Kansas State University—FOOD PROCESSING EQUIPMENT

Thursday, May 5, 1988

#27102

Statewide—MODEMS FOR MICROCOMPUTERS

#27474

University of Kansas Medical Center—JUNE (1988) MEAT PRODUCTS

#73680

Kansas State University—VENTS AND MIRRORS

#73692

Adjutant General's Department—HERBICIDES, Salina

Friday, May 6, 1988

#27807

Department of Corrections—COMMUNITY RESIDENTIAL CENTERS

#73702

University of Kansas Medical Center—ASPHALT OVERLAY

#73704

University of Kansas Medical Center—CHROMATOGRAPHY SYSTEMS

#73705

University of Kansas—PLAIN PAPER COPIER

#73706

Adjutant General's Department—AERIAL SPRAYING, Salina

#73723

Department of Transportation—AIR HAMMERS, TAMPERS AND POST PULLERS, various locations

#73724

Department of Transportation—ALUMINUM SHEET AND SIGN PANELS

#73736

Kansas State University—MEAT PROCESSING EQUIPMENT

Tuesday, May 10, 1988

#73703

University of Kansas Medical Center—DATA ENTRY SOFTWARE FOR IBM MAINFRAME

Wednesday, May 11, 1988

#27810

Department of Corrections—ADULT EDUCATION PROGRAM

#27811

Department of Corrections—ADULT EDUCATION PROGRAM

Tuesday, May 31, 1988

#27809

University of Kansas—LONG DISTANCE SERVICE AND ASSOCIATED BILLING FOR UNIVERSITY OF KANSAS STUDENTS IN CAMPUS DORMITORY LIVING

Friday, June 3, 1988

#26510

University of Kansas Medical Center—PROPERTY INSURANCE

NICHOLAS B. ROACH
Director of Purchases

Doc. No. 006467

State of Kansas

WILDLIFE AND PARKS COMMISSION

NOTICE OF MEETING

A meeting of the Kansas Wildlife and Parks Commission is scheduled for Monday, April 25 and Tuesday, April 26. The meeting will begin at 8 a.m. April 25 with a tour of the Fort Scott National Historic Landmark Area and continue with tours of the Mined Lands Area, Crawford State Park, and Farlington State Fish Hatchery. The meeting will reconvene at 7 p.m. at the Memorial Auditorium and Convention Center, Meeting Room B-6, 503 N. Pine, Pittsburg.

The agenda for the 7 p.m. meeting includes a presentation of the "Hunter Education Liaison Employee of the Year" award; a public hearing on deer, elk, fall turkey, coyote, squirrel and furbearer season regulations and regulations addressing fur dealers, license vendor bonding and antelope and deer hunting restrictions; an executive session; and any other business which may come before the commission.

The commission will reconvene at 9 a.m. April 26 at the same location to conclude any unfinished business.

GERALD W. TOMANEK
Chairman

Doc. No. 006459

State of Kansas

LEGISLATURE

LEGISLATIVE BILLS INTRODUCED

The following numbers and titles of bills and resolutions have been recently introduced in the 1988 Kansas Legislature.

Copies of bills and resolutions are available free of charge from the Legislative Document Room, 145-N State Capitol, Topeka 66612, (913) 296-4096.

Bills introduced April 7-9:

House Bills

HB 3112, by Committee on Appropriations: An act concerning the health care provider insurance availability act; relating to the health care stabilization fund; coverages and surcharges; amending K.S.A. 1987 Supp. 40-3403 and repealing the existing section.

HB 3113, by Committee on Appropriations: An act concerning coal-fired electric generating plants; requiring the burning of Kansas-mined coal.

HB 3114, by Committee on Appropriations: An act relating to coal; imposing a tax upon the generation of electricity from coal by electric public utilities; providing for the administration of such tax and the use of revenues derived therefrom; eliminating the mineral severance tax upon coal; amending K.S.A. 1987 Supp. 79-4216, 79-4217, 79-4218, 79-4220, 79-4221, 79-4222, 79-4223, 79-4224, 79-4226 and 79-4227 and repealing the existing sections.

HB 3115, by Committee on Appropriations: An act concerning the ombudsman of corrections; amending K.S.A. 74-7404 and K.S.A. 1987 Supp. 74-7403 and repealing the existing sections.

Senate Bills

SB 758, by Committee on Ways and Means: An act making and concerning appropriations for the fiscal years ending June 30, 1988, and June 30, 1989, for the judicial branch, department of corrections and Kansas state penitentiary; authorizing certain transfers, imposing certain restrictions and limitations and directing or authorizing certain receipts, disbursements, capital improvements and acts incidental to the foregoing.

SB 759, by Committee on Ways and Means: An act concerning state capital improvement projects; relating to the local building codes and zoning ordinances, resolutions and regulations; amending K.S.A. 75-3741c and repealing the existing section.

SB 760, by Committee on Ways and Means: An act relating to banks and banking; concerning the definition of bankers' bank; amending section 2 of 1988 Senate Bill No. 665 and repealing the existing section.

SB 761, by Committee on Ways and Means: An act relating to home loans; concerning the disclosure of certain information.

SB 762, by Committee on Ways and Means: An act making and concerning appropriations for the fiscal years ending June 30, 1988, and June 30, 1989, to initiate and complete certain capital improvement projects for the department of corrections; authorizing certain transfers, imposing certain restrictions and limitations, and directing or authorizing disbursements and acts incidental to the foregoing; also repealing section 8 of chapter 335 of the 1987 Session Laws of Kansas.

SB 763, by Committee on Ways and Means: An act concerning continuing legal education; exempting attorney members of the legislature from the requirements thereof.

SB 764, by Committee on Ways and Means: An act concerning historic preservation; providing certain historic preservation powers; authorizing prosecution and providing penalties for failure to obtain certain permits; amending K.S.A. 75-2721 and K.S.A. 1987 Supp. 75-2724 and repealing the existing sections.

SB 765, by Committee on Ways and Means: An act concerning municipalities; relating to the temporary financing of public services or improvements in anticipation of state loans or grants.

House Resolutions

HR 6094, by Representative Hensley: A resolution honoring Dr. John Green, Jr., for his service as President of Washburn University.

HR 6095, by Representative Shore: A resolution congratulating and commending Grant County on its Centennial Anniversary.

HR 6096, by Representative Shore: A resolution congratulating and commending Haskell County on its 101st Anniversary.

HR 6097, by Representative Aylward: A resolution urging Congress to repeal the "preproductive expense" provision of the 1986 Federal Tax Reform Act.

HR 6098, by Representative Barkis: A resolution congratulating and commending Michael Rush on being selected a Kansas Master Teacher for 1988.

HR 6099, by Representative Knopp: A resolution congratulating and commending Carol S. Adams on being selected a Kansas Master Teacher for 1988.

HR 6100, a resolution congratulating and commending Robert Hottman on being selected a Kansas Master Teacher for 1988.

HR 6101, by Representative Gross: A resolution congratulating and commending Martha Zakrzewski on being selected a Kansas Master Teacher for 1988.

HR 6102, by Representative Hamm: A resolution congratulating and commending Donald G. Buhler on being selected a Kansas Master Teacher for 1988.

HR 6103, by Representative Lowther: A resolution congratulating and commending Carolyn Kuhn on being selected a Kansas Master Teacher for 1988.

HR 6104, by Representative Freeman: A resolution commending Jerry Waddell, Rick Grossenbacher, and Richard Goza for their heroic and lifesaving actions.

HR 6105, by Representative Rolfs: A resolution congratulating and commending Bonnie Weingart on being selected a Kansas Master Teacher for 1988.

HR 6106, by Representative Branson: A resolution congratulating and commending Ralph J. Turner for receiving the Distinguished Older Citizen of Kansas Award.

HR 6107, by Representative Smith: A resolution congratulating and commending the Jackson Heights Chapter of the Future Farmers of America for winning the 10th Annual Kansas Beef Expo Judging Contest.

HR 6108, by Representative Sallee: A resolution congratulating and commending the City of Whiting on its Centennial Anniversary.

HR 6109, by Representative Freeman: A resolution congratulating and commending the members of the Kansas State Firefighters Association on the organization's Centennial Anniversary.

Senate Resolutions

SCR 1624, by Committee on Education: A concurrent resolution requesting the Legislative Educational Planning Committee to study minority underrepresentation in higher education, to inquire into recruitment and retention efforts of Kansas institutions of higher education, and to develop possible solutions.

SCR 1625, by Senator Burke: A concurrent resolution relating to the 1988 regular session of the legislature; extending such session beyond 90 calendar days; and providing for adjournment thereof.

SCR 1626, by Senators Hoferer, Salisbury and Parrish: A concurrent resolution authorizing and directing the secretary of administration to explore the advisability of acquiring certain real estate adjacent to the capitol and to make a report and recommendation thereon to the 1989 regular session of the legislature.

SR 1868, by Senator Francisco: A resolution congratulating and commending the "Warm Hearts" community service project.

SR 1869, by Senators Hayden and Frey: A resolution congratulating and commending Haskell County on its 101st Anniversary.

SR 1870, by Senator Hayden: A resolution congratulating and commending Grant County on its Centennial Anniversary.

SR 1871, by Senator Gordon: A resolution congratulating and commending the City of Whiting on its Centennial Anniversary.

Doc. No. 006460

State of Kansas

ATTORNEY GENERAL

Opinion No. 88-51

Drainage and Levees—Watershed Districts; Formation of Watershed Districts—Elections; Qualified Voters. Kenneth F. Kern, Executive Director, State Conservation Commission, Topeka, April 8, 1988.

The definition of qualified voter found in K.S.A. 24-1202(j) creates two categories of those qualified to vote under the watershed district act, K.S.A. 24-1201 *et seq.*: First, any person who is a registered voter in the district; and second, any person 18 years or older who owns land within the district, whether or not a registered voter or a resident of the district. As to the second category of qualified voters (those 18 or over owning land), a landowner is defined by K.S.A. 24-1202(k) as the record owner of the fee. As such, a landowner does not include a spouse whose name is not on the title even though the spouse has an interest in the realty under Kansas marital property statutes. However, there is generally nothing to prevent the record owner from deeding the title to himself and

(continued)

his spouse in some form of co-ownership thereby making the spouse a record owner. Cited herein: K.S.A. 24-1201 *et seq.*; 24-1202; K.S.A. 1987 Supp. 23-201; K.S.A. 59-505; K.S.A. 1987 Supp. 60-1610. GE

Opinion No. 88-52

Cities and Municipalities—Port Authorities—Ability to Issue Revenue Bonds. Representative Clyde D. Graeber, 41st District, Leavenworth, April 8, 1988.

K.S.A. 1987 Supp. 12-3415(b) stipulates that a port authority may not issue revenue bonds without first having received approval, by resolution, of the governing bodies of the cities and counties which comprise such port authority. Cited herein: K.S.A. 1987 Supp. 12-3402; 12-3415. REF

Opinion No. 88-53

Corporations—Agricultural Corporations—Definition of "Farming"; Hydroponic Vegetable Production. Representative Rick Bowden, 93rd District, Goddard, April 8, 1988. Hydroponic production of vegetables by a corporation on land owned by the corporation constitutes farming and thus violates the corporate farming law. Cited herein: K.S.A. 1987 Supp. 17-5903; 17-5904.

RLN

Opinion No. 88-54

Corporations—Agricultural Corporations—Corporate Ownership of Agricultural Land; Exemption; Change of Corporate Domicile. Representative Barbara P. Allen, 21st District, Prairie Village, April 8, 1988.

A corporation domiciled in a foreign country which meets the requirements of K.S.A. 1987 Supp. 17-5904(a)(7)(B) will not forfeit its exemption from the corporate farming law if the corporation changes its domicile to the state of Delaware. Cited herein: K.S.A. 17-5901; K.S.A. 1987 Supp. 17-5904. RLN

Opinion No. 88-55

Taxation—Miscellaneous Provisions—Local Ad Valorem Tax Reduction Fund; Distribution to Political Subdivisions. Willis K. Musick, Ellis County Attorney, Hays, April 12, 1988.

A county treasurer who has received local ad valorem tax reduction fund moneys pursuant to K.S.A. 79-2959 *et seq.* may properly receive them under K.S.A. 19-506 but may not distribute them to political subdivisions unless or until that subdivision has originally, or through amendment processes, adopted a budget that complies with procedures and requirements mandated by K.S.A. 79-2961(b). Cited herein: K.S.A. 10-1101; 19-506; 79-2925; K.S.A. 1987 Supp. 79-2959; K.S.A. 79-2960; 79-2961; 79-2962; 79-5001. TMN

ROBERT T. STEPHAN
Attorney General

Doc. No. 006470

State of Kansas

**DEPARTMENT OF HEALTH
AND ENVIRONMENT**

SECRETARY'S EXECUTIVE ORDER NO. 1

On this 30th day of March, 1988, pursuant to the authority vested in the Secretary of the Kansas Department of Health and Environment by K.S.A. 75-5616, I do hereby issue this Executive Order in the form and substance as appears below, and I do consider the same necessary for the efficient administration of the Kansas Department of Health and Environment.

Section 1. I hereby abolish the Toxicology Advisory Committee established on November 8, 1982, by then Secretary Joseph F. Harkins in Executive Order No. 1.

Section 2. I also abolish the following Committee, Council and Board, all of which were established pursuant to K.S.A. 75-5616:

- a) Water Well Advisory Board
- b) Genetic Disease Advisory Committee
- c) Environment Awareness Council

STANLEY C. GRANT, Ph.D.
Secretary of Health
and Environment

Doc. No. 006479

State of Kansas

DEPARTMENT OF TRANSPORTATION

NOTICE TO CONTRACTORS

Notice is hereby given that sealed proposals for the construction of road and bridge work in the following Kansas counties will be received at the office of the Chief of Construction and Maintenance, K.D.O.T., Topeka, until 10 a.m. C.D.T. May 19, 1988, and then publicly opened:

DISTRICT ONE—Northeast

Doniphan—20-22 K-3446-01—K-20, 2.2 miles east of the Doniphan/Brown county line, culvert replacement. (State Funds)

Douglas—23 K-1067-02—Marina at Clinton State Park, construct parking lot. (State Funds)

Douglas—40-23 K-3033-01—U.S. 40, California east to Main Street in Lawrence, 0.5 mile, grading and surfacing. (State Funds)

Douglas—10-23 M-1519-01—K-10, east city limits of Lawrence, then east 1.2 miles on eastbound lanes and 0.4 mile on westbound lanes, 1.2 miles, overlay. (State Funds)

Johnson—35-46 K-2434-04—I-35, Miami-Johnson county line, northeast 6.7 miles, pavement reconstruction. (Federal Funds)

Nemaha—36-66 K-3455-01—U.S. 36, Marshall-Nemaha county line east to the west city limits of Seneca, 9.0 miles, overlay. (State Funds)

Shawnee—75A-89 U-1152-01—U.S. 75A (Topeka Boulevard) and Independence in Topeka, traffic signal. (Federal Funds)

Shawnee—24-89 M-1521-01—U.S. 24, intersection of

U.S. 24 and Kansas Avenue and U.S. 24 and Rochester Road in Topeka, 0.4 mile, overlay. (State Funds)

Wyandotte—105 U-1115-01—Minnesota-Fairfax viaduct in Kansas City, 0.2 mile, bridge replacement. (Federal Funds)

Wyandotte—70-105 M-1516-01—I-70, eastbound intercity viaduct bridge 31, east end of span 2, bridge repair. (State Funds)

DISTRICT TWO—Northcentral

Clay—24-14 K-3129-01—U.S. 24, Huntress Creek bridge 4, 12.5 miles east of Cloud-Clay county line, bridge painting. (State Funds)

Cloud—28-15 M-1493-01—K-28, 0.2 mile northwest of the junction of K-9 and K-28 at Wolf Creek, slide repair. (State Funds)

DISTRICT THREE—Northwest

Cheyenne—12 C-2311-01—County road, 7.5 miles north and 4.0 miles east of St. Francis, then east, 0.2 mile, bridge replacement. (Federal Funds)

Gove—32 C-2502-01—County road, 3.0 miles south of Quinter, then south, 1.3 miles, grading and bridge. (Federal Funds)

Phillips—74 C-2121-01—County road, 11.2 miles north of Agra, then north, 0.1 mile, bridge replacement. (Federal Funds)

DISTRICT FOUR—Southeast

Bourbon—69-6 M-1518-01—U.S. 69, bridge 14 over K-7 and Burlington Northern Railroad, 6.6 miles north of the Crawford-Bourbon county line, 0.2 mile, slide repair. (State Funds)

Coffey—16 C-2138-01—County road, 4.1 miles east of New Strawn, then east, 0.3 mile, bridge replacement. (Federal Funds)

Crawford—19 U-1063-01—U.S. 69 at Frontenac, then west, 1.0 mile, grading and surfacing. (Federal Funds)

Franklin—35-30 M-1517-01—I-35 and U.S. 59 bridge 22, ramp in northwest quadrant, 0.1 mile, slide repair. (State Funds)

Labette—166-50 M-1510-01—U.S. 166, Montgomery-Labette county line east 7.3 miles to the end of the new project, 7.3 miles, shoulders. (State Funds)

Montgomery—63 C-1795-01—County road, 0.4 mile north and 1.0 mile west of Dearing, then west, 0.2 mile, bridge replacement. (Federal Funds)

Montgomery—166-63 M-1509-01—U.S. 166, from the east junction of U.S. 166 and U.S. 169 east to the Montgomery-Labette county line, 3.5 miles, shoulders. (State Funds)

Montgomery—169-63 M-1508-01—U.S. 169, Verdigris River east and north to north of the north junction of U.S. 166 and U.S. 169, 0.5 mile, shoulders. (State Funds)

Neosho—67 U-1111-01—35th Street, from U.S. 169 west to the relocation of U.S. 169 in Chanute, 1.5 miles, surfacing. (Federal Funds)

Woodson—104 C-2332-01—County road, 0.8 mile east of Neosho Falls, then east, 0.3 mile, bridge replacement. (Federal Funds)

DISTRICT FIVE—Southcentral

Barber—2-4 K-3031-01—K-2, 250 feet west of K-8 in Kiowa, 0.1 mile, culvert replacement. (State Funds)

Cowley—77-18 K-3130-01—U.S. 77, Timber Creek bridge 10, 0.7 mile north of U.S. 160, bridge painting. (State Funds)

Kingman—48 C-2153-01—County road, 3.5 miles north and 5.9 miles east of Kingman, then east, 0.1 mile, bridge replacement. (Federal Funds)

Kingman—48 C-2154-01—County road, 3.5 miles north and 7.0 miles east of Kingman, then east, 0.1 mile, bridge replacement. (Federal Funds)

Sedgwick—235-87 K-0805-01—I-235, bridges 77 through 82 over West Street, Missouri Pacific Railroad and The Atchison, Topeka and Santa Fe Railway, bridge widening. (Federal Funds)

DISTRICT SIX—Southwest

Finney—83-28 M-1506-01—U.S. 83, bridge 17 over U.S. 50B at Garden City, bridge repair. (State Funds)

Grant—25-34 K-3128-01—K-25, South Fork Cimarron River bridge 7, 11.1 miles south of U.S. 160, bridge painting. (State Funds)

Seward—54-88 M-1522-01—U.S. 54, Safety Rest Area, 4 miles southwest of Kismet, modifications. (State Funds)

Proposals will be issued upon request to all prospective bidders who have been prequalified by the Kansas Department of Transportation on the basis of financial condition, available construction equipment, and experience. Also, a statement of unearned contracts (Form No. 284) must be filed. There will be no discrimination against anyone because of race, age, religion, color, sex, handicap, or national origin in the award of contracts.

Each bidder shall file a sworn statement executed by or on behalf of the person, firm, association or corporation submitting the bid, certifying that such person, firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. This sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the state to administer oaths. The required form of the affidavit will be provided by the state to each prospective bidder. Failure to submit the sworn statement as part of the bid-approval package will make the bid nonresponsive and not eligible for award consideration.

Plans and specifications for the projects may be examined at the office of the respective county clerk or at the K.D.O.T. district office responsible for the work.

HORACE B. EDWARDS
Secretary of Transportation

Doc. No. 006472

(Published in the *Kansas Register*, April 21, 1988.)**NOTICE OF BOND SALE****\$300,000****General Obligation School Building Bonds
Series A, 1988****of****Unified School District 384 (Blue Valley)****Riley County, State of Kansas****(general obligation bonds payable
from unlimited ad valorem taxes)****Sealed Bids**

Sealed bids will be received by the undersigned, clerk of the Board of Education of Unified School District 384 (Blue Valley), Riley County, Kansas, on behalf of the Board of Education of said school district at the school district office, Box 98, Randolph, KS 66554, until 8 p.m. C.D.T. on Monday, May 9, for the purchase of \$300,000 principal amount of general obligation school building bonds, Series A, 1988, of the school district hereinafter described. All bids will be publicly opened and read at said time and place and will be acted upon by the Board of Education immediately thereafter. No oral or auction bids will be considered.

Bond Details

The bonds will consist of fully registered bonds in the denomination of \$5,000 each or any integral multiple thereof. The bonds will be dated May 1, 1988, and will become due serially on October 1, in the years as follows.

Year	Principal Amount
1989	\$30,000
1990	\$30,000
1991	\$30,000
1992	\$30,000
1993	\$30,000
1994	\$30,000
1995	\$30,000
1996	\$30,000
1997	\$30,000
1998	\$30,000

The bonds will bear interest from the date thereof, said rates to be determined when the bonds are sold as hereinafter provided, which interest will be payable semi-annually on April 1 and October 1 in each year beginning on April 1, 1989.

Place of Payment and Bond Registration

The principal of and interest on the bonds will be payable in lawful money of the United States of America by check or draft of the Kansas State Treasurer, Topeka, Kansas (the paying agent and bond registrar), to the registered owners thereof whose names are on the registration books of the bond registrar as of the 15th day (whether or not a business day) of the calendar month next preceding each interest payment date. The bonds will be registered pursuant to a plan of registration approved by the Kansas State Treasurer and the Kansas Attorney General.

The school district will pay for the fees of the bond registrar for registration and transfer of the bonds and will also pay for printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the

bond registrar, will be the responsibility of the bondowners.

Redemption of Bonds Prior to Maturity

None of said bonds shall be called prior to its stated maturity.

Authority, Purpose and Security

The bonds are being issued pursuant to K.S.A. 72-6761 *et seq.* for the purpose of paying the cost of certain school building improvements. The bonds and the interest thereon will constitute general obligations of the school district, payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable, tangible property, real and personal, within the territorial limits of the school district.

Conditions of Bids

Proposals will be received on the bonds bearing such rate or rates of interest as may be specified by the bidders, subject to the following conditions: The same rate shall apply to all bonds of the same maturity. Each interest rate specified shall be a multiple of $\frac{1}{8}$ or $\frac{1}{20}$ of 1 percent. No interest rate may exceed a rate equal to the index of treasury bonds published by the weekly *Credit Markets* in New York, New York, on the Monday next preceding the day on which the bonds are sold, plus 2 percent. The difference between the highest rate specified and the lowest rate specified shall not exceed 2 percent. No bid of less than the entire par value of the bonds and accrued interest thereon to the date of delivery will be considered and no supplemental interest payments will be considered. Each bid must specify the total interest cost to the school district during the term of the bonds on the basis of such bid, the premium, if any, offered by the bidder, and the net interest cost to the school district on the basis of such bid, all certified by the bidder to be correct, and the school district will be entitled to rely on the certificate of correctness of the bidder. Each bid must also specify the average annual net interest rate to the school district on the basis of such bid.

Good Faith Deposit

Each bid shall be accompanied by a cashier's or certified check drawn on a bank located in the United States of America in the amount of \$6,000 (2 percent of the principal amount of the bonds) payable to the order of the school district to secure the school district from any loss resulting from the failure of the bidder to comply with the terms of the bid. Good faith checks submitted by unsuccessful bidders will be returned. If a bid is accepted, said check or the proceeds thereof will be held by the school district until the bidder has complied with all of the terms and conditions of this notice. If a bid is accepted but the school district fails to deliver the bonds to the bidder in accordance with the terms and conditions of this notice, said check or the proceeds thereof will be returned to the bidder. If a bid is accepted but the bidder defaults in the performance of any of the terms and conditions of this notice, the proceeds of such check will be retained by the school district as and for liquidated damages. No interest will be paid upon the successful bidder's good faith check.

Basis of Award

The award of the bonds will be made on the basis of

the lowest net interest cost to the school district, which will be determined by subtracting the amount of the premium bid, if any, from the total interest cost to the school district. If there is any discrepancy between the net interest cost and the average annual net interest rate specified, the specified net interest cost shall govern and the interest rates specified in the bid shall be adjusted accordingly. If two or more proper bids providing for identical amounts for the lowest net interest cost are received, the Board of Education will determine which bid, if any, will be accepted, and its determination is final. The school district reserves the right to reject any and all bids and to waive any irregularities in a submitted bid. Any bid received after 8 p.m. on the date of sale will be returned to the bidder unopened.

Bid Forms

All bids must be made on forms which may be procured from the clerk of the Board of Education or bond counsel. No additions or alterations in such forms shall be made and any erasures may cause rejection of any bid.

Submission of Bids

Bids must be submitted in sealed envelopes addressed to the undersigned clerk of the Board of Education and marked "Proposal for General Obligation School Building Bonds." Bids may be submitted by mail or delivered in person to the undersigned at the school district's office and must be received by the undersigned prior to 8 p.m. C.D.T. on Monday, May 9, 1988.

CUSIP Numbers

It is anticipated that CUSIP identification numbers will be printed on or assigned to the bonds, but neither the failure to print such number on or assign such number to any bond nor any error with respect thereto will constitute cause for failure or refusal by the purchaser thereof to accept delivery of and pay for the bonds in accordance with the terms of the purchase contract. All expenses in relation to the assignment and printing of CUSIP numbers on the bonds will be paid by the school district.

Delivery and Payment

The school district will pay for printing the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or before July 1, 1988, at such bank or trust company in the state of Kansas or Kansas City, Missouri, as may be specified by the successful bidder. Delivery elsewhere will be made at the expense of the successful bidder. The successful bidder will be furnished with a certified transcript of the proceedings evidencing the authorization and issuance of the bonds and the usual closing documents, including a certificate that there is no litigation pending or threatened at the time of delivery of the bonds affecting their validity. Payment for the bonds must be made in Federal Reserve funds, immediately subject to use by the school district.

The number and denominations of the bonds and the names, addresses and social security or taxpayer identification numbers of the registered owners must be submitted in writing by the successful bidder to the school district and bond registrar at least two weeks prior to the closing date. In the absence of such information, the

school district will deliver one bond per maturity registered in the name of the manager of the successful bidder.

The reoffering prices to the public by the original purchaser must be furnished to the school district at least one week prior to the closing date. A certificate stating that at least 10 percent of the bonds of each maturity has been sold to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at such reoffering prices must be furnished to the school district by the original purchaser at closing.

Official Statement

The school district has prepared an informational statement dated April 15, 1988, copies of which may be obtained from the clerk of the board of education or from bond counsel. Upon the sale of the bonds, the school district will furnish the successful bidder with a reasonable number of copies thereof without additional cost upon request. Additional copies may be ordered at the successful bidder's expense.

Assessed Valuation and Indebtedness

The total assessed valuation of the taxable, tangible property within the school district, for the year 1987, is as follows:

Equalized assessed valuation of taxable tangible property	\$6,617,422.00
Tangible valuation of personal property including motor vehicles	<u>\$1,192,397.00</u>
Equalized assessed tangible valuation for computation of bonded debt limitations	\$7,809,819.00

The total general obligation bonded indebtedness of the school district as of the date of the bonds, including the bonds being sold, is \$300,000.

Approval of Bonds

The bonds will be sold subject to the legal opinion of Fred W. Rausch, Jr., Topeka, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the school district, printed on the bonds and delivered to the successful bidder as and when the bonds are delivered.

Opinion of Bond Counsel

In the opinion of bond counsel, assuming continued compliance by the school district with the terms of the bond resolution, under existing law, the interest on the bonds (a) is excludable from gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted net book income (adjusted current earnings for taxable years ending after December 31, 1989) for the purpose of computing the alternative minimum tax imposed on such corporations. The opinion set forth in clause (a) above is subject to the condition that the school district comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the bonds in order that interest thereon be excluded from gross income for federal income tax purposes. Failure to

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comply with certain of such requirements could cause the interest on the bonds to be included in federal gross income retroactive to the date of issuance of the bonds. The school district has covenanted to comply with all such requirements.

In regard to said Series A, 1988 bonds, and with respect to the Tax Reform Act of 1986 (H.R. 3838) which became effective on October 22, 1986, and with respect to Section 902 of said act relating to interest incurred by financial institutions which carry tax-exempt bonds, the school district hereby designates the bonds as qualified project bonds (qualified tax exemptions) for the purpose of Section 902(b)(3) of the act. The school district further covenants to comply with all of the provisions of the act and all other applicable federal laws, regulations, published rulings and court decisions in order to preserve the tax-exempt status of the bonds; to the extent such actions can be taken by the governing body of the school district.

The bonds are "qualified tax-exempt obligations" within the meaning of section 265(b)(3) of the code, and, in the case of certain financial institutions (within the meaning of Section 265(b)(5) of the code), a deduction is allowed for 80 percent of that portion of such financial institution's interest expense allocable to interest on the bonds.

Bond counsel expresses no opinion regarding other federal tax consequences arising with respect to the bonds.

The bonds are exempt from intangible personal property taxes levied by Kansas counties, cities or townships.

Other Federal Tax Matters

Prospective purchasers of the bonds should be aware that (i) Section 265 of the code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the bonds, except with respect to certain financial institutions (within the meaning of Section 265(b)(5) of the code); (ii) with respect to insurance companies subject to the tax imposed by Section 831 of the code, for taxable years beginning after December 31, 1986, Section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15 percent of the sum of certain items, including interest on the bonds; (iii) for taxable years beginning after December 31, 1986, and before January 1, 1992, interest on the bonds earned by some corporations could be subject to the environmental tax imposed by Section 59A of the code; (iv) for taxable years beginning after December 31, 1986, interest on the bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by Section 884 of the code; (v) passive investment income, including interest on the bonds, may be subject to federal income taxation under Section 1375 of the code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25 percent of the gross receipts of such Subchapter S corporation is passive investment income; and (vi) Section 86 of the code requires recipients of certain Social Security and certain railroad retirement benefits to take into account in determining gross income, receipts or accruals of interest on the bonds. These categories of bondowners should consult their own tax advisers as to the applicability of these consequences.

Additional Information

Additional information regarding the bonds may be obtained from the school district clerk, school district employee, bond counsel or any other source available to a prospective bidder.

Dated April 15, 1988.

UNIFIED SCHOOL DISTRICT 384
RILEY COUNTY, KANSAS
By Ranee Graves, Clerk
Board of Education
Box 98
Randolph, KS 66554
(913) 293-5256

Doc. No. 006478

(Published in the *Kansas Register*, April 21, 1988.)

NOTICE OF BOND SALE

\$7,535,000

General Obligation Bonds

Series 180

of the

City of Manhattan, Kansas

**(general obligation bonds payable
from unlimited ad valorem taxes)**

Sealed Bids

Sealed bids will be received by the undersigned, city clerk of the city of Manhattan, Kansas, on behalf of the governing body at the City Hall, 11th and Poyntz, P.O. Box 748, Manhattan, until 4 p.m. C.D.T. on Tuesday, May 3, 1988, for the purchase of \$7,535,000 principal amount of general obligation bonds, Series 180, of the city hereinafter described. All bids will be publicly opened and read at said time and place and will be acted upon by the governing body at its meeting to be held at 7 p.m. on the date of sale. No oral or auction bids will be considered.

Bond Details

The bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The bonds will be dated May 1, 1988, and will become due serially on November 1 in the years as follows:

Year	Principal Amount
1989	\$350,000
1990	\$370,000
1991	\$390,000
1992	\$410,000
1993	\$435,000
1994	\$460,000
1995	\$490,000
1996	\$520,000
1997	\$555,000
1998	\$595,000
1999	\$210,000
2000	\$225,000
2001	\$245,000
2002	\$260,000
2003	\$280,000
2004	\$300,000
2005	\$320,000
2006	\$345,000
2007	\$375,000
2008	\$400,000

The bonds will bear interest from the date thereof at

rates to be determined when the bonds are sold as hereinafter provided, which interest will be payable semiannually on May 1 and November 1 in each year, beginning on November 1, 1989.

Place of Payment and Bond Registration

The principal of and interest on the bonds will be payable in lawful money of the United States of America by check or draft of the Kansas State Treasurer, Topeka, Kansas (the paying agent and bond registrar), to the registered owners thereof whose names are on the registration books of the bond registrar as of the 15th day (whether or not a business day) of the calendar month next preceding each interest payment date. The bonds will be registered pursuant to a plan of registration approved by the city and the Kansas Attorney General.

The city will pay for the fees of the bond registrar for registration and transfer of the bonds and will also pay for printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the bond registrar, will be the responsibility of the bondowners.

Redemption of Bonds Prior to Maturity

Bonds maturing in the years 1989 to 1998, inclusive, shall become due without option of prior payment. At the option of the city, bonds maturing in the years 1999 and thereafter may be called for redemption and payment prior to maturity in whole or in part (selection of bonds to be designated by the city in such equitable manner as it may determine) on November 1, 1998, or on any interest payment date thereafter at the redemption price of 100 percent (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

Whenever the city is to select bonds for the purpose of redemption, it will, in the case of bonds in denominations greater than \$5,000, if less than all of the bonds then outstanding are to be called for redemption, treat each \$5,000 of face value of each such fully registered bond as though it were a separate bond in the denomination of \$5,000.

If the city elects to call any bond for redemption and payment prior to the maturity thereof, the city shall give written notice of its intention to call and pay said bonds on a specified date, the same being described by maturity, said notice to be mailed by United States certified mail addressed to the owners of said bonds, to the Kansas State Treasurer, to the original purchaser of the bonds and to the paying agent, each of said notices to be mailed not less than 30 days prior to the date fixed for redemption. The city shall also give such additional notice as may be required by Kansas law in effect as of the date of such notice. If any bond be called for redemption and payment as aforesaid, all interest on such bond shall cease from and after the date for which such call is made, provided funds are available for its payment at the price hereinbefore specified.

Authority, Purpose and Security

The bonds are being issued pursuant to K.S.A. 12-685 *et seq.*, 12-6a01 *et seq.*, and 12-1301 *et seq.*, all as amended, for the purpose of paying the cost of certain miscellaneous public improvements. The bonds and the interest thereon will constitute general obligations of the

city, payable in part from special assessments levied upon the property benefited by the construction of said improvements and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the city, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the city.

Conditions of Bids

Proposals will be received on the bonds bearing such rate or rates of interest as may be specified by the bidders, subject to the following conditions: The same rate shall apply to all bonds of the same maturity. Each interest rate specified shall be a multiple of $\frac{1}{8}$ or $\frac{1}{20}$ of 1 percent. No interest rate may exceed a rate equal to the index of treasury bonds published by the weekly *Credit Markets* in New York, New York, on the Monday next preceding the day on which the bonds are sold, plus 2 percent. The difference between the highest rate specified and the lowest rate specified can not exceed 3 percent. No bid of less than the entire par value of the bonds and accrued interest thereon to the date of delivery will be considered and no supplemental interest payments will be considered. Each bid must specify the total interest cost to the city during the term of the bonds on the basis of such bid, the premium, if any, offered by the bidder, and the net interest cost to the city on the basis of such bid, all certified by the bidder to be correct, and the city will be entitled to rely on the certificate of correctness of the bidder. Each bid shall also specify the average annual net interest rate to the city on the basis of such bid.

Good Faith Deposit

Each bid shall be accompanied by a cashier's or certified check drawn on a bank located in the United States of America in the amount of \$150,700 (2 percent of the principal amount of the bonds) payable to the order of the city to secure the city from any loss resulting from the failure of the bidder to comply with the terms of the bid. Good faith checks submitted by unsuccessful bidders will be returned. If a bid is accepted, said check or the proceeds thereof will be held by the city until the bidder has complied with all of the terms and conditions of this notice. If a bid is accepted but the city fails to deliver the bonds to the bidder in accordance with the terms and conditions of this notice, said check or the proceeds thereof will be returned to the bidder. If a bid is accepted but the bidder defaults in the performance of any of the terms and conditions of this notice, the proceeds of such check will be retained by the city as and for liquidated damages. No interest will be paid upon the successful bidder's good faith check.

Basis of Award

The award of the bonds will be made on the basis of the lowest net interest cost to the city, which will be determined by subtracting the amount of the premium bid, if any, from the total interest cost to the city. If there is any discrepancy between the net interest cost and the average annual net interest rate specified, the

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specified net interest cost shall govern and the interest rates specified in the bid shall be adjusted accordingly. If two or more proper bids providing for identical amounts for the lowest net interest cost are received, the governing body shall determine which bid, if any, will be accepted, and its determination is final. The city reserves the right to reject any and all bids and to waive any irregularities in a submitted bid. Any bid received after 4 p.m. on the date of sale will be returned to the bidder unopened.

Bid Forms

All bids must be made on forms which may be procured from the city clerk or the financial adviser. No additions or alterations in such forms shall be made and any erasures may cause rejection of any bid.

Submission of Bids

Bids must be submitted in sealed envelopes addressed to the undersigned city clerk, and marked "Proposal for General Obligation Bonds." Bids may be submitted by mail or delivered in person to the undersigned at the City Hall and must be received by the undersigned prior to 4 p.m. C.D.T. on Tuesday, May 3, 1988.

Bond Rating

The outstanding general obligation bonds of the city are rated "Aa" by Moody's Investors Service, Inc. and "AA-" by Standard & Poor's Corporation. The city has applied for ratings on the bonds herein offered for sale.

CUSIP Numbers

It is anticipated that CUSIP identification numbers will be printed on or assigned to the bonds, but neither the failure to print such number on or assign such number to any bond nor any error with respect thereto will constitute cause for failure or refusal by the purchaser thereof to accept delivery of and pay for the bonds in accordance with the terms of the purchase contract. All expenses in relation to the assignment and printing of CUSIP numbers on the bonds will be paid by the city.

Delivery and Payment

The city will pay for printing the bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or before June 16, 1988 at such bank or trust company in the state of Kansas or Kansas City, Missouri, New York City, San Francisco, Los Angeles, or Chicago, as may be specified by the successful bidder. Delivery elsewhere will be made at the expense of the successful bidder. The successful bidder will be furnished with a certified transcript of the proceedings evidencing the authorization and issuance of the bonds and the usual closing documents, including a certificate that there is no litigation pending or threatened at the time of delivery of the bonds affecting their validity and a certificate regarding the completeness and accuracy of the official statement. Payment for the bonds shall be made in Federal Reserve funds, immediately subject to use by the city.

The number and denominations of the bonds and the names, addresses and social security or taxpayer identification numbers of the registered owners shall be submitted in writing by the successful bidder to the city and bond registrar at least two weeks prior to the closing date. In the absence of such information, the city will deliver

one bond per maturity registered in the name of the manager of the successful bidder.

The reoffering prices to the public by the original purchaser must be furnished to the city at least one week prior to the closing date. A certificate stating that at least 10 percent of the bonds of each maturity has been sold to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at such reoffering prices must be furnished to the city by the original purchaser at closing.

Official Statement

The city has prepared a preliminary official statement dated April 22, 1988, copies of which may be obtained from the city clerk or from the financial adviser. Upon the sale of the bonds, the city will adopt the final official statement and will furnish the successful bidder with a reasonable number of copies thereof without additional cost upon request. Additional copies may be ordered at the successful bidder's expense.

Assessed Valuation and Indebtedness

The total assessed valuation of the taxable tangible property within the city, for the year 1987, is as follows:

Equalized assessed valuation of taxable, tangible property	\$100,792,625
Tangible valuation of motor vehicles	\$ 18,033,944
Equalized assessed tangible valuation for computation of bonded debt limitations	\$118,826,569

The total general obligation bonded indebtedness of the city as of the date of the bonds, including the bonds being sold, is \$22,913,000. Temporary notes in the principal amount of \$8,145,105 will be retired out of proceeds of the bonds and other available funds.

Approval of Bonds

The bonds will be sold subject to the legal opinion of Gilmore & Bell, Wichita, Kansas, bond counsel, whose approving legal opinion as to the validity of the bonds will be furnished and paid for by the city, printed on the bonds and delivered to the successful bidder as and when the bonds are delivered.

Opinion of Bond Counsel

In the opinion of bond counsel, assuming continued compliance by the city with the terms of the bond ordinance, under existing law, the interest on the bonds (a) is excludable from gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted net book income (adjusted current earnings for taxable years ending after December 31, 1989) for the purpose of computing the alternative minimum tax imposed on such corporations. The opinion set forth in clause (a) above is subject to the condition that the city comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the bonds in order that interest thereon be excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements could cause the interest on the bonds to be so included in federal gross income

retroactive to the date of issuance of the bonds. The city has covenanted to comply with all such requirements.

Bond counsel expresses no opinion regarding other federal tax consequences arising with respect to the bonds.

The bonds are exempt from intangible personal property taxes levied by Kansas counties, cities or townships.

A form of bond counsel's opinion is contained in the official statement of the city with respect to the bonds.

Related Federal Tax Matters

Prospective purchasers of the bonds should be aware that (i) Section 265 of the code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the bonds or, in the case of a financial institution (within the meaning of Section 265(b)(5) of the code), that portion of a holder's interest expense allocable to interest on the bonds; (ii) with respect to insurance companies subject to the tax imposed by Section 831 of the code, for taxable years beginning after December 31, 1986, Section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15 percent of the sum of certain items, including interest on the bonds; (iii) for taxable years beginning after December 31, 1986 and before January 1, 1992, interest on the bonds earned by some corporations could be subject to the environmental tax imposed by Section 59A of the code; (iv) for taxable years beginning after December 31, 1986, interest on the bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by Section 884 of the code; (v) passive investment income, including interest on the bonds, may be subject to federal income taxation under Section 1375 of the code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25 percent of the gross receipts of such Subchapter S corporation is passive investment income; and (vi) Section 86 of the code requires recipients of certain Social Security and certain railroad retirement benefits to take into account in determining gross income, receipts or accruals of interest on the bonds. These categories of bondowners should consult their own tax advisers as to the applicability of these consequences.

Additional Information

Additional information regarding the bonds may be obtained from the city clerk or from the financial adviser, Stern Brothers & Co., Suite 810, One Main Place, Wichita, KS 67202, Attention: Charles M. Bouly, First Vice President, (316) 265-8622.

Dated April 5, 1988.

CITY OF MANHATTAN, KANSAS
 By Heide Clark, City Clerk
 City Hall
 11th and Poyntz
 P.O. Box 748
 Manhattan, KS 66502
 (913) 537-0056

Doc. No. 006462

State of Kansas

STATE CORPORATION COMMISSION

NOTICE OF MOTOR CARRIER HEARINGS

Applications set for hearing are to be heard at 9:30 a.m. before the State Corporation Commission, Docking State Office Building, fourth floor, Topeka, unless otherwise noticed.

This list does not include cases previously assigned hearing dates for which parties of record have received notice.

Questions concerning applications for hearing dates should be addressed to the State Corporation Commission, 4th Floor, Docking State Office Building, Topeka 66612, (913) 296-3808 or 296-3364.

Your attention is invited to Kansas Administrative Regulations (K.A.R.) 82-1-228, "Rules of Practice and Procedure Before the Commission."

Applications set for May 3, 1988

Application for Certificate of Convenience and Necessity:

Jim Allier, dba) Docket No. 160,033 M
 Allier Repair & Performance)
 Cycle)
 Route 5)
 Hiawatha, KS 66434)

Applicant's Attorney: None

Wrecked, disabled, repossessed and replacement motor vehicles and trailers.

Between all points and places in Brown, Nemaha, Doniphan, Jackson, Shawnee, and Atchison counties, Kansas. Also,

Between all points and places in the above described counties, on the one hand, and all points and places in the state of Kansas.

Application for Certificate of Convenience and Necessity:

Stephen Beckley, dba) Docket No. 160,034 M
 Beckley Trucking)
 Route 1, Box 73)
 Atwood, KS 67730) MC ID No. 104642

Applicant's Attorney: None

Corn, milo, barley, wheat, triticale and dry fertilizer.

Between points in Cheyenne, Rawlins, Decatur, Norton, Sherman, Thomas, Sheridan, Graham, Wallace, Logan, Gove, Trego, Wichita, Scott, Lane, Kearney, Finney, Grant, Haskell, Gray and Ford counties, Kansas.

Application for Certificate of Convenience and Necessity:

Kirk R. Poe, dba) Docket No. 160,032 M
 Poe Truck Line)
 Route 1, Box 117)
 Norwich, KS 67118)

(continued)

Applicant's Attorney: Brad T. Murphree, 400 N. Woodlawn, Suite 1, Wichita, KS 67208

Grain and related products, farm products, livestock, dry commodities in bulk, salt, hay and alfalfa,

Between all points in Barber, Barton, Chautauqua, Clark, Comanche, Decatur, Finney, Ford, Gray, Harper, Kingman, Lane, Norton, Pratt, Reno, Scott, Sedgwick, Sheridan, Stafford, Sumner and Thomas counties.

Also,

Between above described counties, on the one hand, and on the other, all points in Kansas.

Application for Certificate of Convenience and Necessity:

D. O. McVey) Docket No. 160,035 M
2018 Dennison)
Garden City, KS 67846)

Applicant's Attorney: Joseph Weiler, 1610 S.W. Topeka Blvd., P.O. Box 237, Topeka, KS 66612

Grain, seeds, feed and feed ingredients, fruits and vegetables, wood and lumber,

Between points and places in the Kansas counties of Greeley, Wichita, Scott, Lane, Ness, Hamilton, Kearny, Finney, Hodgeman, Stanton, Grant, Haskell, Gray, Ford, Morton, Stevens, Seward, Meade and Clark.

Also,

Between points and places in the above-referenced Kansas counties, on the one hand, and on the other, points and places in the state of Kansas.

Application for Certificate of Convenience and Necessity:

LeRoy Dinkel, dba) Docket No. 160,031 M
M & L Tank Service)
HCR-01, Box 99)
Morland, KS 67650)

Applicant's Attorney: None

Crude oil, used in and for production, processing, treating, salvage, construction, and for lease road purposes, in bulk, fresh water and salt water,

Between points and places in Barton, Cheyenne, Decatur, Ellis, Gove, Graham, Lane, Logan, Ness, Norton, Phillips, Rawlins, Rooks, Rush, Russell, Scott, Sheridan, Thomas, Trego and Wallace counties, Kansas.

Applications set for May 5, 1988

Application for Extension of Certificate of Convenience and Necessity:

Ace Transportation, Inc.) Docket No. 138,211 M
3721 Highway 90 East)
Broussard, LA 70518) MC ID No. 127293

Applicant's Attorney: W. Robert Alderson, 1610 S.W. Topeka Blvd., P.O. Box 237, Topeka, KS 66612

General commodities (except household goods, classes A and B explosives and commodities in bulk),

Between points and places in Kansas.

Application for Certificate of Convenience and Necessity:

Timberline Oil & Gas) Docket No. 160,038 M
Corporation)
105 E. 8th)
Pratt, KS 67124)

Applicant's Attorney: None

Salt water and fresh water,

All points in Pratt County, Kansas.

Application for Contract Carrier Permit:

Rollins Transportation) Docket No. 160,040 M
Systems, Inc.)
One Rollins Plaza)
P.O. Box 1791)
Wilmington, DE 19899) MC ID No. 130167

Applicant's Attorney: John Jandera, 1610 S.W. Topeka Blvd., P.O. Box 237, Topeka, KS 66612

General commodities (except household goods, classes A and B explosives and commodities in bulk),

Between points and places in Kansas. Under contract with The Ford Motor Company, of Lenexa, Kansas.

Application for Certificate of Convenience and Necessity:

Minuteman Courier Service,) Docket No. 160,037 M
Inc.)
9112 W. 9th)
Wichita, KS 67212)

Applicant's Attorney: LeeAnne Gillaspie, Suite 1600, Epic Center, 301 N. Main, Wichita, KS 67202-4800

Documents in parcels not to exceed 75 pounds per parcel,

Between all points and places in Reno, Kingman, Harper, Harvey, Sedgwick, Sumner, Marion, Chase, Lyon, Butler, Cowley, Chautauqua, Elk and Greenwood counties, Kansas.

Application for Certificate of Convenience and Necessity:

MSS Transport, Inc.) Docket No. 160,039 M
230 E. Avenue A)
Salina, KS 67402-1066) MC ID No. 124697

Applicant's Attorney: None

Concrete, steel, structural steel products, machinery and building products,

Between all points and places in Kansas.

Application for Certificate of Convenience and Necessity:

Ewing Construction of) Docket No. 160,036 M
 Hutchinson, Inc.)
 219 N. Whiteside)
 Hutchinson, KS 67501)

Applicant's Attorney: W. Robert Alderson, 1610 S.W. Topeka Blvd., P.O. Box 237, Topeka, KS 66612

Houses and buildings,

Between points and places in Kansas.

Applications set for May 10, 1988

Application for Certificate of Convenience and Necessity:

Clay Cole, dba) Docket No. 160,041 M
 C-R Wrecker Service)
 Route 1, Box 254)
 Baxter Springs, KS 66713)

Applicant's Attorney: None

Wrecked, disabled, repossessed and replacement motor vehicles and trailers,

Between all points and places in the state of Kansas.

Application for Abandonment of Certificate of Convenience and Necessity:

DPM Transportation, Inc.) Docket No. 133,706 M
 800 E. 37th St. North)
 Wichita, KS 67208) MC ID No. 104494

Applicant's Attorney: None

Application for Certificate of Convenience and Necessity:

J. D. Enterprises of) Docket No. 160,044 M
 Kansas, Inc.)
 Interstate Hwy. 135)
 2 miles east of Moundridge)
 Merritt Building)
 Moundridge, KS 67107) MC ID No. 128144

Applicant's Attorney: Brad Murphree, 400 N. Woodlawn, Suite 1, Wichita, KS 67208

General commodities (except classes A and B explosives, household goods and commodities in bulk),

Between points and places on and east of U.S. 283.

Also,

Between points and places on and east of U.S. 283, on the one hand, and on the other, all points in Kansas.

Application for Certificate of Convenience and Necessity:

Dale J. and Chad Loker, dba) Docket No. 160,043 M
 Loker Trucking)
 508 Decatur Ave.)
 McDonald, KS 67745)

Applicant's Attorney: William Barker, 3401 Harrison, Topeka, KS 66611

Grain, dry feed, dry feed ingredients, dry fertilizer, dry fertilizer ingredients and salt,

Between points in Cheyenne, Rawlins, Decatur, Norton, Sherman, Thomas, Sheridan, Graham, Wallace, Logan, Gove, Trego, Greeley, Wichita, Scott and Ness counties, Kansas.

Also,

Between all points and places in the above described counties, on the one hand, and all points and places in Kansas, on the other.

Application for Extension of Certificate of Convenience and Necessity:

Via Bancourier, Inc.) Docket No. 122,490 M
 158 Terrace Trail South)
 Lake Quivira, KS 66106) MC ID No. 103057

Applicant's Attorney: John Richeson, 2nd and Main, P.O. Box 7, Ottawa, KS 66067

General commodities (except those of unusual value, classes A and B explosives, household goods, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading),

Between Doniphan, Atchison, Jefferson, Leavenworth, Wyandotte, Johnson, Douglas, Miami, Franklin, Osage, Shawnee, Brown, Jackson, Coffey, Anderson, Linn, Woodson, Allen, Bourbon, Wilson, Neosho, Crawford, Montgomery, Labette and Cherokee counties, Kansas.

Application for Transfer of Certificate of Convenience and Necessity:

Wayman & Simon Standard,) Docket No. 153,397 M
 Inc.)
 6327 E. 13th)
 Wichita, KS 67208) MC ID No. 121260

TO:

Wayman's Amoco, Inc.
 6327 E. 13th
 Wichita, KS 67208

Applicant's Attorney: None

Wrecked, disabled, repossessed and replacement motor vehicles and trailers,

Between all points and places in Sedgwick, Harvey, Butler, Cowley, Sumner, Harper, Kingman and Reno counties, Kansas.

Also,

Between all points and places in the above described territory, on the one hand, and all points and places in the state of Kansas, on the other.

(continued)

Application set for May 12, 1988

Application for Transfer of Certificate of
Convenience and Necessity:

Bud's Tank Truck) Docket No. 59,272 M
Service, Inc.)
820 College)
Winfield, KS 67156) MC ID No. 100596
TO:

Larry Brown, dba
Bud's Tank Truck Service
1321 Elizabeth
Winfield, KS 67156

Applicant's Attorney: None

Crude oil, used in and for production, processing, treating, salvage, construction and for lease road purposes, in bulk, fresh water and salt water,

Between all points and places in Cowley, Sumner, Sedgwick, Butler, Chautauqua, Harper, Greenwood and Elk counties, Kansas.

ALFONZO A. MAXWELL
Administrator
Transportation Division

Doc. No. 006468

State of Kansas

DEPARTMENT OF HEALTH
AND ENVIRONMENT

PERMANENT ADMINISTRATIVE
REGULATIONS

(Effective May 1, 1988)

The complete text of the following regulations has not been published because of its length and the resulting cost of publication. Copies of the complete text of any of the following regulations may be obtained by contacting Sandy McAdam, Office of the Secretary, Department of Health and Environment, Building 740, Forbes Field, Topeka 66620, (913) 296-1526.

Article 4.

Reporting Certain Conditions of Preschool Children

K.A.R. 28-4-525 through 28-4-529 are new regulations pertaining to the reporting by primary care physicians of diagnosed conditions in preschool children less than six years of age that indicate mental retardation, or a handicap or chronic condition.

Article 14.

Collection and Analysis of Water; Public Water Supplies

K.A.R. 28-14-2. Schedule of fees. This regulation pertains to a schedule of fees for all public water supply systems submitting samples for analysis to the environmental laboratories of the Department of Health and Environment. The regulation, authorized by K.S.A. 65-156, 65-157 and 65-171m, is amended to establish fees for laboratory monitoring requirements which fees were not previously established and to fulfill the obligation that laboratory fees be consistent with the actual cost of laboratory services.

Article 15.

Application for Permits; Domestic Water Supply

K.A.R. 28-15-35. Conditions of certification and approval. This regulation relates to the conditions of approval and certification of environmental laboratories in Kansas. The revision requires all laboratories located outside of the state of Kansas to submit comparable certification from a federal, state or independent agency in order to be issued Kansas certification.

K.A.R. 28-15-36. Standards for approval. This regulation relates to the minimum requirement for approval of environmental laboratories. The only revision is an update of the history.

Article 16.

Water Pollution Control

K.A.R. 28-16-56a. Sewage permit fees; definitions. This regulation redefines waste treatment facilities for slaughter houses processing less than 50 animals per week as commercial waste treatment facilities and clarifies the definition of cooling water discharge.

Article 17.

Division of Vital Statistics

K.A.R. 28-17-6. Fees for copies and searches. This regulation is changing the fee from \$4 to \$6 for searches of files or records. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to collect from the applicant a fee of \$6 for each five-year period for which a search is requested, or for each fractional part of that period. The state registrar shall also be entitled to collect a fee of \$6 for any search of files necessary for preparing amendment to a standard certificate already on file.

K.A.R. 28-17-20. Corrections to certificates and records. This regulation clarifies how corrections may be made to vital records.

K.A.R. 28-17-21. Dissemination of certain information to state and federal agencies. This is a new regulation that allows the department to provide other state and federal agencies with certain death certificate information for file clearance purposes.

Article 19.

Ambient Air Quality Standards and Air Pollution Control
Amended Regulations

K.A.R. 28-19-7. Definitions. This regulation was amended to define "Person," which is a term used in a new regulation, K.A.R. 28-19-53, and "Emission Limitation/Standard" required in order for the U.S. Environmental Protection Agency to consider K.A.R. 28-19-18, Stack Height *et seq.*, to be approvable. "Waste" has been redefined to be consistent with the definition as used by other bureaus in the department.

K.A.R. 28-19-8. Reporting Required. This regulation was amended for the purpose of lowering the reporting threshold for gaseous hydrocarbons under subsection (b)(6) for sources in areas of the state presently designated non-attainment for the national ambient air quality standard (NAAQS) for ozone. The state has been obligated to adopt

volatile organic compounds (VOC) regulations because EPA has published control technique guidelines (CTG) documents for certain sources of VOC. These "CTG subject sources" must be regulated in ozone NAAQS non-attainment areas once the EPA has published the CTG.

K.A.R. 28-19-17f. Air Quality Models. EPA has changed the published guidelines for the proper conduct of mathematical pollutant dispersion modeling performed pursuant to the federal Prevention of Significant Deterioration (PSD) regulations, which have been adopted by reference by this state under K.A.R. 28-19-17, New Source Permit Requirements for Designated Attainment and Unclassified Areas.

K.A.R. 28-19-18. Stack Heights *et seq.* These regulations, with amendments required, now are in effect as temporary regulations under number T-88-2, January 23, 1987. There are no further amendments from those that are in the temporary regulation. These regulations are being presented as a requirement to incorporate the amendments as permanent regulations.

K.A.R. 28-19-19. Continuous Emission Monitoring. Most amendments are to clarify that the regulation addresses the complete continuous emission monitoring system and not just the monitor, the singular unit which receives and displays data from the complete monitoring system. Other amendments were to clarify enforceability, reporting and record keeping and compliance demonstration requirements. No financial impact due to amendment of this regulation.

- K.A.R. 28-19-61, Definitions.
- K.A.R. 28-19-62, Testing Procedures.
- K.A.R. 28-19-63, Automobile and Light Duty Truck Surface Coating.
- K.A.R. 28-19-64, Bulk Gasoline Terminals.
- K.A.R. 28-19-65, Petroleum Liquid Storage Tanks.
- K.A.R. 28-19-66, Petroleum Liquid Storage in External Floating Roof Tanks.
- K.A.R. 28-19-69, Cutback Asphalt.
- K.A.R. 28-19-70, Leaks from Gasoline Delivery Vessels and Vapor Collections Systems.
- K.A.R. 28-19-71, Printing Operations.
- K.A.R. 28-19-72, Gasoline Dispensing Facilities.
- K.A.R. 28-19-73, Surface Coating of Miscellaneous Metal Parts and Products.
- K.A.R. 28-19-74, Surface Coating of Metal Furniture.
- K.A.R. 28-19-75, Solvent Metal Cleaning.

The amendments are mandated by EPA and made a requirement for approval of the state implementation plan (SIP) for control strategy in the attainment of the ozone NAAQS. The amendments are concerned with strengthening the enforceability, reporting and recordkeeping requirements and compliance demonstration requirements.

K.A.R. 28-19-73 and 28-19-74 combine the surface coating of miscellaneous metal parts and products and metal furniture under the one regulation, 28-19-73, because the control requirements for the two source categories are similar. 28-19-74 has been amended to be an entirely new regulation dealing with the source category of wool fiberglass manufacturing.

K.A.R. 28-19-84 through 28-19-96, 28-19-98 through 28-19-108, 28-19-109, 28-19-119 through 28-19-121a, 28-19-123 through 28-19-125, 28-19-127 through 28-19-141, 28-19-149 through 28-19-151, 28-19-153 through 28-19-155, 28-19-158, 28-19-159. All of these regulations pertain to federal new source performance standards (NSPS) regulations adopted by the state by reference. The amendments are primarily for the purpose of changing the statement of reference to Title 40 CFR, Part 60, which is the document to which the state regulations refer in adoption of the federal regulations. K.A.R. 28-19-155 and 28-19-158 formerly adopted by reference federal national emission standards for hazardous air pollutants (NES-HAPS) which the EPA has never approved for state implementation and enforcement and consequently, never enforced by the state. Amending these two regulations changes them to adopting by reference more federal NSPS regulations published in the July 1, 1986 edition of Title 40 CFR, Part 60, the subject of which are sulfur dioxide emissions from onshore natural gas processing plants and non metallic mineral processing plants.

New Regulations

K.A.R. 28-19-53, Fugitive Particulate Emissions. The department has in the past received numerous complaints from the residents of the state concerning smoke and dust from nuisance type sources, these being sources which do not lend well to regulatory control by means of a firm established emission limit in terms of a weight per unit time or volume, concentration in weight per unit volume or attenuation of light transmission through a dust or smoke plume, and the opacity of the plume. This regulation is being adopted so that the department has a more definitive method of requiring such nuisance sources to take some mitigating action to reduce or terminate impact on complainants when the department determines such action is warranted.

K.A.R. 28-19-108a, Standards of Performance for Secondary Emissions From Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. This is another federal NSPS which the state is adopting by reference and which was published in the July 1, 1986 edition of Title 40 CFR, Part 60.

Article 31.

Hazardous Waste Management Standards

K.A.R. 28-31-1 through 28-31-4, 28-31-6, 28-31-8, 28-31-8a, 28-31-9, 28-31-10 and 28-31-14. The proposed amendments adopt by reference the federal regulation changes.

K.A.R. 28-31-4 will require generators of hazardous waste to install secondary containment around all hazardous waste storage tanks. Depending upon the size of the tank, costs for installation of containment systems could be a minimum of \$100 to thousands of dollars.

K.A.R. 28-31-10 would allow hazardous waste generators that reclaim waste onsite to recover substantial amounts of either energy or materials to be exempt from monitoring fees for that specific hazardous waste being reclaimed.

(continued)

K.A.R. 28-31-14 is a new regulation pertaining to land disposal restrictions and adopting by reference the federal regulation changes.

Article 33.

Laboratories Performing Tests for Syphilis

K.A.R. 28-33-1. This regulation pertains to approval of laboratories performing prenatal serologic test for syphilis. The revision requires laboratories to be approved; the laboratory director will be responsible for assuring that persons are adequately trained to perform the serological tests. The division of laboratories and research will no longer provide a proficiency program for syphilis serology and laboratories will be required to participate in an approved external proficiency program.

K.A.R. 28-33-2 through 28-33-10. Revoked.

Article 35.

Radiation

K.A.R. 28-35-146 and 28-35-147. **K.A.R. 28-35-146** establishes the conditions for payment and exemptions from the fees, and **K.A.R. 28-35-147** is a schedule of fees indicating the fee for each of the types of licensees or registrants.

The regulations request payments be made by registrants at the time of the registration, which is conducted annually, and request payment at the time the licensees ask for a new license and amendments to a license or a renewal.

Article 39.

Licensure of Adult Care Homes

K.A.R. 28-39-77 pertains to licensing procedure for all adult care homes. This regulation is amended to clarify procedural requirements for facility licensure and to incorporate new construction requirements for intermediate personal care homes.

K.A.R. 28-39-83 pertains to administration and management. This regulation is amended to permit admission of a person with a disease or infection in a communicable state if the facility provides isolation in accordance with CDC guidelines.

K.A.R. 28-39-87 is amended to modify requirements for licensed nursing staff and restraint orders.

K.A.R. 28-39-114 through 28-39-129, 28-39-130, and 28-39-131. Revoked.

K.A.R. 28-39-139 through 28-39-143. Revoked.

K.A.R. 28-39-300 through 28-39-312 are new regulations to govern the construction and operation of intermediate personal care homes.

K.A.R. 28-39-400 through 28-39-411 are new regulations to govern the construction and operation of boarding care homes.

Article 50.

Asbestos Control

K.A.R. 28-50-1, 28-50-2, 28-50-4, 28-50-5 through 28-50-9, and 28-50-14. The major changes in these regulations include the establishment of a new fee for the review

of proposed asbestos control projects and increases in the fees that are presently charged for the licensing of asbestos control firms and the certification of asbestos control workers. Also changed was the type and amount of training required of all the state's certified asbestos control workers, so that the training conforms to new federal requirements that have been developed for persons who engage in asbestos control work that is done in elementary and secondary level school buildings.

Article 60.

Credentialing Program

K.A.R. 28-60-1 through 28-60-9 pertain to the review of an application, in accordance with *K.S.A. 65-5001 et seq.*, which is seeking state credentialing of a health care occupational or professional group. Amendments include removing the Statewide Health Coordinating Council's role in the review process, adopting by reference standards listed in the manual for applicants, and setting a time period in which the technical committee's report must be issued if an application is withdrawn.

Article 65.

Emergency Planning and Right-to-Know

K.A.R. 28-65-1. General Provisions.

K.A.R. 28-65-2. Definitions.

K.A.R. 28-65-3. Registration Fees. This regulation specifies the registration fees that reporting entities are requested to submit with their annual reports.

STANLEY C. GRANT, Ph.D.
Secretary of Health
and Environment

Doc. No. 006469

State of Kansas

SOCIAL AND REHABILITATION SERVICES

PERMANENT ADMINISTRATIVE REGULATIONS

(Effective May 1, 1988)

The complete text of the following regulations has not been published because of its length and the resulting cost of publication. Copies of the complete text of any of the following regulations may be obtained by contacting the Legal Division, Department of Social and Rehabilitation Services, 6th Floor, Docking State Office Building, Topeka 66612, (913) 296-3969.

A. General.

1. 30-2-16. Permanency planning goals for title IV-E of the federal social security act. This regulation is being amended to change the date of the federal fiscal year permanency planning goals from October 1, 1986 to October 1, 1987.

B. Public Assistance Program.

1. 30-4-34. Program. This regulation is being amended to adopt the July 1, 1987 temporary regulation change which deleted reference to the transitional general

assistance (TGA) program. This program was abolished effective July 1, 1987.

2. 30-4-35. Application process. This regulation is being amended to require a face-to-face interview at the time of application unless there is good cause to waive this requirement.

3. 30-4-36. Redetermination of eligibility process. This regulation is being amended to require a face-to-face interview at the time of a redetermination of eligibility unless there is good cause to waive this requirement.

4. 30-4-41. Assistance planning. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation changes which:

(1) limited the definition of a caretaker relative to the relative who is assigned the primary responsibility for the care and control of the child, either singly or, as in the case of two parents, jointly;

(2) expanded the essential person provision to include the needy spouse of a caretaker relative;

(3) added CWEP to the work related requirements that an essential person must meet;

(b) adopt the January 1, 1988 temporary regulation changes which:

(1) defines the mandatory filing unit as all persons in the family group whose needs or resources are required to be considered in determining eligibility and amount of payment as outlined in K.A.R. 30-4-74 for ADC purposes and K.A.R. 30-4-90 for GA purposes. If the agency is unable to determine who is required to be a member of the mandatory filing unit as a result of an applicant's or recipient's failure to cooperate in providing necessary information or in complying with an eligibility requirement that is within the applicant's or recipient's control, those persons who would otherwise be required to be in the mandatory filing unit had the applicant or recipient cooperated shall be ineligible for assistance; and

(2) modifies the assistance planning provision to require that the assistance plan consist of those members of the mandatory filing unit and any other persons in the family group for whom assistance is requested and eligibility is determined.

5. 30-4-54. Citizenship, alienage, and residence. This regulation is being amended to:

(a) Adopt the May 1, 1987 temporary regulation changes which:

(1) provided that aliens who are granted permanent residence status pursuant to P.L. 99-603, the Immigration Reform and Control Act of 1986, shall be ineligible to receive assistance for a five-year period beginning on the date that the alien is granted temporary resident status;

(2) reflected several technical changes;

(b) clarify the citizenship provision described above to permit eligibility to persons to whom the five-year prohibition does not apply as provided in P.L. 99-603, the Immigration Reform and Control Act of 1986;

(c) clarify that residence shall be obtained until abandoned or established in another state; and

(d) restrict the May 1, 1987 temporary regulation

change pertaining to the five-year period of ineligibility of aliens who are granted permanent residence under the Immigration Reform and Control Act of 1986 to those aliens who would otherwise qualify for ADC.

6. 30-4-56. Transfer of property. This regulation is being amended to reflect technical changes.

7. 30-4-57. Job search requirements. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which permitted the agency to use a statement from a vocational rehabilitation counselor for purposes of establishing an incapacity exemption for a GAU recipient; and

(b) adopt the January 1, 1988 temporary regulation change which provides that the failure of a nonexempt principal wage earner in ADC-UP to meet the job search requirements without good cause shall render the individual and all persons in the mandatory filing unit ineligible for the penalty period.

8. 30-4-62. Community work experience program requirements. This regulation is being amended to adopt the January 1, 1988 temporary regulation change which provides that the failure of a nonexempt principal wage earner in ADC-UP to meet the CWEP requirement without good cause shall render the individual and all persons in the mandatory filing unit ineligible for the penalty period.

9. 30-4-74. Persons whose needs shall be considered with the needs of the ADC child. This regulation is being amended to adopt the January 1, 1988 temporary regulation change which provides that while the needs of certain parents and children who are not otherwise eligible for ADC shall be excluded in determining eligibility of the ADC child, the income and resources of such persons shall, unless the income and resources are specifically exempt, be included in the eligibility determination.

10. 30-4-75. ADC work incentive program registration requirements. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which expanded the exemption for a caretaker relative of a child under the prescribed age to permit absence from the child for the purpose of employment or participation in an agency-approved work-related activity; and

(b) adopt the January 1, 1988 temporary regulation change which provides that the failure of a nonexempt principal wage earner in ADC-UP to participate in WIN without good cause shall render the individual and all persons in the mandatory filing unit ineligible for the penalty period.

11. 30-4-78. Eligibility factors specific to the APW program. This regulation is being amended to reflect a technical change.

12. 3-4-80. Eligibility factors specific to the ADC-FC program. This regulation is being amended to adopt the May 1, 1987 temporary regulation change which expanded the ADC-FC program to include an otherwise eligible child who has been granted temporary or permanent residence under the provisions of P.L. 99-603, the Immigration Reform and Control Act of 1986.

(continued)

13. 30-4-90. Eligibility factors specific to the GA-unrestricted (GAU) program. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation changes which:

(1) expanded the GAU criteria to include the parent or parents of a child who has been removed from the home and placed in foster care, provided there is an agency-approved plan to return the child to the home;

(2) specified that only those alcohol and drug abuse facilities that are licensed or certified by Alcohol and Drug Abuse Services qualify as an alcohol and drug abuse facility for GAU purposes;

(b) expand the GAU criteria to include a child in a family group who is not otherwise eligible for assistance as a result of an established period of ineligibility resulting from the provisions of K.A.R. 30-4-56 (transfer of property), 30-4-57 (job search), 30-4-58 (potential employment), 30-4-62 (CWEP), 30-4-75 (WIN), or 30-4-110 (lump sum) provided there is an approved social service plan substantiating that the child is facing imminent removal from the home and placement into a foster care arrangement if assistance is not reinstated. Assistance shall be provided in accordance with the social service plan which shall not exceed the budget deficit for the family group;

(c) expand the GAU criteria to include a person who is a full-time high school student;

(d) expand the GAU criteria for persons who are physically incapacitated to permit eligibility when the individual's condition constitutes a substantial handicap to employment. Previously, the person's condition had to prevent employment;

(e) reflect technical changes; and

(f) adopt the January 1, 1988 temporary regulation change which provides that while the needs of certain persons who are not otherwise eligible for GAU be excluded in determining eligibility, the income and resources of such persons shall, unless the income and resources are specifically exempt, be included in the eligibility determination.

14. 30-4-91. Eligibility factors specific to the transitional GA (TGA) program. This regulation is being amended to adopt the July 1, 1987 temporary regulation change which abolished the TGA program.

15. 30-4-100. Payment standards for budgetary requirements in the ADC, ADC-FC, APW, GA and GA-FC programs. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which:

(1) deleted reference to the special budgetary provisions for the TGA program that was abolished effective July 1, 1987;

(2) capped the household size at four persons when budgeting a GAU pro rata living arrangement; and

(b) adopt the January 1, 1988 temporary regulation change which deletes the exceptions to ADC and GAU budgeting that exclude the needs of a child who is temporarily absent from the home for the purpose of education and training and for temporary foster care. This change will require including the needs of the child in the budget plan in addition to budgeting the residential standard or the foster care standard.

16. 30-4-101. Standards for persons in own home, other family home, specialized living, commercial board and room, or commercial room-only living arrangements. This regulation is being amended to adopt the July 1, 1987 temporary regulation change which increased the energy supplement contained in the basic standard to \$12.00 per person.

17. 30-4-102. Standards for children in foster care. This regulation is being amended to adopt the July 1, 1987 temporary regulation changes which increased the foster family care standards by 3 percent.

18. 30-4-106. General rules for consideration of resources, including real property, personal property, and income. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation changes which:

(1) provided that when a nonlegally responsible person in the home and not on the assistance plan contributes cash toward household expenses, the amount of the contribution to be counted shall be the net income realized by the household;

(2) reflected technical changes;

(b) Adopt the January 1, 1988 temporary regulation change which requires that the nonexempt resources of persons who have been excluded from the assistance plan pursuant to K.A.R. 30-4-74(b) and 30-4-90(a)(5) shall be considered; and

(c) reflect additional technical changes.

19. 30-4-108. Real property. This regulation is being amended to:

(a) Remove the 40-acre limitation relative to the definition of the home;

(b) provide for the exemption of real property that is essential for employment or self-employment;

(c) provide for the exemption of real property that is producing income that is consistent with its fair market value; and

(d) reflect technical changes.

20. 30-4-109. Personal property. This regulation is being amended to expand the income producing property exemption to include all property, other than cash assets, which is essential for employment or self-employment and thereby delete the requirement that the property produce an annual adjusted gross income that is at least 40 percent of its gross market value.

21. 30-4-110. Income. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which:

(1) required that if a period of ineligibility is established in a federally-funded program, it shall also result in ineligibility for a state-funded program. However, the period of ineligibility established in a state-funded program shall not result in ineligibility for a federally funded program;

(2) reflected a technical change;

(b) adopt the January 1, 1988 temporary regulation change which expands the definition of "earned income" to include income-in-kind that is received as compensation in lieu of wages, salary or profit; and

(c) restrict the 185 percent gross income test to the prospective determination of eligibility.

22. 30-4-111. Applicable income. This regulation is being amended to:

(a) Adopt the May 1, 1987 temporary regulation change which:

(1) adopted the \$75.00 earned income disregard provision for a stepparent or a parent of a minor parent who is employed part-time;

(2) extended the income disregard provisions for a stepparent or a parent of a minor parent to an alien who is a parent of an ADC child and who is excluded from the assistance plan due to the provisions of P.L. 99-603, the Immigration Reform and Control Act of 1986;

(b) expand the \$30.00 and one-third earned income disregard provisions to all persons in an ADC or APW assistance plan;

(c) clarify that no earned income disregards are to be deducted from earnings which are not timely reported on the monthly status report form without good cause;

(d) expand the provision of not allowing the earned income disregards to be applied to earnings when the client voluntarily requests assistance to be terminated for the primary purpose of avoiding receiving the \$30.00 and one-third disregard for four consecutive months. However, such month shall be counted in determining the four or 12 consecutive month time limitations provisions;

(e) provide that once an individual has received the appropriate earned income disregard for the specified time periods in a program in which the individual's needs were met through federal funds, the individual shall not again be eligible for the earned income disregards until after the individual has not received assistance in which the individual's needs were met with federal funds for 12 consecutive months. In addition, once an individual has received the appropriate earned income disregard for the specified time periods in a program in which the individual's needs were met through state-only funds, the individual shall not again be eligible for the earned income disregards until after the individual has not received assistance in which the individual's needs were met with state-only funds for 12 consecutive months;

(f) provide that if income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the \$30.00 and one-third disregard, nor does it count as one of the consecutive months;

(g) reflect technical changes; and

(h) adopt the January 1, 1988 temporary regulation change which requires that all nonexempt unearned income and gross earnings, or adjusted gross earnings of the self-employed, shall be considered without the application of any income disregards for a person in the home whose income must be considered and who is not included in the assistance plan.

23. 30-4-112. Income exempt from consideration as income and as a cash asset. This regulation is being amended to adopt the July 1, 1987 temporary regulation which:

(a) Expanded the exemption of complementary assist-

ance to that assistance provided by another agency or organization that complements but does not duplicate assistance provided by the agency without regard to its usage;

(b) expanded the provision related to grants and loans to exempt such income when it is for the purpose of meeting needs not related to current living costs; and

(c) reflected technical changes.

24. 30-4-113. Income exempt as applicable income. This regulation is being amended to:

(a) Adopt the January 1, 1988 temporary regulation change which restricts the income-in-kind exemption to unearned income-in-kind;

(b) expand the exemption pertaining to support payments to include all support payments that are subject to assignment. Recovery of support payments retained in violation of the assignment will become the responsibility of the Child Support Enforcement agency; and

(c) change the provision pertaining to reported current support which is in excess of the amount exempted in subsection (a) of this section and which, if treated as nonexempt income, would result in ineligibility to a prospective determination. Currently, such support is budgeted both prospectively and retrospectively in determining eligibility.

25. 30-4-120. Special allowances and requirements for applicants and recipients of ADC, ADC-FC, APW, GAU, TGA and GA-FC. This regulation is amended to:

(a) Adopt the July 1, 1987 temporary regulation changes which:

(1) deleted reference to the TGA program in the title;

(2) expanded the special requirements section to provide for expenses associated with an agency-approved plan for education and training;

(b) standardize the CWEP transportation allowance at \$30.00 without regard to the length of assignment; and

(c) standardize the job search transportation allowance at \$25.00 for persons who are required to participate in job search for one to four weeks. An additional \$25.00 allowance is to be provided to a person who is required to participate in job search for five through eight weeks.

26. 30-4-130. Types of payments. This regulation is being amended to reflect a technical change by correcting a cross reference.

C. Medicaid/Medikan Program—Provider Participation, Scope of Services, Reimbursement

1. 30-5-58. Definitions. This regulation is being amended to:

(a) Delete the definition of "emergency care" and replace it with the definition of "emergency services" which reads, "those services provided after the sudden onset of a medical condition manifested by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part";

(b) delete the word "psychiatric" from the term "psychiatric partial hospitalization"; and

(continued)

(c) add the following new definitions:

"Early and periodic screening, diagnosis and treatment (EPSDT) program participant" means an individual under the age of 21 who is eligible for medicaid, and who has undergone an EPSDT medical screening in accordance with a specified screening schedule in order to ascertain physical and mental defects and to provide treatment which corrects or ameliorates defects and chronic conditions found.

"Early and periodic screening, diagnosis and treatment (EPSDT) dental only participant" means an individual under the age of 21 who is eligible for medicaid, and who has undergone only an EPSDT dental screening in accordance with a specified screening schedule in order to ascertain dental defects and to provide treatment which corrects or ameliorates dental defects and chronic dental conditions found.

"Early and periodic screening, diagnosis and treatment (EPSDT) vision only participant" means an individual under the age of 21 who is eligible for medicaid, and who has undergone only an EPSDT vision screening in accordance with a specified screening schedule in order to ascertain vision defects and to provide treatment which corrects or ameliorates vision defects and chronic vision conditions found.

"Home care services" means the housekeeping and the nonmedical personal care provided by home care workers employed by the department of social and rehabilitation services to medicaid recipients who are unable to maintain their homes in livable conditions or to medicaid recipients who need assistance in accomplishing the activities of daily living.

"Targeted case management services" means those services to assist medicaid recipients with gaining access to medically necessary care, and which are provided by a case manager with credentials specified by the department of social and rehabilitation services.

"Uncollectable overpayment to an out-of-business provider" means any amount which is due from a provider of medical services who has ceased all practice or operations for any medical services as an individual, a partnership or a corporate identity, and who has no assets capable of being applied to any extent toward a medicaid overpayment, or the amount which is due is less than its collection and processing costs.

2. 30-5-59. Provider participation requirements. This regulation is being amended to:

(a) Clarify that unless otherwise specified by the secretary, the specifications contained within the text of the regulation are conditions for participation in and payment from the medicaid/medikan program;

(b) add that providers shall include the composition of available services as information to be updated as necessary on the provider application form;

(c) require providers to maintain records for five years from the date of service so as to disclose fully the extent of the services provided and for the determination and establishment of reimbursement rates, and that standardized definitions, accounting, statistics, and reporting practices which are widely accepted in the provider's field shall be followed;

(d) clarify that providers shall furnish any information

that the department of social and rehabilitation services, its designee or the department of health and human services may request to assure proper payment, substantiate claims for payments and to complete determinations of overpayments;

(e) add that providers shall permit the department of social and rehabilitation services, its designee, or the department of health and human services to examine any records and documents that are necessary to ascertain information about payment. These records shall include matters of the provider's ownership, organization and operation, including documentation as to whether transactions occurred between related parties; fiscal, medical and other recordkeeping systems; documentation of asset acquisition, lease, sale or other action; franchise or management arrangements; costs of operation; amounts of income received by source and purpose; and a statement of changes in financial position; and

(f) add that out-of-state durable medical equipment and medical supply providers shall be enrolled if there is a provider service representative located in Kansas (the text of this section was formerly contained in K.A.R. 30-5-70).

3. 30-5-65. Filing limitations for medical claims. This regulation is being amended to:

(a) Add that each claim for payment shall be submitted within six months of the date of service (the text of this section was formerly contained in K.A.R. 30-5-70); and

(b) add that claims determined payable because of agency error shall be an allowable exception to the filing limitations.

4. 30-5-70. Payment of medical expenses for eligible recipients. This regulation is being amended to:

(a) Add that services in excess of medicaid/medikan program limitations shall be covered for foster care or adoption support recipients when approved by the agency;

(b) add that payment for out-of-state services shall include medical services in excess of the limitations of the state of residence for those for whom Kansas has initiated adoption support agreements when approved by the Kansas Department of Social and Rehabilitation Services and when within the scope of the adoption agreement;

(c) add that payment for medical services shall be made after approval when it has been determined by the agency that an agency administrative error has been made;

(d) move the six months claim filing limitation to K.A.R. 30-5-65;

(e) move the requirement pertaining to the enrollment of out-of-state durable medical equipment and medical supply providers to K.A.R. 30-5-59; and

(f) make technical changes.

5. 30-5-71. Co-pay requirements. This regulation is being amended to:

(a) Change the title of the regulation to read "Co-payment requirements";

(b) add a co-payment of \$1.00 for nonemergency visits in an outpatient general hospital;

(c) change the methodology for the non-institutional co-payment requirements to a range of potential co-payments pursuant to 42 CFR 447.54.

Average Medicaid/Medicaid Payment for Services	Maximum Co-payment Chargeable To Recipient
\$10.00 or less	\$.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

(d) add the following services as being subject to co-payment: audiological office visits; durable medical equipment items; outpatient general hospital surgeries; and podiatric office visits;

(e) add that co-payment shall not apply to emergency services, and to recipients aged 18 to under 22, or aged 65 or older who are inpatients in a state psychiatric facility; and

(f) make technical changes.

6. 30-5-75. Scope of services for eligible aliens. The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-5-75. Scope of services for eligible aliens. The scope of services shall be limited to emergency medical services for otherwise eligible aliens pursuant to K.A.R. 30-6-54 who do not qualify under the citizenship and alienage requirements.

7. 30-5-81. Scope of hospital services. This regulation is being amended to:

(a) Add that non-emergency visits in place of physician's office visits shall be considered as physician's office visits and shall be counted against the physician office visit limitation;

(b) add that autologous bone marrow transplants shall be covered; and

(c) make technical changes.

8. 30-5-81t. Hospital change of ownership. This regulation is being amended to provide that if a business entity fails to provide 60 days notice of change of ownership to the agency, the business entity forfeits all rights to appeal payment rates pursuant to K.A.R. 30-5-81s.

9. 30-5-83a. Reimbursement for ambulatory surgical centers. This regulation is being amended to change the reimbursement methodology to reasonable fees as related to customary charges shall be paid except no fee shall be paid in excess of the range maximums.

10. 30-5-84. Scope of home and community based services. This regulation is being amended to:

(a) Delete as a covered service the provision of home health aide services provided by home health agencies;

(b) change "non-medical attendant care for independent living" to "medical attendant care";

(c) replace references to "non-medical attendant care for independent living" and "homemaker services approved by the agency" with "home care services"; and

(d) make technical changes.

11. 30-5-84a. Reimbursement for home and community based services. This regulation is being amended to add case managers and home care worker services as exceptions to the reimbursement methodology.

12. 30-5-86. Scope of services by community mental health centers. This regulation is being amended to:

(a) Delete reference to outpatient psychotherapy treatment sites;

(b) limit outpatient psychotherapy to 32 hours per calendar year per recipient unless the recipient is an EPSDT program participant;

(c) clarify that outpatient psychotherapy shall be 40 hours per calendar year for EPSDT program participants unless provided pursuant to a plan approved by the agency and prior authorized;

(d) clarify the drug and alcohol treatment limitation by expressing it in "hours" instead of "units";

(e) add that outpatient psychotherapy shall be covered with prior authorization when provided concurrently by the same provider with both targeted case management services and partial hospitalization services;

(f) add that targeted case management services shall be limited to an amount per calendar year per recipient as specified by the secretary; and

(g) clarify that services shall be provided by a psychologist who is a licensed doctoral psychologist or a registered master's level psychologist.

13. 30-5-86a. Base rate reimbursement for community mental health centers. This regulation is being amended effective July 1, 1988, to:

(a) Change the title of the regulation to "Reimbursement for community mental health centers"; and

(b) change the reimbursement methodology to reasonable fees as related to customary charges shall be paid except no fee shall be paid in excess of the range maximum, and the range of charges shall provide the base for computations.

14. 30-5-86b. Existing provider rates for community mental health centers. This regulation is being revoked effective July 1, 1988.

15. 30-5-86c. New provider rates for community mental health centers. This regulation is being revoked effective July 1, 1988.

16. 30-5-86d. Financial recordkeeping for community mental health centers. This regulation is being revoked effective July 1, 1988.

17. 30-5-86e. Modification of prospective rates for community mental health centers. This regulation is being revoked effective July 1, 1988.

18. 30-5-87. Scope of early and periodic screening, diagnosis, and treatment (EPSDT). This regulation is being amended to:

(a) Add prior authorized respiratory therapy provided by a home health agency as a covered service; and

(b) clarify that EPSDT medical screenings may be provided by physicians, registered nurses certified to do comprehensive health assessments, or by a facility under the supervision of a physician or registered nurse; that dental screenings may be provided by dentists; and that vision screenings may be provided by ophthalmologists or optometrists.

19. 30-5-87a. Reimbursement for early and periodic screening, diagnosis and treatment (EPSDT). This regulation is being amended to provide that reimbursement shall be at a fee for service as established by the secretary.

(continued)

20. 30-5-88. Scope of physician services. This regulation is being amended to:

(a) Add that procurement of the organ shall be covered in autologous bone marrow transplants;

(b) increase psychotherapy services to 32 hours per calendar year per recipient (unless the recipient is an EPSDT program participant);

(c) increase psychotherapy services to 40 hours per calendar year for EPSDT program participants;

(d) add that psychotherapy shall be covered with prior authorization when provided concurrently by the same provider with both targeted case management services and partial hospitalization services; and

(e) make technical changes.

21. 30-5-89. Scope of home health services. This regulation is being amended to add prior authorized respiratory therapy for EPSDT program participants as a covered service.

22. 30-5-92. Scope of pharmacy services. This regulation is being amended to clarify that pharmacy services related solely to noncovered transplant procedures shall not be covered.

23. 30-5-100. Scope of dental services. This regulation is being amended to:

(a) Clarify that dental services shall be covered for EPSDT program participants or EPSDT dental only participants;

(b) add that both an EPSDT medical screening and an EPSDT dental screening shall be required for dental services to participants under the age of three, and for orthodontia services;

(c) add that emergency dental services as specified by the secretary shall be covered for adult medicaid program recipients; and

(d) delete the language which provided that the guideline by which decisions of utilization are made for other medicaid recipients shall be the principle of the relief of pain and suffering.

24. 30-5-102. Scope of optometric and optical services. This regulation is being amended to add as a covered service medical treatment pursuant to K.S.A. 65-1501 as amended.

25. 30-5-103. Scope of podiatric services. This regulation is being amended to limit the number of office visits to 12 per calendar year for non-EPSDT program participants.

26. 30-5-104. Scope of psychological services. This regulation is being amended to:

(a) Increase outpatient psychotherapy to 32 hours per calendar year per recipient (unless the recipient is an EPSDT program participant);

(b) increase outpatient psychotherapy to 40 hours per calendar year for EPSDT program participants; and

(c) add that psychotherapy shall be covered with prior authorization when provided concurrently by the same provider with both targeted case management services and partial hospitalization services.

27. 30-5-106a. Reimbursement for ambulance services. This regulation is being amended to delete the lim-

itation that reimbursement shall be limited to the base charge, a charge per mile, stand-by or waiting charges, and approved ancillary services.

28. 30-5-110. Scope of psychiatric partial hospitalization programs. This regulation is being amended to:

(a) Change the title of the regulation to "Scope of partial hospitalization programs"; and

(b) reduce the number of covered hours to a maximum of 1560 hours per recipient per calendar year.

29. 30-5-110a. Reimbursement for psychiatric partial hospitalization programs. This regulation is being amended to:

(a) Change the title of the regulation to "Reimbursement for partial hospitalization programs"; and

(b) change the reimbursement methodology to reasonable fees as related to customary charges shall be paid except no fee shall be paid in excess of the range maximum, and the range of charges shall provide the base for computations.

30. 30-5-112. Scope of local health department services. This regulation is being amended to:

(a) Add nursing assessment performed by a registered nurse as a covered service; and

(b) delete the word "communicable" from the phrase "services to detect, diagnose and treat specific communicable diseases."

31. 30-5-113. Scope of advanced registered nurse practitioner services. The secretary is promulgating a new regulation concerning the scope of advanced registered nurse practitioner services. The text of the regulation is set forth below:

30-5-113. Scope of advanced registered nurse practitioner services. (a) Advanced registered nurse practitioner services shall be covered for medicaid/medikan recipients when provided by an advanced registered nurse practitioner who is certified pursuant to K.A.R. 60-11-103 or who meets this criteria if practicing out-of-state.

(b) Covered services shall include the following:

(1) Anesthesia services provided by certified registered nurse anesthetists;

(2) obstetrical services provided by nurse midwives;

(3) EPSDT screenings when certified by the department of health and environment; and

(4) targeted case management for technology dependent children.

32. 30-5-113a. Reimbursement for advanced registered nurse practitioner services. The secretary is promulgating a new regulation concerning the reimbursement for advanced registered nurse practitioner services. The text of the regulation is set forth below:

3-5-113a. Reimbursement for advanced registered nurse practitioner services. Reasonable fees as related to customary charges shall be paid for advanced registered nurse practitioner services except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations.

33. 30-5-114. Scope of targeted case management services. The secretary is promulgating a new regulation concerning the scope of targeted case management services. The text of the regulation is set forth below:

30-5-114. Scope of targeted case management services. (a) Targeted case management services shall be covered for medicaid/medikan recipients.

(b) Covered services shall include the following:

- (1) Referral for assessment;
- (2) referral for treatment if appropriate according to the assessment; and
- (3) assistance with gaining access to medically necessary services.

34. 30-5-114a. Reimbursement for targeted case management services. The secretary is promulgating a new regulation concerning the reimbursement for targeted case management services. The text of the regulation is set forth below:

30-5-114a. Reimbursement for targeted case management services. Reasonable fees as related to customary charges shall be paid for targeted case management services, except no fee shall be paid in excess of the range maximum. The range of charges shall provide the base for computations.

35. 30-5-150. Co-pay requirements for adult medikan program recipients. This regulation is being amended to:

- (a) Change the title of the regulation to read "Co-payment requirements for medikan program recipients";
- (b) clarify that co-payment requirements shall be the same for both medicaid and medikan program recipients;
- (c) cross reference K.A.R. 30-5-71; and
- (d) make technical changes.

36. 30-5-151. Scope of hospital services for adult medikan program recipients. This regulation is being amended to:

- (a) Change the title of the regulation to read "Scope of hospital services for medikan recipients";
- (b) clarify that hospital services shall be the same for both medicaid and medikan program recipients with the exception of psychiatric services which are limited to specific diagnoses for medikan recipients; and
- (c) cross reference K.A.R. 30-5-81.

37. 30-5-152. Scope of rural health clinic services for adult medikan recipients. This regulation is being amended to:

- (a) Change the title of the regulation to read "Scope of rural health clinic services for medikan recipients";
- (b) add coverage of rural health clinic services for medikan recipients the same as medicaid recipients; and
- (c) cross reference K.A.R. 30-5-82.

38. 30-5-154. Scope of services by community mental health centers for adult medikan program recipients. This regulation is being amended to:

- (a) Change the title of the regulation to read "Scope of community mental health center services for medikan program recipients";
- (b) clarify that community mental health center services shall be the same for both medicaid and medikan recipients with the exceptions that outpatient psychotherapy shall be limited to 24 hours per calendar year per medikan recipient when provided by a community mental health center, physician, psychologist, or any combination of these providers, and that psychological testing shall be

prior authorized and limited to six hours per three consecutive calendar years per medikan recipient;

(c) provide that targeted case management services and partial hospitalization services shall be limited to amounts specified by the secretary for medikan recipients; and

(d) cross reference K.A.R. 30-5-86.

39. 30-5-156. Scope of physician services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of physician services for medikan program recipients";

(b) clarify that physician services shall be the same for both medicaid and medikan recipients with the exception of outpatient psychotherapy which is limited to 24 hours per calendar year per medikan recipient when provided by a physician, psychologist, community mental health center, or any combination of these providers; and

(c) cross reference K.A.R. 30-5-88.

40. 30-5-157. Scope of home health services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of home health services for medikan program recipients";

(b) clarify that home health services shall be the same for both medicaid and medikan recipients; and

(c) cross reference K.A.R. 30-5-89.

41. 30-5-159. Scope of dental services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of dental services for medikan program recipients";

(b) add coverage of dental services for medikan recipients which is identical to the coverage for adult medicaid recipients; and

(c) cross reference K.A.R. 30-5-100.

42. 30-5-160. Scope of chiropractic services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of chiropractic services for medikan program recipients";

(b) clarify that chiropractic services shall be the same for both medicaid and medikan recipients; and

(c) cross reference K.A.R. 30-5-101.

43. 30-5-161. Scope of podiatric services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of podiatric services for medikan program recipients";

(b) clarify that podiatric services shall be the same for both medicaid and medikan recipients; and

(c) cross reference K.A.R. 30-5-103.

44. 30-5-162. Scope of psychological services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of psychological services for medikan program recipients";

(b) clarify that psychological services shall be the same for both medicaid and medikan recipients with the ex-

(continued)

ceptions that outpatient psychotherapy shall be limited to 24 hours per calendar year per medikan recipient when provided by a psychologist, physician, community mental health center, or any combination of these providers; psychological testing and evaluation shall be limited to six hours in any three consecutive calendar years for medikan recipients; and targeted case management and partial hospitalization services shall be limited to amounts specified by the secretary for medikan recipients; and

(c) cross reference K.A.R. 30-5-104.

45. 30-5-163. Scope of services for the hearing impaired under the adult medikan program. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of hearing services for medikan program recipients";

(b) add coverage of hearing services for medikan recipients the same as for medicaid and medikan recipients; and

(c) cross reference K.A.R. 30-5-105.

46. 30-5-167. Scope of services in free-standing inpatient psychiatric facilities for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of services in free-standing inpatient psychiatric facilities for medikan program recipients"; and

(b) replace the 14 days per acute psychotic episode limitation for medikan recipients with the same limitations for medicaid recipients by cross referencing K.A.R. 30-5-109.

47. 30-5-168. Family planning services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Family planning services for medikan program recipients";

(b) clarify that family planning services shall be the same for both medicaid and medikan recipients; and

(c) cross reference K.A.R. 30-5-88(b)(5).

48. 30-5-169. Scope of psychiatric partial hospitalization programs for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of partial hospitalization programs for medikan program recipients";

(b) clarify that partial hospitalization program services shall be the same for both medicaid and medikan recipients with the exception that no more than 720 hours per calendar year of partial hospitalization program services shall be allowed for medikan recipients unless prior approval for an extended program has been granted by the division of medical programs;

(c) cross reference K.A.R. 30-5-110; and

(d) make technical changes.

49. 30-5-170. Scope of services for ambulatory surgical centers for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of services for ambulatory surgical center for medikan program recipients";

(b) clarify that ambulatory surgical center services shall

be the same for both medicaid and medikan recipients; and

(c) cross reference K.A.R. 30-5-83.

50. 30-5-171. Scope of substance abuse services for adult medikan program recipients. This regulation is being amended to:

(a) Change the title of the regulation to read "Scope of substance abuse services for medikan program recipients"; and

(b) clarify that substance abuse services shall be the same for both medicaid and medikan recipients.

D. Medicaid/Medikan Program—Client Eligibility.

1. 30-6-35. Application process. This regulation is being amended to require a face-to-face interview for non-SSI cases at application unless there is good cause to waive this requirement.

2. 30-6-36. Redetermination of eligibility process. This regulation is being amended to reflect technical changes and to require a face-to-face interview for non-SSI cases at the time of a redetermination of eligibility unless there is good cause to waive this requirement.

3. 30-6-41. Assistance planning. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which limited the definition of a caretaker relative to the relative who is assigned the primary responsibility for the care and control of the child, either singly or, as in the case of two parents, jointly;

(b) adopt the January 1, 1988 temporary regulation changes which:

(b) defines the mandatory filing unit as all persons in the family group whose needs or resources are required to be considered in determining eligibility and amount of benefits as outlined in K.A.R. 30-6-74 for ADC purposes and K.A.R. 30-6-79 for non-ADC purposes. If the agency is unable to determine who is required to be a member of the mandatory filing unit as a result of an applicant's or recipient's failure to cooperate in providing necessary information or in complying with an eligibility requirement that is within the applicant's or recipient's control, those persons who would otherwise be required to be in the mandatory filing unit had the applicant or recipient cooperated shall be ineligible for assistance; and

(2) modifies the assistance planning provision to require that the assistance plan consist of those members of the mandatory filing unit and any other persons in the family group for whom assistance is requested and eligibility is determined.

4. 30-6-54. Citizenship, alienage and residence. This regulation is being amended to:

(a) Adopt the May 1, 1987 temporary regulation changes which:

(1) provided that aliens who are granted either temporary or permanent residence status pursuant to P.L. 99-603, the Immigration Reform and Control Act of 1986, shall be regarded as meeting the citizenship and alienage requirement;

(2) provided that an otherwise eligible alien who does not qualify under the alienage requirements shall be el-

eligible for emergency medical care pursuant to P.L. 99-509, the Omnibus Budget Reconciliation Act of 1986;

(3) reflected several technical changes; and

(b) clarify that only those aliens for whom assistance can be granted pursuant to P.L. 99-603 are eligible for assistance.

5. 30-6-56. Transfer of property. This regulation is being amended to reflect technical changes.

6. 30-6-57. Job search requirements. This regulation is being amended to adopt the January 1, 1988 temporary regulation change which provides that the failure of a nonexempt principal wage earner in ADC-UP to meet the job search requirements without good cause shall render the individual and all persons in the mandatory filing unit ineligible for the penalty period.

7. 30-6-65. Automatic eligibles. This regulation is being amended to:

(a) Adopt the May 1, 1987 temporary regulation change which eliminated medical assistance for TGA recipients; and

(b) adopt the July 1, 1987 temporary regulation change which deleted reference to the TGA program.

8. 30-6-74. Persons whose needs are to be considered with the needs of the ADC child. This regulation is being amended to adopt the January 1, 1988 temporary regulation change which provides that while the needs of certain parents and children who are not otherwise eligible for ADC shall be excluded in determining eligibility of the ADC child, the income and resources of such persons shall, unless the income and resources are specifically exempt, be included in the eligibility determination.

9. 30-6-78. Medicaid (title XIX) determined eligibles—eligibility factors specific to aid to pregnant women (APW). This regulation is being amended to reflect technical changes.

10. 30-6-79. Non-ADC child determined eligibles. This regulation is being amended to adopt the January 1, 1988 temporary regulation change which requires that the needs of certain non-ADC siblings who are not otherwise eligible shall be excluded in determining the eligibility of the non-ADC child. However, the income and resources of certain non-ADC siblings shall, unless the income and resources are specifically exempt, be included in the eligibility determination. Such siblings include: SSI recipients; siblings who are ineligible due to the receipt of lump sum income; siblings who are ineligible due to a sanction; minor parents whose needs are met through foster care payments; and aliens who are ineligible because of the citizenship and alienage requirements or sponsorship provisions.

11. 30-6-103. Determined eligibles; protected income levels. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which increased the protected income level for two persons to \$460.00 and for three persons to \$465.00;

(b) adopt the January 1, 1988 temporary regulation changes which:

(1) requires that the protected income level for persons in independent living arrangements be based on the total

number of persons in the assistance plan and any other persons in the family group whose income is being considered; and

(2) increases the protected income level for one person from \$341.00 to \$354.00.

12. 30-6-106. General rules for consideration of resources, including real property, personal property and income. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation changes which:

(1) provided that when a nonlegally responsible person in the home and not on the assistance plan contributes cash toward household expenses, the amount of the contribution to be counted shall be the net income realized by the household;

(2) limited the consideration of combined real and personal property of a husband and wife when both are applicants or recipients and one or both are in a care situation for the month the care situation begins and the following six months to those instances in which both spouses are aged, blind, or disabled;

(b) adopt January 1, 1988 temporary regulation change which requires that the nonexempt resources of persons who have been excluded from the assistance plan pursuant to K.A.R. 30-6-74(b) and 30-6-79(c) shall be considered; and

(c) reflect technical changes.

13. 30-6-107. Property exemption. This regulation is being amended to adopt the January 1, 1988 temporary regulation changes which:

(a) Increases the allowable resource standard from \$1,800.00 to \$1,900.00 for one person and from \$2,700.00 to \$2,850.00 for two or more persons; and

(b) requires that the \$2,850.00 level be used for two or more persons whose nonexempt resources are being considered for a person in the assistance plan.

14. 30-6-108. Real property. This regulation is being amended for non-SSI cases to:

(a) Remove the 40-acre limitation relative to the definition of the home;

(b) provide for the exemption of real property that is essential for employment or self-employment; and

(c) provide for the exemption of real property that is producing income that is consistent with its fair market value.

15. 30-6-109. Personal property. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which specified for SSI that a retroactive social security payment received by an applicant or recipient or an ineligible legally responsible person is exempt for the six months following the month of receipt; and

(b) for non-SSI, expand the income producing property exemption to include all property, other than cash assets, which is essential for employment or self-employment and thereby delete the requirement that the property produce annual adjusted gross income that is at least 40 percent of its gross market value.

16. 30-6-110. Income. This regulation is being

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amended to adopt the January 1, 1988 temporary regulation change which expands the definition of "earned income" to include income-in-kind that is received as compensation in lieu of wages, salary or profit.

17. 30-6-111. Applicable income. This regulation is being amended to:

(a) Adopt the May 1, 1987 temporary regulation change which:

(1) adopted the \$75.00 earned income disregard provision for a stepparent or a parent of a minor parent who is employed part time;

(2) extended the income disregard provisions for a stepparent or a parent of a minor parent to an alien who is a parent of an ADC child and who is excluded from the assistance plan due to the provisions of P.L. 99-603, the Immigration Reform and Control Act of 1986;

(b) adopt the July 1, 1987 temporary regulation change which reflected technical changes;

(c) adopt the January 1, 1988 temporary regulation changes which:

(1) for non-SSI, allow the earned income disregards for all persons in the home whose earned income must be considered and who are excluded from the assistance plan; and

(2) require that all net nonexempt unearned income, except for special disregards for stepparents, parents of minor parents and alien parents of an ADC child who are excluded from the assistance plan, be applicable.

18. 30-6-112. Income exempt from consideration as income and as a cash asset. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which:

(1) expanded the exemption of complementary assistance to that assistance provided by another agency or organization that complements but does not duplicate assistance provided by the agency without regard to its usage;

(2) expanded the provision related to grants and loans to exempt such income when it is for the purpose of meeting needs not related to current living costs; and

(b) for SSI, adopt the January 1, 1988 temporary regulation change which exempts any portion of any financial assistance funded under title IV of the Higher Education Act of 1965, as amended, or under Bureau of Indian Affairs Student Assistance Programs which is made available for tuition, fees, books, supplies, transportation and miscellaneous personal supplies.

19. 30-6-113. Income exempt as applicable income. This regulation is being amended to:

(a) Adopt the July 1, 1987 temporary regulation change which added an additional exemption for SSI to disregard the amount of the social security adult disabled child benefit for an otherwise eligible SSI person age 18 or older who was receiving SSI benefits that began prior to age 22 and who loses SSI eligibility due solely to the person becoming eligible for the adult disabled child benefits or an increase in the adult disabled child benefits;

(b) adopt the January 1, 1988 temporary regulation change which restricts the income-in-kind exemption to unearned income-in-kind; and

(c) reflect a technical change.

E. Medicaid/Medikan Program—Adult Care Homes.

1. 30-10-1a. Adult care home program definitions. This regulation is being amended to change the following definitions:

(a) "Inspection of care review and medical review of intermediate care and skilled nursing facilities" means a yearly, resident-oriented review of only medicaid/medikan recipients, conducted by a team from the agency consisting of a nurse, a social worker and a medical doctor, to determine whether those recipients' needs are being met. (This replaces the definition for "independent professional review.")

(b) "Intermediate care facility (ICF)" means a facility which has met state licensure standards and which provides health-related care and services, prescribed by a physician, to residents who require 24 hours a day, seven days a week, licensed nursing supervision for ongoing observation, treatment or care for long term illness, disease, or injury.

(c) "Related parties" means a relationship between two or more parties in which one party has the ability to influence another party of the transaction to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties includes parties related by family, business or financial association, or by common ownership or control. Transactions between related parties shall not be considered to have arisen through arms-length negotiations. Transactions or agreements that are illusory or a sham shall not be recognized.

(d) "Organization costs" mean those costs directly incidental to the creation of the corporation or other form of business. These costs are intangible assets in that they represent expenditures for rights and privileges which have value to the enterprise. The services inherent in organization costs extend over more than one accounting period and should be amortized over a period of not less than 60 months from the date of incorporation.

This regulation is being further amended to add the following new definitions:

(e) "Non-working owners" means any individual or organization having 5 percent or more interest in the provider and does not perform a patient-related function for the adult care home.

(f) "Non-working related party" means any related party as defined in K.A.R. 30-10-1a(p) who does not perform a patient-related function for the adult care home.

(g) "Owner/related party compensation" means salaries, drawings, consulting fees or other payments paid to or on the behalf of any owner with 5 percent or more interest in the provider or any related party as defined in K.A.R. 30-10-1a(p), whether the payment is from a sole proprietorship, partnership, corporation, or non-profit organization.

(h) "Projection status" means a provider who has been assigned a previous provider's rate for a set period of time or one who is allowed to submit a projected cost report. The provider shall submit a historic cost report at the end of the projection period to be used for a settlement of the interim rates and to determine a prospective rate.

(i) "Projected cost report" means a cost report submitted to the agency by a provider for a 12-month period of time. The projected cost report is based on an estimate of the costs, revenues, resident days and other financial data for the 12-month period of time.

(j) "Survey correction budget" means a budget of the estimated costs for a 12-month period needed to correct state and federal deficiencies found in intermediate care facilities for the mentally retarded.

(k) "Provider" means the operator of the adult care home specified in the provider agreement.

2. 30-10-1b. Adult care home facilities. This regulation is being amended to:

(a) Provide that failure to submit a timely notification shall result in the new provider assuming responsibility for any overpayment made to the previous provider before the transfer. This shall not release the previous provider of responsibility for such overpayment.

(b) Change the term "ownership" to "provider" for purposes of clarity.

3. 30-10-2. Standards for participation; skilled nursing facility. This regulation is being amended to delete subsection (d) which provides for five working days notice when the recipient is admitted to a hospital and the facility has decided not to re-admit the recipient. The Department of Health and Environment will enforce this item under K.A.R. 28-39-78(a)(3).

4. 30-10-3. Standards for participation; intermediate care facility and intermediate care facility for mental health. This regulation is being amended to delete subsection (c) which provides for five working days notice when the recipient is admitted to a hospital and the facility has decided not to re-admit the recipient. The Department of Health and Environment will enforce this item under K.A.R. 28-39-78(a)(3).

5. 30-10-4. Standards for participation; intermediate care facility for the mentally retarded or persons with related conditions. This regulation is being amended to delete subsection (c) which provides for five working days notice when the recipient is admitted to a hospital and the facility has decided not to re-admit the recipient. The Department of Health and Environment will enforce this item under K.A.R. 28-39-78(a)(3).

6. 30-10-9. Utilization review of adult care homes. This regulation is being amended to add new subsection (e) to read as follows:

Any adult care home that has recipients found to be inappropriately placed by the inspection of care team shall be responsible for providing transportation for the recipient or recipients to a more appropriate placement facility.

7. 30-10-11. Personal needs funds. This regulation is being amended to make technical changes and to add "or conservator" after the word "guardian" in subsection (i).

8. 30-10-15a. Reimbursement. This regulation is being amended to:

(a) Change independent professional review teams to inspection of care review teams; and

(b) provide that payment for a work activity program in an ICF-MR or an ICF-MH facility shall be included in the per diem reimbursement.

9. 30-10-15b. Financial data. This regulation is being amended under subsection (c) to read as follows:

"(c) Adequate cost data and cost finding. Providers shall provide adequate cost data on the cost report. This cost data shall be the actual expenses of the facility. Estimates of costs are not allowable except on projected cost reports submitted pursuant to K.A.R. 30-10-17. The cost data shall be based on the accrual basis of accounting and may include a current use value of the provider's fixed assets used in patient care."

10. 30-10-17. Cost reports. This regulation is being amended to:

(a) Provide that cost reports must be received by the agency no later than the close of business on the last day of the third month following the close of the period covered by the report and that cost reports from each provider with more than one facility must be received on the same date;

(b) provide that an extension of time for submitting a cost report to be received by the agency must be requested in writing and must be received by the agency prior to the due date of the cost report;

(c) provide that if the cost report has not been received by the agency by the close of business on the due date, the provider's current rate shall be reduced to the lowest rate in the state for the level of care in which the provider participates;

(d) delete subsection (f)(4) which pertains to a penalty for the late filing of a historical cost report for the period covered by a projected cost report due to the fact this issue is addressed in another regulation; and

(e) provide that an interim settlement, based on a desk review of the historical cost report for the projection period, shall be determined within 60 days after the provider is notified of the new rate determined from such cost report.

11. 30-10-19. Rates; effective dates. This regulation is being amended under subsection (a) to read as follows:

(a) Effective date of per diem rates for existing facilities. The effective date of a new rate that is based on information and data in the adult care home cost report shall be the first day of the second calendar month following the month the complete cost report is received by the agency.

12. 30-10-21. Reserve days. This regulation is being amended under subsection (b)(3) to read as follows:

(b)(3) The periods of hospitalization for acute conditions shall not exceed 10 days per any single hospital stay and for residents from an intermediate care facility for mental health and 21 days per state mental institution admission or admission to a psychiatric ward in a general hospital or private psychiatric hospital.

13. 30-10-23a. Non-reimbursable costs. This regulation is being amended to include nine additional expense or cost items that shall not be allowed. These additional items include:

- (a) oxygen;
- (b) vending machine and related supplies;
- (c) board of director costs;

(continued)

- (d) resident personal purchases;
- (e) barber and beauty shop expenses;
- (f) advertising for patient utilization;
- (g) public relations expenses;
- (h) penalties, fines, and late charges; and
- (i) prescription drugs.

14. 30-10-24. Compensation of owners, spouses, related parties and administrators. This regulation is being amended under subsection (a) to read as follows:

(a) Non-working owners and related parties. Remunerations paid to non-working owners or other related parties, as defined in subsections (p), (q), (r), (s), (ee) and (ff) of K.A.R. 30-10-1a, shall not be considered an allowable cost regardless of the name assigned to the transfer, accrual, or the type of provider entity making the payment. Each payment shall be separately identified and reported as owner compensation in the non-reimbursable and non-patient related expense section of the cost report.

15. 30-10-25. Real and personal property fee. This regulation is being amended to add a new subsection (e)(1) to read as follows:

(e)(1) Providers shall be allowed to request a property fee re-basing if the following capital expenditure thresholds are met for related equipment and/or projects:

- (A) \$25,000.00 for facilities with 50 or fewer beds; or
- (B) \$50,000.00 for facilities with 51 or more beds.

(2) The per diem from the components (i.e. interest and depreciation) of the capital expenditures shall be added to the property allowance per diem originally established.

(3) The revised property allowance shall be used to determine the property value factor. The revised property value factor shall be based on the existing arrays.

16. 30-10-29. Reimbursement for 24-hour nursing care. This regulation is being amended to delete the language providing that the pass-through shall not exceed 12 months.

F. Licensing of Psychiatric Hospitals and Community Mental Health Centers; Funding of Community Mental Health Centers and Facilities for the Mentally Retarded and Facilities for Handicapped Persons.

1. 30-22-30. This application for state financing of community mental health centers. This regulation is being amended to read as follows:

30-22-30. Application for state financing of community mental health centers. (a) Community mental health centers may apply for state financing under L. 1987, Ch. 249, Sections 1 through 12, by submitting an annual budget request to the secretary of social and rehabilitation services.

(b) Budget requests shall be submitted to the secretary by July 1 of each year unless a delay is granted in writing.

(c) Budgets shall be submitted on forms and according to instructions prescribed by the secretary.

(d) When an existing program is adequately serving a geographic area, a duplicate program shall not be requested in the budget of a center. Reasonable efforts shall be made to make the existing service available to all citizens in the area through contractual agreement with the provider of the existing service, if necessary.

(e) When a new program is to be implemented by a center, the center must notify the secretary 45 days in advance of program initiation in order to receive approval as a non-duplicate program in the center catchment area. In determining whether a new program duplicates an existing program, the secretary will consider pre-existing programs in the center catchment area and the availability of the pre-existing programs to all groups of catchment area citizens.

(f) As soon as state appropriation bills are signed into law, the amount available for each center that has submitted a budget shall be determined by the secretary. The amount shall be equal to the amount that the center's average grant would have been under the Kansas community mental health assistance act for the fiscal years ending on June 30, 1986, June 30, 1987, and June 30, 1988, if such act had not been repealed and if appropriations for the fiscal year ending June 30, 1988 to finance grants under such act had remained constant from the previous fiscal year plus each mental health center's pro rata share of any increase in moneys, including any inflation adjustments, appropriated for such purpose. The amounts so determined shall be paid to the centers in four payments on July 1, October 1, January 1 and April 1.

(g) Each center shall submit a quarterly report within 30 working days after the end of each calendar quarter. The report shall be on forms and in such detail as prescribed by the secretary.

(h) Each center shall file a copy of its annual audit report that has been certified by an independent auditor.

(i) Underpayments, overpayments or payments exceeding the maximum allowed by statute shall be subtracted from or added to the payment made on April 1.

(j) The secretary may withdraw funds from any center for one or more of the following reasons:

(1) Not being substantially administered according to the annual budget;

(2) loss of license granted in accordance with the provisions of K.S.A. 75-3307b and amendments thereto; or

(3) net loss in a new program which did not receive approval by the secretary and which is found to be a duplicate program within the center catchment area. The secretary shall verify the amount of income and disbursements related to such programs in determining any net loss with audits conducted by auditors of the department of social and rehabilitation services. The amount withdrawn will be equal to the net loss of the program determined after each 12 months of operation.

(k) The secretary may withhold payments from a center or facility for one or more of the following reasons:

(1) Failure to submit required reports;

(2) unreasonable delay in the submission of required reports; or

(3) other good cause.

(l) Quarterly payments described in subsection (e) will be made to a new or realigned community mental health center catchment area only after each new or realigned catchment area has been approved in accordance with K.A.R. 30-22-13 and 30-22-14. The financial plan required in K.A.R. 30-22-13(c)(6) shall include a new or revised budget as required in subsection (c).

(m) Special purpose grants may be awarded by the sec-

retary if appropriated by the legislature for that purpose. The secretary shall consider legislative intent and identified local needs in awarding such grants.

2. **30-22-32. Application for state financing of community mental retardation facilities under the community mental retardation facilities assistance act.** This regulation is being amended to add a fifth condition that a client must meet before the client shall be eligible and shall generate program units for a facility. This new condition that must be met by the client is as follows:

(5) is accepted for a program by the facility on a "first-come, first-serve basis in order of the time at which an application for admission was made to such facility on behalf of the client, except that a client accepted for a program by a facility on other than a first-come, first-serve basis because of a family crisis occasioned by family circumstances shall constitute a full-time equivalent client." A family crisis occasioned by family circumstances must be considered on an individual basis. Standards and guidelines shall be established by each agency board of directors and shall upon request of the secretary be made available for review by the secretary. The standards and guidelines established by the agency board of directors shall specify to the extent known the types of family crises most likely to necessitate admission to a facility and shall establish criteria for determining the appropriateness of such admission. Standards and guidelines for defining family crises shall specify family situations which make it impossible or extremely difficult for the family unit to provide or continue provision of that care and programming which the client needs based on the client's current behavior, functioning and medical needs. Age, health, transportation and financial capabilities of responsible family members, as well as client needs, shall be valid considerations in determining crises situations.

G. Alcohol and Drug Abuse Treatment Programs.

1. **30-31-2. Classification of treatment components of services.** This regulation is being amended to:

(a) Change subsection (g) to read as follows:

Diagnostic and referral program. A diagnostic and referral program is a program which offers services which evaluates, identifies or examines the existence or nonexistence of an individual's alcohol or drug abuse problem, which may include the specific nature of the individual's alcohol or drug abuse problem. Upon having assessed an abuse problem, the services of such program may include recommendations to the individual regarding the appropriate plan for treatment including but not limited to assistance in obtaining treatment commensurate with the individual's needs.

(b) Reflect technical changes.

2. **30-31-3. License requirements.** This regulation is being amended to make technical changes and to provide that a standard renewable license may be issued for one, two or three years, or a portion thereof.

3. **30-31-4. Application procedures.** This regulation is being amended to make technical changes and to provide that an application for license shall be accompanied by a check payable to the Department of Social and Rehabilitation Services in the amount of \$25.00 per treatment component, not to exceed \$100.00.

H. Child Abuse and Neglect.

1. **30-46-1. Definitions.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-46-1. Definitions. (a) "Alleged perpetrator" means the person identified in the initial report or during the investigation as the person suspected of perpetrating a reported act of abuse, neglect or sexual abuse.

(b) "Confirmed abuse, neglect or sexual abuse" means that the report has been validated by a preponderance of the evidence.

(c) "Confirmed perpetrator" means the person who has been identified by a preponderance of the evidence to have committed a confirmed act of abuse, neglect or sexual abuse.

(d) "Investigation" means the gathering and assessing of information sufficient to determine if a child has been abused, neglected or sexually abused.

(e) "Report of suspected abuse, neglect or sexual abuse" means information received by the agency or law enforcement that a child is suspected of being abused, neglected or sexually abused.

2. **30-46-2. Right to interview.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-46-2. Right to interview. Each alleged perpetrator shall have an opportunity to be interviewed before a proposed finding is issued identifying a perpetrator under K.A.R. 30-46-3.

3. **30-46-3. Notice of proposed finding.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-46-3. Notice of proposed finding. (a) Before any person is identified as a confirmed perpetrator, a written notice of the proposed finding shall be sent to the person by the agency. The notice shall state specifically the reasons for the finding and shall offer the alleged perpetrator an opportunity to reply to the proposed finding before the finding becomes final. The notice shall specify that the alleged perpetrator may appear in person before the area manager of the area in which the alleged act was committed or the area manager's designee or may reply in writing or both. The notice shall specify the date by which the alleged perpetrator may reply in writing or appear, or both. Such date shall be not less than five working days nor more than 10 working days following the date the notice was personally delivered or mailed to the alleged perpetrator.

(b) The area manager or the designee of the area manager shall not have been involved in the investigation of the alleged abuse, neglect or sexual abuse.

4. **30-46-4. Notice of final decision.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-46-4. Notice of final decision. Following the alleged perpetrator's response to the opportunity to reply to the proposed finding, or upon expiration of the time for such a reply if no reply is made, the alleged perpetrator shall be notified in writing of the final decision on the proposed

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finding by the area manager or the designee of the area manager. The notice shall set forth the reasons for the finding and shall inform the confirmed perpetrator of the perpetrator's right to appeal the decision in accordance with K.A.R. 30-7-26, et seq. within 30 calendar days from the date the notice was personally delivered or mailed to the perpetrator.

5. **30-46-5. Central registry.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-46-5. Central registry. The name of a confirmed perpetrator shall not be entered into the agency's central registry until the person has exhausted or failed to exercise the appeal process in K.A.R. 30-7-26, et seq.

6. **30-46-6. Expungement of confirmed perpetrator from central registry.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-46-6. Expungement of confirmed perpetrator from central registry. (a) Application for expungement.

(1) Any confirmed perpetrator of abuse, neglect or sexual abuse may apply in writing to the secretary to have the confirmed perpetrator's name expunged from the central registry when three years have passed since the most recent confirmed incident or when new information is presented.

(2) Each application for expungement shall be referred to the expungement review panel. The panel shall consist of the commissioner of youth services or the commissioner's designee, the chief legal counsel or the counsel's designee, and a representative of the public appointed by the secretary. The commissioner of youth services or the commissioner's designee shall chair the panel.

(3) A review hearing shall be convened by the panel at which time the applicant may present evidence supporting expungement of the applicant's name from the central registry. Evidence in support of or in opposition to the application may be presented by the SRS area office which conducted the original investigation at this hearing.

(4) Decisions of the review panel shall be by majority vote. The following factors shall be considered by the panel in making its decision:

(A) The nature and severity of the confirmed act of abuse, neglect or sexual abuse;

(B) the number of confirmations of abuse, neglect or sexual abuse involving the applicant;

(C) the age of the applicant at the time of the confirmed abuse, neglect or sexual abuse;

(D) the circumstances that no longer exist which contributed to the finding of abuse, neglect or sexual abuse of the applicant; and

(E) actions taken by the applicant to prevent the recurrence of acts of abuse, neglect or sexual abuse.

(5) Unless a request for continuance is granted, the review hearing shall be conducted within 30 days from the date the application for expungement is received by the agency. A written notice shall be sent to the applicant and the area office by the commissioner of youth services or the commissioner's designee at least 10 days prior to the hearing. The notice shall state the day, hour, and

place of the hearing. Continuances may be granted only for good cause.

(6) A written decision shall be rendered by the panel within 60 days from the date the matter is ready for decision. The decision shall be in writing, shall set forth the reasons for the decision, and shall inform an applicant of the applicant's right to appeal an adverse decision in accordance with K.A.R. 30-7-26, et seq., within 30 days from the date the decision was personally delivered or mailed to the applicant.

(b) Expungement by the agency. Records may be expunged from the central registry by the secretary or the designee of the secretary when 18 years have passed since the most recent incident.

I. Adult Abuse, Neglect or Exploitation.

1. **30-51-1. Definitions.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-51-1. Definitions: (a) "Alleged perpetrator" means the person identified in the initial report or during the investigation as the person suspected of perpetrating a reported act of abuse, neglect or exploitation.

(b) "Confirmed abuse, neglect or exploitation" means that the report has been validated by a preponderance of the evidence.

(c) "Confirmed perpetrator" means the person who has been identified by a preponderance of the evidence to have committed a confirmed act of abuse, neglect or exploitation.

(d) "Investigation" means the gathering and assessing of information sufficient to determine if an adult has been abused, neglected or exploited.

(e) "Report of suspected abuse, neglect or exploitation" means information received by the agency or law enforcement that an adult is suspected of being abused, neglected or exploited.

2. **30-51-2. Right to interview.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-51-2. Right to interview. Each alleged perpetrator shall have an opportunity to be interviewed before a proposed finding is issued identifying a perpetrator under K.A.R. 30-51-3.

3. **30-51-3. Notice of proposed finding.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-51-3. Notice of proposed finding. The notice shall set forth the reasons for the proposed finding and shall inform the alleged perpetrator of the alleged perpetrator's right to appeal the decision in accordance with K.A.R. 30-7-26, et seq. within 30 calendar days from the date the notice was personally delivered or mailed to the perpetrator.

4. **30-51-4. Central registry.** The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-51-4. Central registry. The name of a confirmed perpetrator shall not be entered into the agency's central registry until the person has exhausted or failed to exercise the appeal process in K.A.R. 30-7-26, et seq.

5. 30-51-5. Expungement of confirmed perpetrator from central registry. The secretary is promulgating a new regulation. The text of the regulation is set forth below:

30-51-5. Expungement of confirmed perpetrator from central registry. (a) Application for expungement.

(1) Any confirmed perpetrator of abuse, neglect or exploitation may apply in writing to the secretary to have the confirmed perpetrator's name expunged from the central registry when three years have passed since the most recent confirmed incident or when new information is presented.

(2) Each application for expungement shall be referred to the expungement review panel. The panel shall consist of the commissioner of adult services or the commissioner's designee, the chief legal counsel or the counsel's designee, and a representative of the public appointed by the secretary. The commissioner of adult services or the commissioner's designee shall chair the panel.

(3) A review hearing shall be convened at the panel at which time the applicant may present evidence supporting expungement of the applicant's name from the central registry. Evidence in support of or in opposition to the application may be presented by the SRS area office which conducted the original investigation at this hearing.

(4) Decisions of the review panel shall be by majority vote. The following factors shall be considered by the panel in making its decision:

(A) The nature and severity of the confirmed act of abuse, neglect or exploitation;

(B) the number of confirmations of abuse, neglect or exploitation involving the applicant; and

(C) changes in circumstances that no longer exist which contributed to the finding of abuse, neglect or exploitation of the applicant.

(5) Unless a request for continuance is granted, the review hearing shall be conducted within 30 days from the date the application for expungement is received by the agency. A written notice shall be sent to the applicant and the area office by the commissioner of adult services or the commissioner's designee at least 10 days prior to the hearing. The notice shall state the day, hour, and place of the hearing. Continuances may be granted only for good cause.

(6) A written decision shall be rendered by the panel within 60 days from the date the matter is ready for decision. The decision shall be in writing, shall set forth the reasons for the decision, and shall inform an applicant of the applicant's right to appeal an adverse decision in accordance with K.A.R. 30-7-26, et seq., within 30 days from the date the decision was personally delivered or mailed to the applicant.

(b) Expungement by the agency. Records may be expunged from the central registry by the secretary or the designee of the secretary:

(1) When five years have passed since the most recent incident; and

(2) prior to the implementation of these regulations.

WINSTON BARTON
Secretary of Social and
Rehabilitation Services

(Published in the *Kansas Register*, April 21, 1988.)

SENATE BILL No. 639

AN ACT relating to public water supply systems; concerning the use of lead in the construction thereof; amending K.S.A. 65-171o and 65-171r and repealing the existing sections.

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

Section 1. K.S.A. 65-171o is hereby amended to read as follows: 65-171o. The secretary of health and environment may require a supplier of water to give notice to the persons served by the public water supply system and to the secretary of health and environment whenever the public water supply system:

(a) Is not in compliance with an applicable maximum maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a primary drinking water standard adopted under K.S.A. 65-171m, *and amendments thereto*; or

(b) fails to perform monitoring, testing, analyzing or sampling as required; or

(c) is subject to a variance or exception; or

(d) is not in compliance with the requirements prescribed by a variance or exemption; or

(e) *is subject to potential lead contamination from either or both of the following: (1) The lead content in the construction materials of the public water distribution system; (2) corrosivity of the water supply sufficient to cause leaching of lead.*

The secretary of health and environment shall by rule and regulation prescribe the form and manner for giving such notice.

Sec. 2. K.S.A. 65-171r is hereby amended to read as follows: 65-171r. The following acts are prohibited:

(a) The operation of a public water supply system without first obtaining a valid public water supply system permit under K.S.A. 65-163, *and amendments thereto*;

(b) the operation of a public water supply system in violation of the conditions of the public water supply system permit under K.S.A. 65-163, *and amendments thereto*;

(c) the failure of a supplier of water under investigation to furnish information to the secretary under K.S.A. 65-163, *and amendments thereto*;

(d) the failure of a supplier of water to comply with any final order of the secretary issued under the provisions of K.S.A. 65-163 or 65-163a, *and amendments thereto*;

(e) the failure of a supplier of water to comply with a primary drinking water standard established under K.S.A. 65-171m, *and amendments thereto* and rules and regulations adopted pursuant thereto unless a variance or exception has been granted;

(f) the failure of a supplier of water to comply with the rules and regulations of the secretary for monitoring, maintenance of records and submission of reports, sampling and analysis of water and inspections adopted under K.S.A. 65-171m, *and amendments thereto*; and

(g) the failure of a supplier of water to give notice as required under K.S.A. 65-171o and rules and regulations adopted pursuant thereto;

(h) *using any pipe, solder or flux in the installation or repair of any public water supply system or any plumbing in a residential or nonresidential facility providing water for human consumption, which is not lead-free, except that this paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes. As used in this paragraph, "lead-free" means: (1) With respect to its usage in conjunction with solder and flux, solder and flux containing not more than .2% lead, and (2) with respect to its usage in conjunction with pipes and pipe fittings, pipes and pipe fittings containing not more than 8% lead;*

(i) *the sale of unmarked lead solders and fluxes after June 19, 1988. After June 19, 1988, a seller of lead solders and fluxes in Kansas shall not sell any solder or flux containing more than .2% lead unless the seller displays a sign and a label is affixed to such product which states: "Contains lead: Kansas law and federal law prohibits the use of this product in any plumbing installation providing water for human consumption."*

Sec. 3. K.S.A. 65-171o and 65-171r are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the *Kansas register*.

(continued)

I hereby certify that the above BILL originated in the SENATE, and passed that body March 2, 1988.

ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE March 31, 1988.

JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Clerk of the House.

APPROVED April 13, 1988.

MIKE HAYDEN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 13th day of April, 1988.
BILL GRAVES
Secretary of State.

(SEAL)

(Published in the *Kansas Register*, April 21, 1988.)

SENATE BILL No. 461

AN ACT creating the task force on epilepsy and other seizure-related disorders; providing for the powers, duties and functions thereof.

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

Section 1. (a) There is hereby created the task force on epilepsy and other seizure-related disorders, hereinafter referred to as the task force, which shall consist of the following members: (1) Not more than eight members appointed by the secretary of health and environment; (2) one member appointed by the president of the senate; (3) one member appointed by the speaker of the house of representatives; (4) one member appointed by the minority leader of the senate; and (5) one member appointed by the minority leader of the house of representatives. Individuals appointed to the task force shall include representatives of private organizations involved in assisting epileptic persons or persons suffering from other seizure-related disorders and their families, persons licensed to practice medicine and surgery who have expertise in the field of epilepsy and other seizure-related disorders, educational professionals knowledgeable in the field of epilepsy or other seizure-related disorders, providers of services to epileptic individuals or individuals suffering from other seizure-related disorders, parents of epileptic individuals or individuals suffering from other seizure-related disorders and representatives of state and local government agencies. Of the members appointed by the secretary of health and environment, not more than two such members shall be providers of health care services.

(b) The members of the task force shall be appointed for terms which shall expire upon the date of expiration of this act under section 4. Upon the vacancy of a position on the task force, the person appointing the member whose position is vacant, or the successor to the position of the person appointing such member, shall appoint a person to fill such vacancy.

(c) The first person appointed by the secretary of health and environment shall call the first meeting of the task force and shall serve as temporary chairperson of the task force until a chairperson is elected. The task force shall elect a chairperson and vice-chairperson from among the members of the task force. The task force shall meet on the call of the chairperson or upon the request of a majority of all the members of the task force. A majority of all the members of the task force shall constitute a quorum.

Sec. 2. (a) The task force shall conduct a study of the needs of

epileptic individuals and individuals suffering from other seizure-related disorders and the resources available to such persons and shall develop a plan for meeting the needs of such individuals and for coordinating the utilization of available resources in meeting these needs.

(b) The task force shall prepare and submit to the governor and the legislature its report and plan on or before December 31, 1988.

(c) The secretary of health and environment shall provide staff assistance and clerical services to the task force. Other state agencies shall cooperate with the task force by providing information and other assistance as may be helpful to the task force in carrying out its duties under this act.

Sec. 3. The members of the task force attending meetings of such task force, or attending a subcommittee meeting thereof authorized by such task force, shall be paid mileage as provided in subsection (c) of K.S.A. 75-3223 and amendments thereto but shall not be paid compensation, subsistence allowances or other expenses as otherwise may be authorized by law. Mileage allowances paid under this section shall be from appropriations to the department of health and environment upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the task force or a person designated by the chairperson and the secretary of health and environment or a person designated by the secretary.

Sec. 4. The provisions of sections 1 to 4, inclusive, shall expire on December 31, 1988.

Sec. 5. This act shall take effect and be in force from and after its publication in the *Kansas register*.

I hereby certify that the above BILL originated in the SENATE, and passed that body February 3, 1988.

SENATE concurred in HOUSE amendments March 31, 1988.
ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE as amended March 30, 1988.

JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 14, 1988.

MIKE HAYDEN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 14th day of April, 1988.

BILL GRAVES
Secretary of State.

(SEAL)

(Published in the Kansas Register, April 21, 1988.)

(Published in the Kansas Register, April 21, 1988.)

SENATE BILL No. 512

SENATE BILL No. 658

AN ACT concerning cities; relating to industrial funds and taxes therefor; amending K.S.A. 12-1617h and 12-1617i and repealing the existing sections.

AN ACT concerning the treatment act for mentally ill persons; concerning the use of restraints or seclusion; amending K.S.A. 1987 Supp. 59-2928 and repealing the existing section.

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

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

Section 1. K.S.A. 12-1617h is hereby amended to read as follows: 12-1617h. ~~Incorporated~~ Cities are hereby authorized to levy annually upon all the taxable tangible property within ~~said~~ the city a tax not to exceed the limitation prescribed by K.S.A. 79-1948, 79-1949, 79-1950, 79-1951, 79-1952 and 79-1953, ~~and amendments thereto~~, for the purpose of creating a fund to be used in securing ~~or retaining~~ industries or manufacturing institutions for such city or near its environs and to pay a portion of the principal and interest on bonds issued by such city under the authority of K.S.A. 12-1774, and amendments thereto. No such levy shall be made until the ~~city commissioners or governing body shall be~~ is instructed to do so by a majority of all the votes cast on this proposition at an election held ~~in such city or cities for such purpose, or by submitting the proposition above mentioned to the voters of such city or cities~~ at any city or general election.

Section 1. K.S.A. 1987 Supp. 59-2928 is hereby amended to read as follows: 59-2928. (a) Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the treatment facility or a physician or psychologist to be required to prevent substantial bodily injury to such patient or others. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent injury to the patient or others, and the use of restraint or seclusion ~~in a treatment facility other than a licensed adult care home~~ shall not exceed three hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12:00 midnight and 8:00 a.m. ~~Reevaluation of the use of restraint or seclusion in a treatment facility which is a licensed adult care home shall be made at a frequency specified by the treating physician or psychologist.~~ When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or psychologist, which shall be no less than once per hour. The head of the treatment facility or a physician or psychologist shall sign a statement explaining the treatment necessity for the use of any restraint and seclusion and shall make such statement a part of the permanent treatment record of such patient.

Such election shall be held as provided by law for bond elections; ~~and any one such election shall authorize above mentioned cities to levy said taxes.~~ If any such city shall not make such tax levy in any year, after the third year following the approval of such tax levy by the voters, then it shall be necessary to resubmit the issue to the voters before any such tax levy shall be imposed again. The tax levy herein authorized shall be in addition to all other levies authorized by law and shall not be subject to any of the limitations prescribed by article 19 of chapter 79 of the Kansas Statutes Annotated or acts amendatory thereof and supplemental thereto.

(b) The provisions of subsection (a) shall not prevent, for a period not exceeding two hours without review and approval thereof by the head of the treatment facility or a physician or psychologist:

Nothing in this section shall be construed as restricting the authority of cities to utilize the general fund or other revenue sources for the purpose of promoting or securing the location or expansion of business and industry.

- (1) Staff at the state security hospital from confining patients in their rooms when it is considered necessary for security or proper institutional management;
- (2) the use of such restraints as necessary for a patient who is likely to cause physical injury to self or others without the use of such restraints; or
- (3) the use of restraints when needed primarily for examination or treatment or to insure the healing process.

Sec. 2. K.S.A. 12-1617i is hereby amended to read as follows: 12-1617i. All moneys collected by virtue of the tax ~~hereinbefore~~ authorized by K.S.A. 12-1617h, ~~and amendments thereto~~, shall be ~~replaced~~ placed in ~~the~~ a fund known as an "industrial development fund," and shall ~~only~~ be used by ordinance ~~duly adopted~~ by the governing body of such city for the purpose of inducing industries to locate ~~or remain~~ within the ~~said~~ city or near its environs; ~~and said ordinance may be passed only after submitting the proposition to the voter as provided for in K.S.A. 12-1617h.~~

Sec. 2. K.S.A. 1987 Supp. 59-2928 is hereby repealed.

Sec. 3. K.S.A. 12-1617h and 12-1617i are hereby repealed.

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body February 9, 1988.

I hereby certify that the above BILL originated in the SENATE, and passed that body March 9, 1988.

ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE March 31, 1988.

Passed the HOUSE April 4, 1988.

JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Clerk of the House.

JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Clerk of the House.

APPROVED April 13, 1988.

APPROVED April 14, 1988.

MIKE HAYDEN
Governor.

MIKE HAYDEN
Governor.

STATE OF KANSAS
Office of Secretary of State

STATE OF KANSAS
Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 13th day of April, 1988.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 14th day of April, 1988.

BILL GRAVES
Secretary of State.

BILL GRAVES
Secretary of State.

(SEAL)

(SEAL)

(Published in the *Kansas Register*, April 21, 1988.)

HOUSE BILL No. 2698

AN ACT relating to cities of the second and third classes; concerning appointment and term of certain officers; amending K.S.A. 14-201, 14-308 and 15-311 and K.S.A. 1987 Supp. 15-204 and repealing the existing sections.

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

Section 1. K.S.A. 14-201 is hereby amended to read as follows: 14-201. Except as provided in K.S.A. 12-1028a, and amendments thereto, there shall be elected on the first Tuesday in April of each odd-numbered year a mayor, councilmembers and city treasurer. The mayor shall appoint, by and with the consent of the council, a municipal judge of the municipal court, a city marshal-chief of police, city clerk, city attorney, and may appoint police officers and any other officers deemed necessary. Any officers appointed and confirmed shall hold their offices for a term an initial term of office of not to exceed one year and until their successors are appointed and qualified. Any officers who are reappointed shall hold their offices for a term of one year and until their successors are appointed and qualified. The council shall by ordinance specify the duties and compensation of the office holders, and by ordinance may abolish any office created by the council whenever deemed expedient. The council may retain a licensed professional engineer to act in the capacity of city engineer for specifically defined duties, and provide for reasonable compensation for the services rendered.

The mayor, councilmembers and city treasurer shall hold their offices for a term of two years.

Sec. 2. K.S.A. 14-308 is hereby amended to read as follows: 14-308. When any vacancy shall happen in the office of mayor by death, resignation, removal from the city, removal from office, refusal to qualify, or otherwise, the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, other than the appointment of officers pursuant to K.S.A. 14-201 and amendments thereto, until such vacancy be filled or such disability be removed, or, in case of temporary absence, until the mayor shall return; and. During the time he or she the president of the council shall so act exercise the office of the mayor, the president shall receive the same compensation that the mayor would be entitled to; and in case of such vacancy, other than a temporary absence or disability, the person exercising the office of mayor shall become mayor. Thereupon the council shall elect from its membership a new president of the council. Whenever a vacancy shall occur in the office of councilman councilmember, the governing body shall appoint an elector of the ward where the vacancy occurs to be councilman councilmember for the balance of the unexpired term.

Sec. 3. K.S.A. 1987 Supp. 15-204 is hereby amended to read as follows: 15-204. The mayor, with the consent of the council, may appoint, at the first regular meeting of the governing body in May of each year, the following city officers: A municipal judge of the municipal court, a clerk, a treasurer, a marshal-chief of police, law enforcement officers and such other officers as deemed necessary; and may retain a licensed professional engineer to act in the capacity of city engineer for specifically defined duties. Such officers shall hold their respective offices an initial term of office of not to exceed one year and until their successors have been appointed and qualified. Any officers who are reappointed shall hold their offices for a term of one year and until their successors are appointed and qualified. The duties and pay of the various officers shall be regulated by ordinance. Any officer may be removed by a majority vote of the total membership elected or appointed to the council and may be suspended at any time by the mayor.

Sec. 4. K.S.A. 15-311 is hereby amended to read as follows: 15-311. When any vacancy shall happen in the office of mayor, by death, resignation, removal from the city, removal from office, refusal to qualify, or otherwise, the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, other than the appointment of officers pursuant to K.S.A. 15-204 and amendments thereto, until such vacancy be filled, or such disability be removed, or in case of temporary absence, until the mayor shall return.

Sec. 5. K.S.A. 14-201, 14-308 and 15-311 and K.S.A. 1987 Supp. 15-204 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 7, 1988.

HOUSE concurred in SENATE amendments March 31, 1988.

JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE as amended March 30, 1988.

ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 13, 1988.

MIKE HAYDEN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 13th day of April, 1988.

BILL GRAVES
Secretary of State.

(SEAL)

(Published in the *Kansas Register*, April 21, 1988.)

SENATE BILL No. 692

AN ACT concerning counties; relating to enforcement of codes and resolutions; authorizing the establishment of a code for the enforcement of county codes and resolutions; amending K.S.A. 19-101d and 19-101f and K.S.A. 1987 Supp. 19-101e and 20-310a and repealing the existing sections.

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

Section 1. K.S.A. 19-101d is hereby amended to read as follows: 19-101d. (a) (1) The board of county commissioners of any county shall have the power to enforce all resolutions passed pursuant to county home rule powers, as designated by K.S.A. 19-101c and amendments thereto. Such resolutions may be enforced by enjoining violations thereof or by prescribing penalties for violations of such resolutions, either by fine, or by confinement in the county jail, or by both such fine and confinement. Unless otherwise provided by the resolution that defines and makes punishable the violation of such resolution, the penalty imposed shall be in accordance with the penalties established by law for conviction of a class C misdemeanor. In no event shall the penalty imposed for the violation of a resolution exceed the penalties established by law for conviction of a class B misdemeanor.

(2) Prosecution for any such violation shall be commenced in the district court in the name of the county and, except as provided in subsection (b), shall be conducted in the manner provided by law for the prosecution of misdemeanor violations of state laws. Writs and process necessary for the prosecution of such violations shall be in the form prescribed by the judge or judges of the courts vested with jurisdiction of such violations by this act, and shall be substantially in the form of writs and process issued for the prosecution of misdemeanor violations of state laws. Each county shall provide all necessary supplies, forms and records at its own expense.

(b) (1) In addition to all other procedures authorized for the enforcement of county codes and resolutions, in any county with a population in excess of 300,000, the prosecution for violation of codes and resolutions adopted by the board of county commissioners may be commenced in the district court in the name

of the county and may be conducted, except as otherwise provided in this section, in the manner provided for and in accordance with the provisions of the code for the enforcement of county codes and resolutions.

(2) For the purposes of aiding in the enforcement of county codes and resolutions, the board of county commissioners may employ or appoint code enforcement officers for the county who shall have power to sign, issue and execute notices to appear and uniform citations or uniform complaints and notices to appear, as provided in the appendix of forms of the code contained in this act to enforce violations of county codes and resolutions, but shall have no power to issue warrants or make arrests. All warrants shall be issued and arrests made by law enforcement officers pursuant to and in the manner provided in chapter 21 of the Kansas Statutes Annotated.

(3) The board of county commissioners may employ or appoint attorneys for the purpose of prosecuting actions for the enforcement of county codes and resolutions, and such attorneys shall have the duties, powers and authorities provided by the board as necessary to prosecute actions under the code.

(4) All costs for the enforcement and prosecution of violations of county codes and resolutions, except for compensation and expenses of the district court judge, shall be paid from the revenues of the county and, the board of county commissioners may establish a special law enforcement fund for the purpose of paying for the costs of code enforcement within the county. In addition, the board of county commissioners is hereby authorized to levy a tax of not to exceed $\frac{1}{2}$ mill upon all taxable tangible property within such county to pay the costs of code enforcement. Taxes levied by the county under the authority of this act shall not be subject to or within the limitations upon the levy of taxes and expenditure of funds imposed under the provisions of K.S.A. 79-5001 et seq. and K.S.A. 79-5021 et seq. and amendments thereto.

(c) Notwithstanding the provisions of subsection (b), any action commenced in the district court for the enforcement of county codes and resolutions, wherein a person may be subject to detention or arrest or wherein an accused person, if found guilty, would or might be deprived of such person's liberty, shall be conducted in the manner provided by law for the prosecution of misdemeanor violations of state laws under the Kansas code of criminal procedure and not under the code for the enforcement of county codes and resolutions.

Sec. 2. K.S.A. 1987 Supp. 19-101e is hereby amended to read as follows: 19-101e. (a) Except as provided in subsection (b) and in section 11, the items allowable as costs shall be the same as in cases for misdemeanor violations of state law and shall be taxed as provided in K.S.A. 22-3801, 22-3802 and 22-3803, and amendments thereto.

(b) The fees and mileage for the attendance of witnesses shall be borne by the party calling the witness, except that if an accused person is found not guilty, the county shall pay all such expenses, but the court may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person, if the court finds that there has been an abuse of the use of subpoenas by the accused person.

(c) All fines and penalties collected in actions for the enforcement of county codes and resolutions pursuant to the code for the enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 19-101d and amendments thereto shall be paid over to the county treasurer of the county where they are imposed for deposit in the county general fund or in the special law enforcement fund, if established. All fines and penalties collected in actions brought pursuant to the provisions of subsection (a) of K.S.A. 19-101d and amendments thereto shall be remitted to the state treasurer, as provided in K.S.A. 20-2801 and amendments thereto.

Sec. 3. K.S.A. 19-101f is hereby amended to read as follows: 19-101f. Appeals in actions brought for the enforcement of county resolutions may be taken in the same manner as is provided for appeals in cases for misdemeanor violations of state law, except as otherwise provided in section 41.

Sec. 4. K.S.A. 1987 Supp. 20-310a is hereby amended to read as follows: 20-310a. (a) In the absence, sickness or disability of a

district judge or district magistrate judge in any judicial district, a judge pro tem may be appointed whenever the departmental justice for such judicial district has not assigned a district judge from another judicial district, as provided in K.S.A. 20-319 and amendments thereto.

(b) Any judge pro tem appointed pursuant to this section shall be a regularly admitted member of the bar of this state. The appointment of any such judge pro tem shall be made by the administrative judge or, in the absence of the administrative judge, by the departmental justice for the judicial district.

(c) Any judge pro tem appointed pursuant to this section shall have the full power and authority of a district judge with respect to any actions or proceedings before such judge pro tem, except that any judge pro tem appointed pursuant to subsection (d) or (e) shall have only such power and authority as provided therein. A judge pro tem shall receive such compensation as is prescribed by the district court, subject to the budget limitations of such district court.

(d) Subject to the budget limitations of the district court, the administrative judge of any judicial district may appoint one or more judges pro tem for the limited purpose of hearing the original trials of actions filed pursuant to the small claims procedures act. Any such judge pro tem shall have only such judicial power and authority as is necessary to hear such actions.

(e) Subject to the budget limitations of the district court, the administrative judge of any judicial district in which the board of county commissioners is authorized to use the code for the enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 19-101d and amendments thereto may appoint one or more judges pro tem for the limited purpose of hearing such cases. Such judge pro tem shall receive the salary and other compensation set by resolution of the board of county commissioners which shall be paid from the revenues of the county general fund or other fund established for the purpose of financing code enforcement.

(e)(f) The administrative judge of each judicial district shall report to the judicial administrator of the courts: (1) The dates on which any judge pro tem served in such district, (2) the compensation paid to any judge pro tem, and (3) such other information as the judicial administrator may request with regard to the appointment of judges pro tem. The reports shall be submitted annually on or before January 15 on forms provided by the judicial administrator.

New Sec. 5. The provisions of sections 5 through 42 may be cited as the code for the enforcement of county codes and resolutions.

New Sec. 6. This code governs the practice and procedure for the law enforcement and prosecution of county codes and resolutions in the district court as authorized under the provisions of K.S.A. 19-101d and amendments thereto.

New Sec. 7. This code is intended to provide for the just determination of violations of county codes and resolutions. Its provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. If no procedure is provided by this code, the court shall proceed in any lawful manner consistent with any applicable law and not inconsistent with this code.

New Sec. 8. The district court shall have jurisdiction to hear and determine cases under the procedures prescribed in this act for violation of all county codes and resolutions, but this code shall not apply to nor be utilized for the prosecution of any action which is defined as a traffic offense.

New Sec. 9. Any action brought in accordance with the code shall be presided over by a district court judge designated by the administrative judge of the district court presiding in the county or a judge pro tem who shall be appointed by and serve at the pleasure of the administrative judge of the district court presiding in the county, in accordance with the provisions of subsection (e) of K.S.A. 20-310a and amendments thereto. If a judge pro tem presides over such action, such judge pro tem shall receive a salary and other compensation set by resolution of the board of county commissioners and paid from the revenues of the county general fund or other fund established for the purpose of financ-

(continued)

ing the costs of enforcement and prosecution of violations of county codes and resolutions pursuant to the code. If a district court judge presides over such action, such district court judge shall not be entitled to any additional compensation or expense payments.

New Sec. 10. The county counselor, such counselor's designee or such other attorney as the board of county commissioners shall specifically designate shall prosecute all actions brought pursuant to the code.

New Sec. 11. No person shall be assessed costs for enforcement and prosecution of violations of county codes and resolutions pursuant to this code, except for witness fees and mileage as set forth in section 30.

New Sec. 12. As used in this act:

(a) "Accused person" means a person, corporation or other legal entity accused by a complaint of the violation of a county code or resolution.

(b) "Arraignment" means the formal act of calling the person accused of violating a county code or resolution before the district court to inform the person of the offense with which the person is charged, to ask the person whether the person is guilty or not guilty and, if guilty, to impose fines and penalties.

(c) "Arrest" means the taking of a person into custody. The giving of a notice to appear is not an arrest.

(d) "Code enforcement officer" means any person who is appointed to administer or enforce county codes or resolutions adopted by the board of county commissioners and who are designated by resolution of such board as responsible code enforcement officials.

(e) "Complaint" means a sworn written statement, or a written statement by a law enforcement officer or code enforcement officer, of the essential facts constituting a violation of a county code or resolution.

(f) "County counselor" is the county counselor as appointed by the board of county commissioners or the county counselor's designee, or for the purposes of this act, such attorney as the board of county commissioners shall specifically designate.

(g) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or resolutions of any county thereof, except such term shall not include code enforcement officers.

(h) "Notice to appear" is a written notice to a person accused by a complaint of having violated a county code or resolution to appear at a stated time and place to answer to the charge of the complaint.

(i) "Subpoena" is a process issued by the court to cause a witness to appear and give testimony at a time and place therein specified.

(j) "Traffic offense" is a violation of a county code or resolution that proscribes or requires the same behavior as that proscribed or required by the uniform act regulating traffic on highways, except such term shall not include any violation concerning parking in a prohibited area, abandonment of a motor vehicle or operation of a motor vehicle on property owned by the county.

(k) "Warrant" is a written order made by a judge directed to any law enforcement officer, commanding the officer to arrest the person named or described in it.

New Sec. 13. The prosecution for the violation of county codes and resolutions pursuant to this code shall be commenced by the filing of a complaint with the district court.

New Sec. 14. A complaint shall be in writing and shall be signed by the complainant. More than one violation may be charged in the same complaint. A complaint shall be deemed sufficient if in substantially the form of the complaint set forth in the appendix of forms contained in this act.

New Sec. 15. A copy of the complaint shall be served, together with a notice to appear, by a law enforcement officer or code enforcement officer upon the accused person, and forthwith, the complaint shall be filed with the district court, except that a complaint may be filed initially with the district court pursuant to this code, and if so filed, a copy of the complaint shall

forthwith be delivered to the county counselor. The county counselor shall cause to be issued a notice to appear.

If a county counselor fails to cause a notice to appear on a complaint initially filed with the district court pursuant to this code, the judge, upon affidavits filed with such judge alleging the violation of a county code or resolution, may order the county counselor to institute proceedings against any person.

New Sec. 16. A notice to appear shall describe the offense charged, shall summon the accused person to appear, shall contain a space in which the accused person may agree, in writing, to appear at a time not less than five days after such notice to appear is given, unless the accused person shall demand an earlier hearing. A notice to appear may be signed by a judge, the clerk of the district court, the county counselor, or any law enforcement officer or code enforcement officer.

A notice to appear shall be deemed sufficient if in substantially the form of the notice to appear set out in the appendix of forms contained in this act.

New Sec. 17. In all cases a complaint and notice to appear may be made in the form of the uniform complaint and notice to appear which shall be deemed sufficient if in substantially the form set out in the appendix of forms contained in this act.

New Sec. 18. A notice to appear shall be used in all cases involving the violation of a county code or resolution.

New Sec. 19. The notice to appear shall be served upon the accused person by delivering a copy to such person personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of such person. A notice to appear may be served by any law enforcement officer or code enforcement officer within the state and, if mailed, shall be mailed by a law enforcement officer or code enforcement officer or the clerk of the district court. Upon service by mail, the law enforcement officer or code enforcement officer or the clerk of the district court shall execute a verification to be filed with a copy of the notice to appear. Such verification shall be deemed sufficient if in substantially the following form:

The undersigned hereby certifies that on the _____ day of _____, 19____, a copy of notice to appear was mailed to _____ at _____.

Signature of Law Enforcement Officer,
Code Enforcement Officer or
Clerk of District Court

New Sec. 20. (a) The board of county commissioners shall establish a schedule of fines which shall be imposed for violations of county codes and resolutions. Any fine established shall be within the minimum and maximum allowable fines established by county resolutions for such offenses by the board of county commissioners.

(b) A person charged with the violation of a county code or resolution contained in a schedule of fines established under subsection (a) shall, except as provided in subsection (c), appear at the place and time specified in the notice to appear. If the person enters an appearance, waives right to trial, pleads guilty or no contest, the fine shall be no greater than that specified in the schedule.

(c) Prior to the time specified in the notice to appear, a person charged with the violation of a county code or resolution contained in a schedule of fines established under subsection (a) may enter an appearance, waive right to trial, plead guilty or no contest and pay the fine for the violation as specified in the schedule. At the election of the person charged, such appearance, waiver, plea and payment may be made by mail or in person and payment may be by personal check. The complaint shall not have been complied with if a check is not honored for any reason, or the fine is not paid in full prior to the time specified in the notice to appear. When a person charged with violating a county code or resolution on a schedule of fines makes payment without executing a written waiver of right to trial and plea of guilty or no contest, the payment shall be deemed such an appearance, waiver of right to trial and plea of no contest.

The judge may authorize the clerk of the district court or some

other person to accept by mail or in person such voluntary appearance, plea of guilty or no contest and payment of the fine imposed by the schedule.

The schedule of fines and persons authorized to accept such pleas shall be conspicuously displayed in the office where such voluntary appearance, plea of guilty and payment of fine occurs.

(d) No person who violates a county code or resolution and is prosecuted under this code shall be imprisoned for such violation.

New Sec. 21. Every person charged with violation of a county code or resolution shall receive a copy of the complaint, and shall not be required to plead until such person shall have had a reasonable time to examine such complaint, to obtain counsel and to determine such person's plea.

New Sec. 22. The judge may compel the appearance of an accused person. In addition to the procedures provided in section 20, the judge, upon request, may permit appearance, pleas and satisfaction of the judgment and sentence of the court by counsel or by mail.

New Sec. 23. Accused persons shall be arraigned:

- (a) At the time specified in the notice to appear; or
- (b) if no date be specified, then on the earliest date when the court convenes.

New Sec. 24. Arraignment shall be conducted in open court by stating to the accused person the substance of the charge and calling upon such person to plead thereto. Arraignment for purposes of accepting plea of not guilty may be accomplished by telephone, mail or appearance by counsel.

New Sec. 25. (a) A plea of guilty is an admission of the charge and every material fact alleged therein.

(b) A plea of no contest is a formal declaration that the accused person does not contest the charge. When such a plea is entered, a finding of guilty may be adjudged thereon. The plea cannot be used against the accused person as an admission in any other action based on the same act.

(c) A plea of not guilty denies and puts into issue every material fact alleged in the charge.

(d) If the accused person refuses to plead, the court shall enter a plea of not guilty.

New Sec. 26. If the accused person pleads guilty, the judge may hear evidence touching on the nature of the case, or otherwise ascertain the facts thereof, and after such hearing, may refuse to accept the plea or may accept the plea, assess the punishment and enter the proper judgment.

New Sec. 27. The Kansas code of criminal procedure shall govern, insofar as applicable, the filing and disposition of motions. Motions may be oral or written.

New Sec. 28. The judge may grant a continuance of the trial or any hearing upon a showing of good cause, except as set out in section 31.

New Sec. 29. The accused person shall be permitted to inspect all matters relevant to the case. Depositions shall not be taken or used except by written agreement of both parties filed with the court or by order of the court upon such conditions as the court may prescribe.

New Sec. 30. All parties shall be entitled to the use of subpoenas to compel attendance of witnesses within the state. The judge or clerk of the district court shall issue a subpoena which may be served by any law enforcement officer or code enforcement officer upon the named person. Disobedience may constitute contempt.

Fees and mileage of witnesses shall be \$2.50 per day or any part thereof for an appearance and \$.10 per mile actually driven beyond 10 miles. The fees and mileage for the attendance of witnesses shall be paid by the party calling the witnesses, except that if an accused person is found not guilty, the county shall pay all such expenses. The judge may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person, if the judge finds that there has been an abuse of the use of subpoenas by the accused person.

New Sec. 31. An accused person entering a plea of not guilty, or for whom the court entered a plea of not guilty, shall be tried on the earliest practical day set by the court, unless trial is continued for good cause.

New Sec. 32. All trials under this code shall be conducted before a judge and an accused person shall not have a right to have such person's trial conducted before a jury.

New Sec. 33. The order of trial shall be:

- (a) Opening statement of prosecution, unless waived;
- (b) evidence by the prosecution;
- (c) opening statement of accused person, unless waived;
- (d) evidence by the accused person, unless waived;
- (e) rebuttal evidence, unless waived; and
- (f) closing arguments, unless waived.

New Sec. 34. The rules of evidence prescribed in the code of civil procedure shall apply to this code.

New Sec. 35. Amendments to the complaint may be permitted by the court before trial. Once the trial commences, the court may permit a complaint to be amended before judgment, if no additional or different offense is charged, and if substantial rights of the accused person are not prejudiced.

New Sec. 36. Where two or more persons are separately or jointly accused by a complaint of a violation of a county code or resolution arising from the same general state of circumstances, such persons may be tried separately or jointly, except that where an accused person requests, such person shall be tried separately.

New Sec. 37. If the accused person is found not guilty, judgment shall be rendered immediately. If the accused person is found guilty, the court shall render judgment without unreasonable delay, assess fines or penalties and provide for immediate payment of such fines or penalties or for not more than 24 hours from the time that judgment is rendered.

New Sec. 38. When a judgment is rendered, the judge or clerk of the district court shall enter such judgment on the docket. The omission of this duty shall not affect the validity of the judgment.

New Sec. 39. When a fine is levied as punishment, the judge or clerk of the district court shall issue a statement setting forth the amount of the fine and the manner of payment. Failure to pay in the manner specified may constitute contempt of court.

New Sec. 40. The judge, on motion of the accused person or on the judge's own motion, shall set aside a judgment if the complaint does not charge a violation of a county code or resolution, or if the court was without jurisdiction of the offense. The motion for setting aside the judgment shall be made within 10 days after the finding of guilty, or within such further time as the court may fix during the ten-day period. Clerical mistakes in judgments or orders may be corrected by the court at any time.

New Sec. 41. (a) An appeal may be taken from any judgment under the code for the enforcement of county codes and resolutions. All appeals shall be by notice of appeal specifying the party or parties taking the appeal and the order, ruling, decision or judgment complained of and shall be filed with the clerk of the district court within 10 days after entry of judgment. All appeals shall be tried and determined *de novo* before a district judge, other than the judge from which the appeal is taken. The provisions of K.S.A. 60-2001 and 61-1716, and amendments thereto, shall be applicable to actions appealed pursuant to this subsection. The appealing party shall cause notice of the appeal to be served upon all other parties to the action in accordance with the provisions of K.S.A. 60-205 and amendments thereto. An appeal shall be perfected upon the filing of the notice of appeal. When the appeal is perfected, the clerk of the court or the judge from which the appeal is taken shall refer the case to the administrative judge for assignment in accordance with this section. All proceedings for the enforcement of any judgment under the code for the enforcement of county codes and resolutions shall be stayed during the time within which an appeal may be taken and during the pendency of an appeal, without the necessity of the appellant filing a supersedeas bond.

(b) Any order, ruling, decision or judgment rendered by a district judge on an appeal taken pursuant to subsection (a) may be appealed in the manner provided in article 21 of chapter 60 of the Kansas Statutes Annotated.

New Sec. 42. The forms contained in the appendix of forms

are sufficient under this act and are intended to indicate the simplicity and brevity of statement which this act contemplates.

APPENDIX OF FORMS
INTRODUCTORY

The following forms are intended for illustration only, but they are expressly declared by section 42 to be sufficient.

Form No. 1: FORM FOR COMPLAINT

IN THE DISTRICT COURT
OF _____, KANSAS

The County of _____, Kansas,
vs.

(Accused person)

the undersigned, complains that on or about the _____ day
of _____, 19____, in the County of _____,
and State of Kansas, _____

did then and there unlawfully _____

in violation of Resolution No. _____ of the County of
_____, Kansas.

Signature of Officer or Complainant _____ No. _____

* Sworn to positively before me this _____ day of _____,
19____.

Officer authorized to administer oaths

* This complaint is not required to be sworn if it is signed by a law enforce-
ment officer or a code enforcement officer.

Form No. 2: FORM FOR NOTICE TO APPEAR

IN THE DISTRICT COURT
OF _____, KANSAS

The County of _____, Kansas,
vs.

(Accused person)

(Address)

NOTICE TO APPEAR

The County of _____, Kansas, to the above named accused person:
You are hereby summoned to appear before the District Court of
_____, Kansas, on the _____ day
of _____, 19____, at _____ o'clock, ____m., to answer a
complaint charging you with _____

If you fail to appear a warrant will be issued for your arrest.
Dated _____, 19____.

Signature of Official

Title of Official

I agree to appear in the Court at the stated time and place.

Signature of Accused Person

RETURN

The undersigned hereby certifies that on the _____ day
of _____, 19____, the notice to appear was served, mailed or
delivered.

Law Enforcement Officer or
Code Enforcement Officer

Form No. 3: FORM FOR UNIFORM COMPLAINT AND NOTICE TO
APPEAR

UNIFORM COMPLAINT
AND NOTICE TO APPEAR

State of Kansas
County of _____
The undersigned complains that on the _____ day of _____,
19____, at _____ p.m. (a.m.)

Name _____
(Please Print)

Street Address _____

County _____ State _____

Birth Date _____ Sex _____

Did unlawfully at _____

All in violation of Section(s) _____
of Resolution No. _____ of _____ County, Kansas.
Signature of Officer or Complainant _____ No. _____
* Sworn to positively before me this _____ day of _____, 19____.

Judge

* This complaint is not required to be sworn if it is signed by a law enforcement
officer or code enforcement officer.

NOTICE TO APPEAR

The County of _____, Kansas, to the above-named person:
You are hereby summoned to appear before the District Court of
_____, Kansas, at _____ on
the _____ day of _____, 19____,
at _____ o'clock ____m., to answer the above complaint.
If you fail to appear a warrant will be issued for your arrest.
Dated _____, 19____.

Signature of Official

Title of Official

I agree to appear in the Court at the stated time and place.

Signature of Accused Person

RETURN

The undersigned hereby certifies that on the _____ day
of _____, 19____, the notice to appear was served, mailed or
delivered.

Law Enforcement Officer or
Code Enforcement Officer

Sec. 43. K.S.A. 19-101d and 19-101f and K.S.A. 1987 Supp.
19-101e and 20-310a are hereby repealed.

Sec. 44. This act shall take effect and be in force from and
after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and
passed that body March 9, 1988.

SENATE concurred in HOUSE amendments March 29, 1988.
ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

Passed the HOUSE as amended March 29, 1988.
JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

APPROVED April 13, 1988.

MIKE HAYDEN
Governor.

STATE OF KANSAS

Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby
certify that the above and foregoing is a correct copy of the original
enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my
name and affixed my official seal, this 13th day of April, 1988.

BILL GRAVES
Secretary of State.

(SEAL)

(Published in the *Kansas Register*, April 21, 1988.)

HOUSE BILL No. 2772

AN ACT amending the Kansas parimutuel racing act; amending K.S.A. 1987 Supp. 74-8806, 74-8813, 74-8815, 74-8816 and 74-8826 and repealing the existing sections.

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

Section 1. K.S.A. 1987 Supp. 74-8806 is hereby amended to read as follows: 74-8806. (a) The commission shall employ an animal health officer and such assistant animal health officers as needed to serve at the pleasure of the commission. Such officers shall:

- (1) Be doctors of veterinary medicine;
- (2) be in the unclassified service under the Kansas civil service act;
- (3) receive such compensation as determined by the commission, subject to the limitations of appropriations therefor; and
- (4) while employed by the commission, devote full time to the duties of the office.

(b) The animal health officer shall:

(1) Supervise the formulation, administration and evaluation of all medical tests the commission's rules and regulations require or authorize;

(2) advise the commission on all aspects of veterinary medicine relating to its powers and duties;

(3) supervise all personnel involved in conducting physical examinations and medical testing of racing animals, as directed by the executive director; and

(4) perform such other duties as directed by the commission.

(c) The assistant animal health officers shall:

(1) Conduct physical examinations and medical tests of racing animals as prescribed by the commission;

(2) administer emergency treatment of racing animals at race meetings as authorized by the owners of such animals or their agents; and

(3) perform such other duties as directed by the commission.

(d) The animal health officer or an assistant animal health officer may possess and administer drugs and medications to horses and greyhounds within a racetrack facility as authorized by rules and regulations of the commission.

(e) The commission may require an organization licensee to reimburse the commission for services performed by assistant animal health officers at race meetings conducted by the organization licensee.

(f) The commission may obtain medical services as required by contract with an institution which teaches animal health sciences within the state.

(g) The commission shall contract with one or more laboratory facilities for the analysis of samples taken for the purpose of enforcing compliance with K.S.A. 1987 Supp. 74-8811 with one or more laboratory facilities in this state and amendments thereto. In entering into any contract under this subsection, the commission shall give preference to laboratory facilities located in this state.

Sec. 2. K.S.A. 1987 Supp. 74-8813 is hereby amended to read as follows: 74-8813. (a) A nonprofit organization may apply to the commission for an organization license to conduct horse races or an organization license to conduct greyhound races, or both such licenses. In addition, an organization license may authorize the licensee to construct or own a racetrack facility if so provided by the commission. The application for an organization license shall be filed with the commission at a time and place prescribed by rules and regulations of the commission. The application shall specify the days when, the exact location where it proposes to conduct such races and shall be in a form and include such information as the commission prescribes. A nonrefundable application fee in the form of a certified check or bank draft shall accompany the application. Except as provided pursuant to K.S.A. 1987 Supp. 74-8814 and amendments thereto, such fee shall be as follows:

(1) For an application for an organization license to conduct horse or greyhound races with parimutuel wagering, a fee of \$5,000 for each application; and

(2) for an application for an organization license to conduct

horse races without parimutuel wagering, a fee of \$500 for each application.

(b) If an applicant for an organization license is proposing to construct a racetrack facility, such applicant, at the time of submitting the application, shall deposit with the commission, in such form as prescribed by rules and regulations of the commission, the sum of (1) \$500,000, if the number of racing days applied for in a racing season is 150 days or more; (2) \$250,000, if the number of racing days applied for is less than 150 days; or (3) a lesser sum established by the commission, if the applicant meets the qualifications set forth in subsection (a)(1) or (a)(2) of K.S.A. 1987 Supp. 74-8814 and amendments thereto or if the applicant will be conducting races only on the state fairgrounds. Only one such deposit shall be required for a dual racetrack facility. The executive director shall promptly remit any deposit received pursuant to this subsection to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit it to the racing applicant deposit fund created by K.S.A. 1987 Supp. 74-8828 and amendments thereto. If the application is denied by the commission, the deposit, and any interest accrued thereon, shall be refunded to the applicant. If the license is granted by the commission in accordance with the terms of the application or other terms satisfactory to the applicant, the deposit, and any interest accrued thereon, shall be refunded to the licensee upon completion of the racetrack facility in accordance with the terms of the license. If the licensee fails to complete the racetrack facility in accordance with the terms of the license, the deposit, and any interest accrued thereon, shall be forfeited by the applicant.

(c) To qualify for an organization license to conduct horse or greyhound races:

(1) The applicant shall be a bona fide, nonprofit organization which, if applicable, meets the requirements of subsection (d);

(2) the applicant shall have, either by itself or through contractual relationships with other persons or businesses approved by the commission, the financial capability, manpower and technical expertise, as determined by the commission, to properly conduct horse races or greyhound races, or both, and, if applicable, to operate a parimutuel wagering system;

(3) if the applicant is proposing to construct a racetrack facility, the applicant shall submit detailed plans for the construction of such facility, including the means and source of financing such construction and operation, sufficient to convince the commission that such plans are feasible;

(4) submit for commission approval a written copy of each contract and agreement which the applicant proposes to enter into, including all those listed in subsection (n), which contracts and agreements shall conform to the restrictions placed thereon by subsections (n), (o) and (p);

(5) the applicant shall propose to conduct races within only one county, and in such county the majority of the qualified electors have approved either: (A) The constitutional amendment permitting the conduct of horse and dog races and parimutuel wagering thereon; or (B) a proposition permitting horse and dog races and parimutuel wagering thereon within the boundaries of such county;

(6) no director, officer, employee or agent of the applicant shall have been convicted of any of the following in any court of any state or of the United States: (A) Fixing of horse or greyhound races; (B) illegal gambling activity; (C) illegal sale or possession of any controlled substance; (D) operation of any illegal business; (E) repeated acts of violence; or (F) any felony; and

(7) no director or officer of the applicant shall be addicted to, and a user of, alcohol or a controlled substance.

(d) To qualify for an organization license to conduct horse or greyhound races, a nonprofit organization, other than a county fair association or a nonprofit organization conducting races only on the state fair grounds, shall:

(1) Distribute all of its net earnings from the conduct of horse and greyhound races, other than that portion of the net earnings which is necessary to satisfy the debt service obligations, not otherwise deducted from net earnings, of an organization licensee owning the racetrack facility or that portion of the net

(continued)

earnings which is set aside as reasonable reserves for future improvement, maintenance and repair of the racetrack facility owned by the organization licensee, only to organizations, other than itself, which: (A) Have been exempted from the payment of federal income taxes pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as in effect July 1, 1987, (B) are domiciled in this state and (C) expend the moneys so distributed only within this state;

(2) distribute not more than 25% of such net earnings to any one such organization in any calendar year;

(3) not engage in, and have no officer, director or member who engages in, any prohibited transaction, as defined by section 503(b) of the federal internal revenue code of 1986, as in effect July 1, 1987; and

(4) have no officer, director or member who is not a bona fide resident of this state.

(e) Within 30 days after the date specified for filing, the commission shall examine each application for an organization license for compliance with the provisions of this act and rules and regulations of the commission. If any application does not comply with the provisions of this act or rules and regulations of the commission, the application may be rejected or the commission may direct the applicant to comply with the provisions of this act or rules and regulations of the commission within a reasonable time, as determined by the commission. Denial of an organization license by the commission shall be in accordance with the Kansas administrative procedure act. Upon proof by the applicant of compliance, the commission may reconsider the application. If an application is found to be in compliance and the commission finds that the issuance of the license would be within the best interests of horse and greyhound racing within this state from the standpoint of both the public interest and the horse or greyhound industry, as determined solely within the discretion of the commission, the commission may issue an organization license to the applicant. The commission shall approve the issuance of organization licenses for a period established by the commission but not to exceed 25 years. Such license may provide that during its term it constitutes an exclusive license within a radius of the location specified in the license, as determined by the commission. No racing of any kind regulated by this act shall be conducted by any other person within the territory covered by such exclusive license without the written consent of the licensee. For each license issued, the commission shall specify the location, type, time and date of all races and race meetings which the commission has approved for the licensee to conduct. The license shall be issued upon receipt of the license fee and the furnishing of a surety bond or other financial security approved by the commission, conditioned on, and in an amount determined by the commission as sufficient to pay, the licensee's potential financial liability for unpaid taxes, purses and distribution of parimutuel winnings and breakage. No organization license shall be transferred to any other organization or entity.

(f) When considering the granting of organization licenses or racing days between two or more competing applicants, the commission shall give consideration to the following factors:

(1) The character, reputation, experience and financial stability of those persons within the applicant organizations who will be supervising the conduct of the races and parimutuel wagering for the organization;

(2) the quality of the racing facilities and adjoining accommodations;

(3) the amount of revenue that can reasonably be expected to be generated from state and local taxes, the economic impact for the respective horse or greyhound breeding industries in Kansas and the indirect economic benefit to the surrounding area, in the determination of which economic benefit the commission shall solicit written recommendations from all interested parties in the surrounding area;

(4) the location of the race meetings in relation to the principal centers of population and the effect of such centers on the ability of the organizations to sustain a financially sound racing operation; and

(5) testimony from interested parties at public hearings to be

conducted in the geographic areas where the applicants would be conducting their race meetings.

(g) Except as otherwise provided pursuant to K.S.A. 1987 Supp. 74-8814 and amendments thereto, each organization licensee shall pay a license fee in the amount of \$200 for each day of racing approved by the commission. Such fees shall be paid at such times and by such means as prescribed by rules and regulations of the commission. The commission may authorize the state treasurer to refund from the state racing fund a fee paid for any racing day which was canceled with advance notice to and with the approval of the commission.

(h) Organization licensees may apply to the commission for changes in approved race meetings or dates or for additional race meetings or dates as needed throughout the terms of their licenses. Application shall be made upon forms furnished by the commission and shall contain or be accompanied by such information as the commission prescribes. Upon approval by the commission, the organization licensee shall pay an additional license fee for any race days in excess of the number originally approved and included in the calculation of the initial license fee.

(i) All organization licenses shall be reviewed annually by the commission to determine if the licensee is complying with the provisions of this act and rules and regulations of the commission and following such proposed plans and operating procedures as were approved by the commission. The commission may review an organization license more often than annually upon its own initiative or upon the request of any interested party. The commission shall require each organization licensee, other than a county fair association, to file annually with the commission a certified financial audit of the licensee by an independent certified public accountant, which audit shall be open to inspection by the public, and may require an organization licensee to provide any other information necessary for the commission to conduct the annual or periodic review.

(j) Subject to the provisions of subsection (k), the commission, in accordance with the Kansas administrative procedure act, may suspend or revoke an organization license or may impose a civil fine not exceeding \$5,000, or may both suspend such license and impose such fine, for each of the following violations by a licensee:

(1) One or more violations, or a pattern of repeated violations, of the provisions of this act or rules and regulations of the commission;

(2) failure to follow one or more provisions of the licensee's plans for the financing, construction or operation of a racetrack facility as submitted to and approved by the commission;

(3) failure to maintain compliance with the requirements of subsection (c) or (d), if applicable, for the initial issuance of an organization license;

(4) failure to properly maintain or to make available to the commission such financial and other records sufficient to permit the commission to verify the licensee's nonprofit status and compliance with the provisions of this act or rules and regulations of the commission;

(5) providing to the commission any information material to the issuance, maintenance or renewal of the licensee's license knowing such information to be false or misleading;

(6) failure to meet the licensee's financial obligations incurred in connection with the conduct of a race meeting; or

(7) a violation of K.S.A. 1987 Supp. 74-8833 and amendments thereto or any rules and regulations adopted pursuant to that section.

(k) Prior to suspension or revocation of a license pursuant to subsection (j), the commission shall give written notice of the reason therefor in detail to the organization licensee and to all facility owner and facility manager licensees with whom the organization licensee is doing business. Upon receipt of such notice by all of such licensees, the organization licensee shall have 30 days in which to cure the alleged violation, if it can be cured. If the commission finds that the violation has not been cured upon expiration of the 30 days, or upon a later deadline granted by the commission, or if the commission finds that the alleged violation is of such a nature that it cannot be cured, the commission shall proceed to suspend or revoke the license

pursuant to subsection (j). Nothing in this subsection shall be construed to preclude the commission from imposing a fine pursuant to subsection (j) even if the violation is cured with 30 days or such other period as provided by the commission.

(l) Prior to the expiration of an organization license, the organization may apply to the commission for renewal of such license. The renewal application shall be in a form and include such information as the commission prescribes. The commission shall grant such renewal if the organization meets all of the qualifications required for an initial license. The commission may charge a fee for the processing of the renewal application not to exceed the application fee authorized for an initial license.

(m) Once an organization license has been issued, no person thereafter and during the term of such license shall in any manner become the owner or holder, directly or indirectly, of any shares of stock or certificates or other evidence of ownership or become a director or officer of such organization licensee without first having obtained the written approval of the commission.

(n) An organization licensee shall submit to the commission for approval a copy of each contract and agreement which the organization licensee proposes to enter into and any proposed modification of any such contract or agreement, including but not limited to those involving:

- (1) Any person to be employed by the organization licensee;
- (2) any person supplying goods and services to the organization licensee, including management, consulting or other professional services;
- (3) any lease of facilities, including real estate or equipment or other personal property; or
- (4) the operation of any concession within or adjacent to the racetrack facility.

The commission shall reject any such contract or agreement which violates any provision of this act or rules and regulations of the commission, which provides for payment of money or other valuable consideration which is clearly in excess of the fair market value of the goods, services or facilities being purchased or leased or which, in the case of a contract or agreement with a facility owner licensee or a facility manager licensee, would not protect the organization licensee from incurring losses due to contractual liability.

(o) Organization licensees shall not by lease, contract, agreement, understanding or arrangement of any kind grant, assign or turn over to any person the parimutuel system of wagering described in K.S.A. 1987 Supp. 74-8819 and amendments thereto or the operation and conduct of any horse or greyhound race to which such wagering applies, but this subsection shall not prohibit the organization licensee from contracting with and compensating others for providing services in connection with the financing, acquisition, construction, equipping, maintenance and management of the racetrack facility; the hiring and training of personnel; and the promotion of the facility.

(p) An organization licensee shall not in any manner permit a person other than such licensee to have a share, percentage or proportion of money received from parimutuel wagering at the racetrack facility except as specifically set forth in this act, except that:

(1) A facility owner licensee may receive gross percentage rental fees under a lease if all terms of the lease are disclosed to the commission and such lease is approved by the commission; and

(2) a person who has contracted with an organization licensee to provide one or more of the services permitted by subsection (o) may receive compensation in the form of a percentage of the money received from parimutuel wagering if such contract is approved by the commission and such person is licensed as a facility manager.

(q) Directors or officers of an organization licensee are not liable in a civil action for damages arising from their acts or omissions when acting as individual directors or officers, or as a board as a whole, of a nonprofit organization conducting races pursuant to this act, unless such conduct constitutes willful or wanton misconduct or intentionally tortious conduct, but only to the extent the directors and officers are not required to be insured by law or are not otherwise insured against such acts or

omissions. Nothing in this section shall be construed to affect the liability of an organization licensee for damages in a civil action caused by the negligent or wrongful acts or omissions of its directors or officers, and a director's or officer's negligence or wrongful act or omission, while acting as a director or officer, shall be imputed to the organization licensee for the purpose of apportioning liability for damages to a third party pursuant to K.S.A. 60-258a and amendments thereto.

(r) If an applicant for an organization license proposes to construct a racetrack facility and the commission determines that such license should be issued to the applicant, the commission shall issue to the applicant an organization license conditioned on the submission by the licensee to the commission, within a period of time prescribed by the commission, of a commitment for financing the construction of the racetrack facility by a financial institution or other source, subject to approval by the commission. If such commitment is not submitted within the period of time originally prescribed by the commission or such additional time as authorized by the commission, the license shall expire at the end of such period.

(s) If an organization licensee's license authorizes the construction of a dual racetrack facility, such license shall be conditioned on the completion of such facility within a time specified by the commission. If, within the time specified by the commission, the licensee has not constructed a dual racetrack facility in accordance with the plans submitted to the commission pursuant to subsection (c)(3), the commission, in accordance with the Kansas administrative procedure act, shall:

(1) Impose upon the licensee a civil fine equal to ~~2%~~ 5% of the total parimutuel pools for all races held at the licensee's facility on and after the date that racing with parimutuel wagering is first conducted at such facility and until the date that was specified by the commission for completion of such facility as a condition of the licensee's license construction of the dual racetrack facility is completed and horse racing has begun; and

(2) revoke the licensee's license unless the licensee demonstrates reasonable cause for the failure to complete the facility.

(t) Any license granted an organization licensee to conduct races at a dual racetrack facility shall be conditioned on the organization licensee's conducting horse races on not less than 20% of the annual racing days granted the licensee by the commission. If an organization licensee fails to comply with such condition, the commission shall revoke the organization licensee's license unless the licensee demonstrates reasonable justification for the failure to complete the facility.

Sec. 3. K.S.A. 1987 Supp. 74-8815 is hereby amended to read as follows: 74-8815. (a) Any person, partnership, corporation or association, or the state of Kansas or any political subdivision thereof, may apply to the commission for a facility owner license to construct or own, or both, a racetrack facility which includes a racetrack and other areas designed for horse racing or greyhound racing, or both.

(b) Any person, partnership, corporation or association may apply to the commission for a facility manager license to manage a racetrack facility.

(c) A facility owner license or a facility manager license shall be issued for a period established by the commission but not to exceed 25 years. The application for a facility owner license shall be accompanied by a nonrefundable fee of \$5,000. An application for a facility manager license shall be accompanied by a nonrefundable fee of \$5,000.

(d) If an applicant for a facility owner license is proposing to construct a racetrack facility, such applicant, at the time of submitting the application, shall deposit with the commission, in such form as prescribed by rules and regulations of the commission, the sum of (1) \$500,000, if the number of racing days applied for by organization licensee applicants proposing to race at the facility is 150 days or more in a racing season; (2) \$250,000, if such number of racing days applied for is less than 150 days; or (3) a lesser sum established by the commission, if the applicant is the state or a political subdivision of the state. Only one such deposit shall be required for a dual racetrack facility. The executive director shall promptly remit any deposit received pursuant to this subsection to the state treasurer. The state treasurer

(continued)

shall deposit the entire amount in the state treasury and credit it to the racing applicant deposit fund created by K.S.A. 1987 Supp. 74-8828 and amendments thereto. If the application is denied by the commission, the deposit, and any interest accrued thereon, shall be refunded to the applicant. If the license is granted by the commission in accordance with the terms of the application or other terms satisfactory to the applicant, the deposit, and any interest accrued thereon, shall be refunded to the licensee upon completion of the racetrack facility in accordance with the terms of the license. If the licensee fails to complete the racetrack facility in accordance with the terms of the license, the deposit, and any interest accrued thereon, shall be forfeited by the applicant.

(e) A facility owner license shall be granted only to an applicant that already owns an existing racetrack facility or has submitted with its application detailed plans for the construction of such facility, including the means and source of financing such construction and operation sufficient to convince the commission that such plans are feasible or has submitted detailed plans for the construction of a racetrack facility, including the means and source of financing such construction and operation, sufficient to convince the commission that such plans are feasible. A facility manager license shall be granted only to an applicant that has a facility management contract with an organization licensed pursuant to K.S.A. 1987 Supp. 74-8813 and amendments thereto. Denial of a facility owner license or facility manager license by the commission shall be in accordance with the Kansas administrative procedure act.

(f) An applicant for a facility owner license or facility manager license, or both, shall not be granted a license if there is substantial evidence that the applicant for the license, or any officer or director, stockholder, member or owner of or other person having a financial interest in the applicant:

(1) Has been suspended or ordered to cease operation of a parimutuel racing facility in another jurisdiction by the appropriate authorities in that jurisdiction, has been ordered to cease association or affiliation with such a racing facility or has been banned from such a racing facility;

(2) has been convicted by a court of any state or of the United States of any criminal act involving fixing or manipulation of parimutuel races, violation of any law involving gambling or controlled substances, drug violations involving horses or greyhounds or if any employee or agent assisting the applicant in activities relating to ownership or management of a racetrack facility or to the conduct of races has been so convicted;

(3) has been convicted by a court of any state or of the United States of any felony involving dishonesty, fraud, theft, counterfeiting, alcohol violations or embezzlement or if any employee or agent assisting the applicant in activities relating to ownership or management of a racetrack facility or to the conduct of races has been so convicted;

(4) has not demonstrated financial responsibility sufficient to meet the obligations being undertaken pursuant to its contract with the organization licensee;

(5) is not in fact the person or entity authorized to or engaged in the licensed activity;

(6) is or becomes subject to a contract or option to purchase under which 10% or more of the ownership or other financial interest or membership interest are subject to purchase or transfer, unless the contract or option has been disclosed to the commission and the commission has approved the sale or transfer during the license period;

(7) has made a statement of a material fact in the application or otherwise in response to official inquiry by the commission knowing such statement to be false; or

(8) has failed to meet any monetary or tax obligation to the federal government or to any state or local government, whether or not relating to the conduct or operation of a race meet held in this state or any other jurisdiction.

(g) No person or entity shall be qualified to hold a facility manager license if such person or entity, or any director, officer, employee or agent thereof, is addicted to, and a user of, alcohol or a controlled substance.

(h) All facility owner licenses and facility manager licenses shall be reviewed annually by the commission to determine if

the licensee is complying with the provisions of this act and rules and regulations of the commission and following such proposed plans and operating procedures as were approved by the commission. The commission may review a facility owner license or facility manager license more often than annually upon its own initiative or upon the request of any interested party. The commission shall require each facility owner licensee and each facility manager licensee to file annually with the commission a certified financial audit of the licensee by an independent certified public accountant, which audit shall be open to inspection by the public, and may require any such licensee to provide any other information necessary for the commission to conduct the annual or periodic review.

(i) If the commission finds probable cause to believe that a facility owner licensee has failed to follow one or more provisions of the licensee's plans for the financing, construction or operation of a racetrack facility as submitted to and approved by the commission or that a facility owner licensee or facility manager licensee has violated any of the terms and conditions of licensure provided by this section or any other provision of this act or any rule and regulation of the commission, the commission shall give written notice thereof to the licensee and all other interested parties. The licensee shall have 30 days from receipt of the notice to cure such alleged failure or violation, if it can be cured. If the commission finds that such violation has not been cured upon expiration of such 30 days or upon a later deadline granted by the commission, or if the alleged violation is of such a nature that it cannot be cured, the commission may suspend or revoke the licensee's license in accordance with the Kansas administrative procedure act.

(j) If an applicant for a facility owner license proposes to construct a racetrack facility and the commission determines that such license should be issued to the applicant, the commission shall issue to the applicant a facility owner license conditioned on the submission by the licensee to the commission, within a period of time prescribed by the commission, of a commitment for financing the construction of the racetrack facility by a financial institution or other source, subject to approval by the commission. If such commitment is not submitted within the period of time originally prescribed by the commission or such additional time as authorized by the commission, the license shall expire at the end of such period.

(k) If a facility owner licensee's license authorizes the construction of a dual racetrack facility, such license shall be conditioned on the completion of such facility within a time specified by the commission. If, within the time specified by the commission, the licensee has not constructed a dual racetrack facility in accordance with the plans submitted to the commission pursuant to subsection (e), the commission, in accordance with the Kansas administrative procedure act, shall:

(1) Impose upon the licensee a civil fine equal to 2% 5% of the total parimutuel pools for all races held at the licensee's facility on and after the date that racing with parimutuel wagering is first conducted at such facility and until the date that was specified by the commission for completion of such facility as a condition of the licensee's license construction of the dual racetrack facility is completed and horse racing has begun; and

(2) revoke the licensee's license unless the licensee demonstrates reasonable cause for the failure to complete the facility.

Sec. 4. K.S.A. 1987 Supp. 74-8816 is hereby amended to read as follows: 74-8816. (a) The commission shall require occupation licenses for:

(1) Any owner of a horse or greyhound participating in a race conducted by an organization licensee;

(2) any person whose work, in whole or in part, is conducted within a racetrack facility owned or leased by an organization licensee, including trainers, jockeys, agents, apprentices, grooms, exercise persons, veterinarians, valéts, blacksmiths, stewards, racing judges, starters, timers, supervisors of mutuels, parimutuel tellers and clerks, guards and such other personnel designated by the commission.

(b) An occupation license shall be obtained from the commission prior to the time a person engages activities for which such license is required, regardless of whether a race meeting is being conducted.

(c) A person required to be licensed pursuant to subsection (a) shall apply for such license in a manner and upon forms prescribed and furnished by the commission. The commission may require the applicant to submit to fingerprinting. Occupation licenses shall be issued for a period established by the commission but not less than one year or more than three years. The commission shall establish the amount of application fees and license fees for different types of occupation licenses, but no such fee shall exceed \$200 a year. The application fee shall not be refundable if the applicant fails to qualify for a license and shall include the cost of processing fingerprints if they are required by the commission.

(d) The commission may require an applicant for an occupation license as a condition of licensure to consent to allow agents of the Kansas bureau of investigation or security personnel of the commission to search without warrant the licensee's person, personal property and work premises while within the racetrack facility or adjacent facilities under the control of the organization licensee for the purpose of investigating possible criminal violations of this act or violations of rules and regulations of the commission.

(e) Denial of an occupation license by the commission shall be in accordance with the Kansas administrative procedure act. The commission may refuse to issue an occupation license to any person who:

(1) Has been convicted of a felony by a court of any state or of the United States;

(2) has been convicted of a violation of any law of any state or of the United States involving gambling or controlled substances;

(3) is not qualified to perform the duties associated with the license being applied for;

(4) fails to disclose any material fact or provides information, knowing such information to be false, when applying for the license;

(5) has been found by the commission to have violated any provision of this act or any rule and regulation of the commission;

(6) has had an occupation license suspended, revoked or denied for just cause in any other jurisdiction; or

(7) has committed two or more acts of violence within the past two years as established by a court of competent jurisdiction of any state or of the United States.

(f) The commission may suspend or revoke an occupation license for any reason which would justify refusal to issue such a license and may impose a fine not exceeding \$5,000 for each violation upon any occupation licensee found to have violated any provision of this act or any rule and regulation of the commission. Such fine may be imposed in addition to or in lieu of suspending or revoking such person's occupation license. Proceedings for the suspension or revocation of an occupation license or imposition of a fine pursuant to this section shall be conducted by the commission or its appointed hearing officer in accordance with the Kansas administrative procedure act.

(g) The commission may provide by rules and regulations for the temporary suspension of an occupation license by summary adjudicative proceedings in accordance with the Kansas administrative procedure act upon finding that there is probable cause to believe that grounds exist for a permanent suspension or revocation of such license. Such suspension shall be for a period not exceeding 30 days. Upon expiration of such suspension, the license shall be restored unless the license has been suspended or revoked pursuant to subsection (f).

(h) The stewards at any horse race meeting and the racing judges at any greyhound race meeting may temporarily suspend any occupation license by emergency adjudicative proceedings in accordance with the Kansas administrative procedure act upon a finding by at least two of the stewards or racing judges that there is probable cause to believe that such occupation licensee has violated the provisions of this act or any rule or regulation of the commission.

Sec. 5. K.S.A. 1987 Supp. 74-8826 is hereby amended to read as follows: 74-8826. (a) There is hereby created the state racing fund in the state treasury.

(b) Except as otherwise provided by K.S.A. 1987 Supp. 74-8824 and amendments thereto, all taxes on parimutuel wagering, admissions tax, application fees, license fees and fines which are collected by the commission shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the state racing fund. All moneys credited to such fund shall be expended or transferred only for the purposes and in the manner provided by this act. Expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the commission or a person designated by the chairperson.

(c) All operating expenses of the commission and moneys for the promotion of horse and greyhound racing appropriated by the legislature shall be paid from the state racing fund. On July 15 of each year and at such other times as provided by law, the director of accounts and reports shall transfer to the state gaming revenues fund created by K.S.A. 1986 1987 Supp. 79-4801 and amendments thereto any moneys in the state racing fund in excess of those so appropriated.

(d) Any appropriation or transfer of state general fund moneys for the operation of the commission or the office of the executive director and any other expenses incurred in connection with the administration and enforcement of this act shall be considered a loan and shall be repaid with interest to the state general fund in accordance with appropriation acts. Such loan shall not be considered an indebtedness or debt of the state within the meaning of section 6 of article 11 of the constitution of the state of Kansas. Such loan shall bear interest at a rate equal to the rate prescribed by K.S.A. 75-4210 and amendments thereto for inactive accounts of the state effective on the first day of the month during which the appropriation or transfer takes effect.

(e) At the time of repayment of a loan pursuant to subsection (d), the executive director shall certify to the director of accounts and reports the amount to be repaid and any interest due thereon. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified from the state racing fund to the state general fund.

Sec. 6. K.S.A. 1987 Supp. 74-8806, 74-8813, 74-8815, 74-8816 and 74-8826 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body February 25, 1988.

HOUSE concurred in SENATE amendments March 31, 1988.

JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE as amended March 29, 1988.

ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 13, 1988.

MIKE HAYDEN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 13th day of April, 1988.
BILL GRAVES
Secretary of State.

(SEAL)

(Published in the *Kansas Register*, April 21, 1988.)

SENATE BILL No. 586

AN ACT concerning the regulation of the acquisition of control of certain issuing public corporations; repealing K.S.A. 17-1276, 17-1277, 17-1278, 17-1279, 17-1281, 17-1282, 17-1283 and 17-1284 and K.S.A. 1987 Supp. 17-1280.

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

Section 1. "Control shares" means shares that, except for this act, would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person, or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person immediately after acquisition of the shares, directly or indirectly, alone or as part of a group, to exercise or direct the exercise of the voting power of the issuing public corporation, in the election of directors within any of the following ranges of voting power:

- (a) One-fifth or more but less than $\frac{1}{3}$ of all the voting power.
- (b) One-third or more, but less than a majority of all the voting power.
- (c) A majority or more of all voting power.

Sec. 2. (a) "Control share acquisition" means the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

(b) For purposes of this act, all shares acquired within a 120 day period, and all shares acquired pursuant to a plan to make a control share acquisition, are deemed to have been acquired in the same acquisition.

(c) The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

- (1) An acquisition before, or pursuant to an agreement existing before the effective date of this act.
- (2) Pursuant to a will or other testamentary disposition, the laws of descent and distribution or by inter vivos gift when the gift is made in good faith and not for the purpose of circumventing this act.
- (3) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this act.
- (4) Pursuant to a merger or consolidation effected in compliance with K.S.A. 17-6701 *et seq.*, and amendments thereto, if the issuing public corporation is a party to the agreement of merger or consolidation.
- (5) An acquisition from the issuing public corporation.
- (6) An acquisition for the benefit of others by a person acting in good faith and not for the purpose of circumventing this act to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others.
- (7) An acquisition by or from a person whose shares have been accorded voting rights in compliance with this act, or an acquisition from a person whose previous acquisition would have constituted a control share acquisition but for paragraphs (1) through (6) of this subsection if the acquisition entitles the person making the acquisition, directly or indirectly, alone or as part of a group, to exercise or direct the exercise of voting power of the corporation in the election of directors within a range not in excess of the range of voting power associated with the shares as previously held.

Sec. 3. "Interested shares" means the shares of an issuing public corporation with respect to which any of the following persons may exercise or direct the exercise of voting power in the election of directors of the issuing public corporation:

- (a) A person or member of a group that makes or proposes to make a control share acquisition.
- (b) Any officer of the issuing public corporation.
- (c) Any employee of the issuing public corporation who is also a director of the corporation.

Sec. 4. (a) An "issuing public corporation" means a corporation organized under the laws of the state of Kansas that has:

- (1) One hundred or more shareholders;

(2) its principal place of business, its principal office, or substantial assets within Kansas; and

(3) either:

- (A) More than 10% of its shareholders resident in Kansas;
 - (B) more than 10% of its shares owned by Kansas residents;
- or
- (C) two thousand five hundred shareholders resident in Kansas.

(b) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(c) Shares held by banks, except as trustee or guardian, brokers or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this section.

Sec. 5. (a) Unless before the control acquisition a corporation's articles of incorporation or bylaws provide that this act does not apply to control share acquisitions of shares of the corporation, control shares of an issuing public corporation acquired in a control share acquisition have only such voting rights as are conferred by section 9 of this act.

(b) Notwithstanding subsection (a), the provisions of this act will not apply to control share acquisitions of an issuing public corporation for a period of six months from the effective date of this act, unless the corporation's articles of incorporation or bylaws provide that this article will apply.

Sec. 6. Any person who makes or proposes to make a control share acquisition may at the person's election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement must set forth all of the following:

(a) The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares.

(b) A statement that the acquiring person statement is given pursuant to this act.

(c) The number of shares of the issuing public corporation owned, directly or indirectly, by the acquiring person and each other member of the group.

(d) The range of voting power under which the control share acquisition falls or would, if consummated, fall.

(e) If the control share acquisition has not taken place:

(1) A description in reasonable detail of the terms of the proposed control share acquisition; and

(2) Representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

Sec. 7. (a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the corporation's expenses of a special meeting, within 10 days thereafter, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition.

(b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after receipt by the issuing public corporation of the request.

(c) If no request is made, the voting rights to be accorded the shares acquired in the control share acquisition shall be presented to the next special or annual meeting of shareholders.

(d) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than 30 days after receipt by the issuing public corporation of the acquiring person statement.

Sec. 8. (a) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.

(b) Notice of the special or annual shareholder meeting at

which the voting rights are to be considered must include or be accompanied by both of the following:

(1) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this act.

(2) A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

Sec. 9. (a) Control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

(b) To be approved under this section, the resolution must be approved by:

(1) The affirmative vote of a majority of all outstanding shares entitled to vote in the election of directors voting by class if required by the terms of the shares; and

(2) the affirmative vote of a majority of all outstanding shares entitled to vote in the election of directors voting by class if required by the terms of the shares, excluding all interested shares.

Sec. 10. (a) Unless otherwise provided in the articles of incorporation or bylaws of an issuing public corporation before a control share acquisition has occurred or has been proposed, the issuing public corporation may call for redemption of not less than all shares acquired in a control share acquisition at a redemption price equal to the market value of the shares at the time the call for redemption is given, in the event:

(1) An acquiring person statement has not been delivered to the issuing public corporation by the acquiring person by the tenth day after the control share acquisition; or

(2) an acquiring person statement has been filed but the shareholders have voted not to accord voting rights to the control shares.

(b) The call for redemption shall be given within 30 days after the event giving the issuing public corporation the option to call for redemption and the shares shall be redeemed within 60 days after the call is given.

Sec. 11. (a) Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred or has been proposed, in the event that control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, each shareholder of the issuing public corporation who objected thereto in writing and whose shares either were not entitled to vote or were not voted in favor of the control share acquisition and who files such written objection with the corporation before the taking of the vote on the control share acquisition shall have dissenters' rights as provided in K.S.A. 17-6712, and amendments thereto.

(b) As soon as practicable after these events have occurred, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that they have dissenters' rights to receive the fair value of their shares pursuant to K.S.A. 17-6712, and amendments thereto.

(c) As used in this section, "fair value" means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

Sec. 12. (a) As used in this section "affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with, a specified person.

(b) As used in this section "associate," when used to indicate a relationship with any person, means any of the following:

(1) Any corporation or organization of which the person is an officer, director or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class or series of shares entitled to vote or other equity interest.

(2) Any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or personal representative or in a similar fiduciary capacity.

(3) Any relative or spouse of the person, or any relative of the spouse, residing in the house of the person.

(c) Control shares acquired in a control share acquisition that do not have voting rights accorded them by approval of a resolution of shareholders shall regain their voting rights on transfer to a person other than the acquiring person or affiliate or associate of the acquiring person, unless the acquisition of the shares by the other person constitutes a control share acquisition, in which case the voting rights of the shares acquired by such other person are subject to the provisions of this act.

Sec. 13. An acquiring person, an issuing public corporation and a shareholder of an issuing public corporation may sue at law or in equity to enforce the provisions of this act.

Sec. 14. K.S.A. 17-1276, 17-1277, 17-1278, 17-1279, 17-1281, 17-1282, 17-1283 and 17-1284 and K.S.A. 1987 Supp. 17-1280 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body March 9, 1988.

SENATE concurred in HOUSE amendments April 1, 1988.

ROBERT V. TALKINGTON

President of the Senate.

LU KENNEY

Secretary of the Senate.

Passed the HOUSE as amended March 30, 1988.

JAMES D. BRADEN

Speaker of the House.

GENEVA SEWARD

Chief Clerk of the House.

APPROVED April 14, 1988.

MIKE HAYDEN

Governor.

STATE OF KANSAS

Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 14th day of April, 1988.

BILL GRAVES

Secretary of State.

(SEAL)

(Published in the *Kansas Register*, April 21, 1988.)

HOUSE BILL No. 3018

AN ACT concerning corporations; relating to cumulative voting; annual franchise tax; corporation code; establishing a swine technology center; making and concerning appropriations for the fiscal year ending June 30, 1989; prohibiting processors of pork from contracting for hog production and owning hogs; penalties for violation thereof; allowing production contracts in certain situations; prohibiting swine confinement facility tax exemptions; prohibiting swine confinement facility from being in an enterprise zone; exempting swine confinement facility from revenue producing enterprise; amending K.S.A. 17-6009, 17-6102, 17-6204, 17-6302, 17-6402, 17-6404, 17-6410, 17-6417, 17-6418, 17-6420, 17-6422, 17-6423, 17-6426, 17-6501, 17-6503, 17-6504, 17-6505, 17-6506, 17-6508, 17-6509, 17-6510, 17-6511, 17-6512, 17-6513, 17-6515, 17-6520, 17-6601, 17-6602, 17-6604, 17-6605, 17-6704, 17-6705, 17-6706, 17-6707, 17-6709, 17-6805, 17-6807, 17-6808 and 17-7507 and K.S.A. 1987 Supp. 17-5903, 17-5904, 17-6002, 17-6301, 17-6401, 17-6406, 17-6408, 17-6409, 17-6603, 17-6701, 17-6702, 17-6703, 79-250 and 79-32,154 and repealing the existing sections.

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

Section 1. K.S.A. 17-6504 is hereby amended to read as follows: 17-6504. ~~At all elections of directors, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit. The articles of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified~~

(continued)

circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which, except for such provision as to cumulative voting, such holder would be entitled to cast for the election of directors with respect to such holder's shares of stock multiplied by the number of directors to be elected by each holder, and that such holder may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them as such holder may see fit, provided that this act shall not apply to a corporation organized prior to the effective date of this act unless the stockholders of such corporation shall amend its articles of incorporation to eliminate the requirements of cumulative voting in force at the time of its organization.

Sec. 2. K.S.A. 17-7507 is hereby amended to read as follows: 17-7507. No corporation 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 corporation has filed its articles of incorporation or certificate of good standing at least six (6) months prior to the last day of its tax period. If any corporation shall file with the secretary of state a notice of change in its tax period, and the next annual report filed by such corporation subsequent to such notice is based on a tax period of less than twelve (12) months, there shall be no reduction or proration of the annual tax required to accompany such report 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. Notwithstanding the foregoing, the minimum annual franchise tax shall be \$20. This section shall be applicable to all annual reports filed by corporations with tax periods ending after November 30, 1987.

Sec. 3. K.S.A. 1987 Supp. 17-6002 is hereby amended to read as follows: 17-6002. (a) The articles of incorporation shall set forth:

(1) The name of the corporation which, except for banks, shall contain one of the words "association," "church," "college," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate" or "limited," or one of the abbreviations "co.," "corp.," "inc.," "ltd.," or words or abbreviations of like import in other languages if they are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the office of the secretary of state from the names of other corporations and partnerships organized, reserved or registered under the laws of this state, unless there shall be obtained the written consent of such other corporation, executed, acknowledged and filed in accordance with K.S.A. 17-6003 and amendments thereto. The name of every corporation heretofore organized, except for banks, may be changed to conform to the provisions of this section, but such change of name for existing corporations shall not be required, and nothing herein shall be construed as requiring any corporation which is subject to special statutory regulation to include any of such names or abbreviations in the name of such corporation if such name or abbreviation would be inconsistent or in conflict with such special statutory regulation;

(2) the address, which shall include the street, number, city and county of the corporation's registered office in this state, and the name of its resident agent at such address;

(3) the nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the Kansas general corporation code, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

(4) if the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the articles of incorporation shall set forth the total number of shares of all classes of stock which the

corporation shall have authority to issue and the number of shares of each class that are to have a par value and the par value of each share of each such class, the number of shares of each class that, and shall specify each class the shares of which are to be without par value, and each class the shares of which are to have a par value and the par value of the shares of each such class. The articles of incorporation shall also set forth a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by K.S.A. 17-6401 and amendments thereto, in respect to any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the articles of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by resolution or resolutions any thereof that may be desired but which shall not be fixed by the articles of incorporation. The foregoing provisions of this paragraph (4) shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the articles of incorporation. The conditions of membership of such corporations shall likewise be stated in the articles of incorporation or the articles may provide that the conditions of membership shall be stated in the bylaws, and if a corporation not organized for profit is to have authority to issue capital stock, such fact shall be stated in the articles of incorporation;

(5) the name and mailing address of the incorporator or incorporators; and

(6) if the powers of the incorporator or incorporators are to terminate upon the filing of the articles of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualify.

(b) In addition to the matters required to be set forth in the articles of incorporation by subsection (a) of this section, the articles of incorporation may also contain any or all of the following matters:

(1) Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the sale or other disposition of stock and the powers of the corporation, the directors and the stockholders, or any class of the stockholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of this state. Any provision which is required or permitted by any section of this act to be stated in the bylaws may be stated instead in the articles of incorporation;

(2) the following provisions, in these words: "Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them or between this corporation and its stockholders or any class of them, any court of competent jurisdiction within the state of Kansas, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of K.S.A. 17-6901 and amendments thereto, or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of K.S.A. 17-6808 and amendments thereto, may order a meeting of the creditors or class of creditors, or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing $\frac{3}{4}$ in value of the creditors or class of creditors, or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation";

(3) such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all

classes or series thereof, or to any securities of the corporation convertible into such stock. No stockholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to such stockholder in the articles of incorporation. All such rights in existence on July 1, 1972, shall remain in existence unaffected by this paragraph (3) unless and until changed or terminated by appropriate action which expressly provides for such change or termination;

(4) provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this act;

(5) a provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

(6) a provision imposing personal liability for the debts of the corporation on its stockholders or members to a specified extent and upon specified conditions; otherwise, the stockholders or members of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

(7) the manner of adoption, alteration and repeal of bylaws; and

(8) a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders, policyholders or members for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (A) for any breach of the director's duty of loyalty to the corporation or its stockholders, policyholders or members, (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (C) under the provisions of K.S.A. 17-6424 and amendments thereto or (D) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this subsection to a director shall be deemed also to refer to a member of the governing body of a corporation which is not authorized to issue capital stock.

(c) It shall not be necessary to set forth in the articles of incorporation any of the powers conferred on corporations by this act.

Sec. 4. K.S.A. 17-6009 is hereby amended to read as follows:

17-6009. (a) ~~Unless otherwise provided in the articles of incorporation, The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators or by the initial directors if they were named in the articles of incorporation. Thereafter, or, before a corporation has received any payment for any of its stock, by its board of directors. After a corporation has received any payment for any of its stock, the power to make, alter, adopt, amend or repeal bylaws shall be in the stockholders entitled to vote or, in the case of a non-stock corporation, in its members and such power also may be conferred concurrently upon the directors or, in the case of a non-stock corporation, upon its governing body by whatever name designated entitled to vote; provided, however, any corporation may in its articles of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body by whatever name designated. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the stockholders or members of the power, nor limit their power to adopt, amend or repeal bylaws. The right to make, alter or repeal bylaws of any corporation in existence on July 1, 1972 shall be vested in the board of directors, unless otherwise provided in such corporation's articles of incorporation and subject to the right of the stockholders to make, alter or repeal the bylaws.~~

(b) The bylaws may contain any provision, not inconsistent with law or with the articles of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.

Sec. 5. K.S.A. 17-6102 is hereby amended to read as follows: 17-6102. Every domestic corporation subject to the provisions of this act shall have power to:

(1) Have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation;

(2) Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitrate or other proceeding, in its corporate name;

(3) Have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(4) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;

(5) Appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;

(6) Adopt, amend and repeal bylaws;

(7) Wind up and dissolve itself in the manner provided in this act;

(8) Conduct its business, carry on its operations and have offices and exercise its powers within or without this state;

(9) Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

(10) Be an incorporator, promoter or manager of other corporations of any type or kind;

(11) Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

(12) Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;

(13) Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of: (A) A corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation; (B) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation; or (C) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

(14) Lend money for its corporate purposes, invest and reinvest its funds and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

(15) Pay pension and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers, and employees, and for any or all of the directors, officers, and employees of its subsidiaries;

(16) Provide insurance for its benefit on the life of any of its directors, officers or employees, or on the life of any stockholder for the purpose of acquiring at his death shares of its stock owned by such stockholder.

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Sec. 6. K.S.A. 17-6204 is hereby amended to read as follows: 17-6204. (a) A resident agent may change the address of the registered office of the corporation or corporations for which he or she is resident agent to another address in this state by filing with the secretary of state a certificate, executed and acknowledged by such resident agent, setting forth the names of all the corporations represented by such resident agent, and the address at which such resident agent has maintained the registered office for each of such corporations, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such resident agent will thereafter maintain the registered office for each of the corporations recited in the certificate. Upon the filing of such certificate, with one copy thereof for each corporation listed on the certificate, the secretary of state shall furnish a certified copy of the same under his or her hand and seal of office, and the certified copy shall be recorded by the resident agent in the office of the register of deeds of the county where the registered office of the corporation is located in this state, and thereafter, or until further change of address, as authorized by law, the registered office in this state of each of the corporations recited in the certificate shall be located at the new address of the resident agent thereof as given in the certificate. If the location of such office shall be changed from one county to another county, a certified copy of such certificate shall also be recorded in the office of the register of deeds for the county in which such office was formerly located.

(b) Whenever the location of a resident agent's office is moved to another room or suite within the same structure and such change is reported in writing to the secretary of state, said secretary shall charge no fee for recording such change on the appropriate records on file with said secretary.

(c) *In the event of a change of name of any person or corporation acting as registered agent in this state, such registered agent shall file with the secretary of state a certificate, executed and acknowledged by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the corporations represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such corporations. Upon the filing of such certificate, with one copy thereof for each corporation listed on the certificate, the secretary of state shall furnish a certified copy of the same under the secretary's hand and seal of office, and the certified copy shall be recorded by the resident agent in the office of the register of deeds of the county where the registered office of each of the corporations recited in the certificate is located in this state.*

Sec. 7. K.S.A. 1987 Supp. 17-6301 is hereby amended to read as follows: 17-6301. (a) The business and affairs of every corporation shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this act or in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this act shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation.

(b) The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the articles of incorporation establish the number of directors, in which case a change in the number of directors shall be made only by amendment of the articles. Directors need not be stockholders unless so required by the articles of incorporation or the bylaws. *The articles of incorporation or bylaws may prescribe other qualifications for directors.* Each director shall hold office until a successor is elected and qualified or until such director's earlier resignation or removal. Any director may resign at any time upon written notice to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the articles of incorporation or the bylaws require a greater number. Unless the articles of incorporation provide otherwise, the bylaws may provide that a number less than a majority shall constitute a quorum which in

no case shall be less than $\frac{1}{3}$ of the total number of directors except that, when a board of one director is authorized under the provisions of this section, one director shall constitute a quorum. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the articles of incorporation or the bylaws shall require a vote of a greater number.

(c) The board of directors may designate, by resolution passed by a majority of the whole board, one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that, in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the articles of incorporation, *except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in K.S.A. 17-6401, and amendments thereto, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series, adopting an agreement of merger or consolidation pursuant to K.S.A. 17-6701 or 17-6702, and amendments thereto, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution, bylaws or articles of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to K.S.A. 17-6703, and amendments thereto.*

(d) The directors of any corporation may be divided into one, two or three classes by the articles of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The articles of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for such term, and have such voting powers, as stated in the articles of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. *If the articles of incorporation provide that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in this act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.*

(e) A member of the board of directors or governing body of any corporation, or a member of any committee designated by the board of directors or governing body, shall be fully protected in the performance of such member's duties in relying in good

faith upon the books of account or reports made to the corporation by any of its officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the board of directors or by any such committee, or in relying in good faith upon other records of the corporation records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.

(f) Unless otherwise restricted by the articles of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors, or governing body, or of any committee thereof may be taken without a meeting if all members of the board or governing body or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board, governing body or committee.

(g) Unless otherwise restricted by the articles of incorporation or bylaws, the board of directors or governing body of any corporation organized under this act may hold its meetings, and have an office or offices, outside of this state.

(h) Unless otherwise restricted by the articles of incorporation or bylaws, the board of directors shall have the authority to fix the compensation of directors.

(i) Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or the governing body of any corporation, or any committee designated by such board or body, may participate in a meeting of such board, body or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

(j) The articles of incorporation of any corporation organized under this chapter which is not authorized to issue capital stock may provide that less than 1/3 of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the corporation shall be managed in a manner different from that provided in this section. Except as provided by the articles of incorporation, the provisions of this section shall apply to such a corporation and, when so applied, all references to the board of directors, to members thereof and to stockholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation respectively.

(k) Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

(1) Unless the articles of incorporation otherwise provides, in the case of a corporation whose board is classified as provided in subsection (d), shareholders may effect such removal only for cause; or

(2) if less than the entire board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which such director is a part.

Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

Sec. 8. K.S.A. 17-6302 is hereby amended to read as follows: 17-6302. (a) Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen as the bylaws may direct. Each officer shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written

notice to the corporation. The secretary shall record all the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose, and shall perform such other duties as shall be assigned to him such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as may be necessary to enable it to sign instruments and stock certificates which comply with subsection (a)(2) of K.S.A. 17-6003 and K.S.A. 17-6408, and amendments thereto. One of the officers shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose. Any number of offices may be held by the same person unless the articles of incorporation or bylaws otherwise provide.

(b) The corporation may have such other officers and agents as are desired, who shall be chosen in such manner and Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold the office until such officer's successor is elected and qualified or until such officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation.

(c) The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

(d) A failure to elect annually a president, secretary, treasurer or other officers shall not dissolve a corporation.

(e) Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise shall be filled as the bylaws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

(f) A corporation not for profit, without capital stock, may elect such officers as its articles of incorporation or bylaws may specify, who shall exercise the respective duties ordinarily exercised by the president, secretary, treasurer and other officers commonly elected by a stock corporation.

Sec. 9. K.S.A. 1987 Supp. 17-6401 is hereby amended to read as follows: 17-6401. (a) Every corporation, whether or not organized for profit, may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided in this act shall apply to all or any such classes of stock.

(b) Any preferred or special stock may be made subject to redemption at such time or times and at such price or prices and may be issued in such series, with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the

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board of directors as hereinabove provided. Any stock which is entitled upon any distribution of the corporation's assets, whether by dividend or by liquidation, to a preference over another class or series of stock may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event. Any stock of a regulated investment company registered under the investment company act of 1940 (15 U.S.C.A. 80a-1 et seq.), as heretofore or hereafter amended, may be given the right to require the corporation to redeem or repurchase the stock at the option of the holder of the stock, provided such redemption or repurchase would not impair or cause a further impairment of the capital of the corporation. Any stock of a corporation which has a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(c) The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or non-cumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as elsewhere in this act provided.

(d) The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(e) At the option of either the holder or the corporation or upon the happening of a specified event, any stock of any class or of any series thereof may be made convertible into or exchangeable for shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(f) If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent certificated shares of such class or series of stock. Except as otherwise provided in K.S.A. 17-6426 and amendments thereto, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation issues to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifica-

tions, limitations or restrictions of such preferences or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or K.S.A. 17-6406, subsection (a) of K.S.A. 17-6426 or subsection (a) of K.S.A. 17-6508, and amendments thereto, or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights, or both. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

(g) Before When any corporation shall desires to issue any shares of stock of any class or of any series of any class of which the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the articles of incorporation or in any amendment thereto, but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series shall be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003 and amendments thereto. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such class or series so set forth in to which such resolution or resolutions apply may be increased or decreased, but not below above the total number of authorized shares thereof then outstanding of the class or series or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged, filed and recorded setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. When no share of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding and that none will be issued may be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003, and amendments thereto, and, when such certificate becomes effective, it shall have the effect of eliminating from the articles of incorporation all reference to such class or series of stock. Unless otherwise provided in the articles of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which (1) states that no shares of the class or series have been issued, (2) sets forth a copy of the resolution or resolutions and (3) if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged, filed, recorded and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. When any certificate filed under this subsection becomes effective, it shall have the effect of amending the articles of incorporation, except that neither the filing of such certificate nor the filing of restated articles of incorporation pursuant to K.S.A. 17-6605, and amendments thereto, shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

(h) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its stock shall be uncertificated shares, but such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsection (f). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

Sec. 10. K.S.A. 17-6402 is hereby amended to read as follows: 17-6402. Subscriptions to, or the purchase price of, the capital stock of any corporation organized under any law of this state may be paid for, wholly or partly, by cash, or labor done, by personal property, or by real property or leases thereof, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, nor shall the holder thereof be liable for any further payments under the provisions of this act. In the absence of actual fraud in the transaction, the judgment of the directors shall be conclusive as to the value of such labor, property, real estate or leases thereof. The consideration, as determined pursuant to subsections (a) and (b) of K.S.A. 17-6403, and amendments thereto, for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessible stock if: (a) The entire amount of such consideration has been received by the corporation in the form of cash, services rendered, personal property, real property, leases of real property, or a combination thereof; or (b) not less than the amount of the consideration determined to be capital pursuant to K.S.A. 17-6404, and amendments thereto, has been received by the corporation in such form and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price; provided, however, nothing contained herein shall prevent the board of directors from issuing partly paid shares under K.S.A. 17-6406, and amendments thereto.

Sec. 11. K.S.A. 17-6404 is hereby amended to read as follows: 17-6404. Any corporation, by resolution of its board of directors, may determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in the event that any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case, the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined what part of the consideration for such shares shall be capital (1) at the time of issue of any shares of the capital stock of the corporation issued for cash or (2) within sixty (60) 60 days after the issue of any shares of the capital stock of the corporation issued for property other than cash, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors, directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be

transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. At any given time, the excess, if any, of the net assets of the corporation over the amount so determined to be capital shall be surplus. Net assets means the amount by which total assets exceed total liabilities, but capital and surplus are not liabilities for this purpose.

Sec. 12. K.S.A. 1987 Supp. 17-6406 is hereby amended to read as follows: 17-6406. Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid certificated shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

Sec. 13. K.S.A. 1987 Supp. 17-6408 is hereby amended to read as follows: 17-6408. Every holder of certificated shares of stock in a corporation shall be entitled to have a certificate signed by or in the name of the corporation by the chairperson or vice-chairperson of the board of directors, or by the president or a vice-president, and by the treasurer or an assistant treasurer, or by the secretary or an assistant secretary of such corporation, certifying the number of shares owned by the stockholder in such corporation. The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson or vice-chairperson of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In the event that any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if the person were such officer, transfer agent or registrar at the date of issue.

Sec. 14. K.S.A. 1987 Supp. 17-6409 is hereby amended to read as follows: 17-6409. The shares or stock in every corporation shall be deemed personal property and transferable as provided in the acts contained in article 8 of chapter 84 of the Kansas Statutes Annotated. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the transfer is registered when the certificates are presented to the corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the corporation to do so.

Sec. 15. K.S.A. 17-6410 is hereby amended to read as follows: 17-6410. (a) Every corporation may purchase, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; but no corporation shall use its funds or property for the purchase of its own shares of capital stock when the capital of the corporation is impaired or when such use would cause any impairment of the capital of the corporation, except that it may purchase or redeem out of capital its own shares of preferred or special stock in accordance with K.S.A. 17-6603. Shares of its own capital stock belonging to the corpo-

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ration or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held by the corporation, shall neither be entitled to vote nor counted for quorum purposes. Nothing in this section shall be construed as limiting the right of the corporation to vote its own stock held by it in a fiduciary capacity, provided, however, that no corporation shall:

(1) Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation, except that a corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with K.S.A. 17-6603 and 17-6604, and amendments thereto. Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption or exchange of its shares of stock if at the time such note, debenture or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired;

(2) purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or

(3) redeem any of its shares unless their redemption is authorized by subsection (b) of K.S.A. 17-6401, and amendments thereto, and then only in accordance with such section and the articles of incorporation.

(b) Nothing in this section limits or affects a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for such consideration as shall be fixed by the board of directors.

(c) Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

(d) Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to the holder thereof and a sum sufficient to redeem such share has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

Sec. 16. K.S.A. 17-6417 is hereby amended to read as follows: 17-6417. A corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the allegedly lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Sec. 17. K.S.A. 17-6418 is hereby amended to read as follows: 17-6418. (a) If a corporation refuses to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, which certificate is alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or his the owner's legal representative, may commence an action in district court to compel the corporation to issue for an order requiring the corporation to show cause why it should not issue new uncertificated shares or a new certificate of stock in place of the one so lost, stolen or destroyed. The petition in such action shall state the name of the corporation, the number and date of the certificate, if known or ascertainable by the plaintiff, the number of shares of stock represented thereby and to whom issued, and a

statement of the circumstances attending such loss, theft or destruction. Thereupon the court shall make an order requiring the corporation to show cause at a time and place therein designated, why it should not issue new uncertificated shares or a new certificate of stock in place of the one described in the complaint. A copy of the complaint and order shall be served upon the corporation at least five days before the time designated in the order.

(b) If, upon hearing, the court is satisfied that the plaintiff is the lawful owner of the number of shares of capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost, stolen or destroyed, and no sufficient cause has been shown why new uncertificated shares or a new certificate should not be issued in place thereof, it shall enter an order directing requiring the corporation to issue and deliver to the plaintiff new uncertificated shares or a new certificate for such shares. In its order the court shall direct that, prior to the issuance and delivery to the plaintiff of such new uncertificated shares or a new certificate, the plaintiff give the corporation a bond in such form and with such security as to the court appears sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. No corporation which has issued uncertificated shares or a certificate pursuant to an order of the court entered hereunder shall be liable in an amount in excess of the amount specified in such bond.

Sec. 18. K.S.A. 17-6420 is hereby amended to read as follows: 17-6420. (a) The directors of every corporation, subject to any restrictions contained in its articles of incorporation, may declare and pay dividends upon the shares of its capital stock either (1) out of its surplus, as defined in and computed in accordance with K.S.A. 17-6404, 17-6602, 17-6603 and 17-6604, and amendments thereto, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared or the preceding fiscal year. If the capital of the corporation, computed in accordance with K.S.A. 17-6404, 17-6602, 17-6603 and 17-6604, and amendments thereto, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

(b) Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets, including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets, may determine the net profits derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation of such assets.

Sec. 19. K.S.A. 17-6422 is hereby amended to read as follows: 17-6422. A director shall be fully protected in relying in good faith upon the books of account or other records of the corporation or statements prepared by any of its officers or by independent public accountants or by an appraiser selected with reasonable care by the board of directors as to the value and amount of the assets, liabilities or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid; or with which the corporation's stock might properly be purchased or redeemed. A member of the board of directors, or a member of any committee designated by the board of directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the

board of directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and net profits of the corporation, or both, or any other facts pertinent to the existence and amount of net profits of the corporation, or with which the corporation's stock might properly be purchased or redeemed.

Sec. 20. K.S.A. 17-6423 is hereby amended to read as follows: 17-6423. No corporation shall pay dividends except in accordance with the provisions of this act. Dividends may be paid in cash, in property or in shares of the corporation's capital stock; ~~in the case of shares with par value at par, and in the case of shares without par value at such price as may be fixed by the board of directors.~~ *If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock, the board of directors shall, by resolution, direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.*

Sec. 21. K.S.A. 17-6426 is hereby amended to read as follows: 17-6426. (a) A written restriction on the transfer or registration of transfer of a security of a corporation, if permitted by this section and noted conspicuously on the certificate representing the security, or, in the case of uncertificated shares, contained in the notice sent pursuant to K.S.A. 17-6401, and amendments thereto, may be enforced against the holder of the restricted security or any successor or transferee of the holder, including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate representing the security, or, in the case of uncertificated shares, contained in the notice sent pursuant to K.S.A. 17-6401, and amendments thereto, restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(b) A restriction on the transfer or registration of transfer of securities of a corporation may be imposed either by the articles of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

(c) A restriction on the transfer of securities of a corporation is permitted by this section if it:

(1) Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(2) Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(3) Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; or

(4) Prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable.

(d) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States internal revenue code or of maintaining any other tax advantage to the corporation, is conclusively presumed to be for a reasonable purpose.

(e) Any other lawful restriction on transfer or registration of transfer of securities is permitted by this section.

Sec. 22. K.S.A. 17-6501 is hereby amended to read as follows: 17-6501. (a) Meetings of stockholders may be held at such place, either within or without this state, as may be designated by or in the manner provided in the bylaws or, if not so designated, at the registered office of the corporation in this state.

(b) An annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. Any other proper business may be transacted at the annual meeting.

(c) A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation, except as may be otherwise specifically provided in this act. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient. If there be a failure to hold the annual meeting for a period of ~~thirty (30)~~ 30 days after the date designated therefor, or if no date has been designated, for a period of ~~thirteen (13)~~ 13 months after the organization of the corporation or after its last annual meeting, the district court may summarily order a meeting to be held upon the application of any stockholder or director. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the articles of incorporation or bylaws to the contrary. The district court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of stockholders entitled to vote and the form of notice of such meeting.

(d) Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the articles of incorporation or by the bylaws.

(e) Unless otherwise provided in the articles of incorporation, all elections of directors shall be by written ballot if requested by any stockholder or member of a non-stock corporation entitled to vote.

Sec. 23. K.S.A. 17-6503 is hereby amended to read as follows: 17-6503. ~~(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.~~

~~(b) If no record date is fixed:~~

~~(1) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.~~

~~(2) The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, shall be the day on which the first written consent is expressed.~~

~~(3) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.~~

~~(e) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, except that the board of directors may fix a new record date for the adjourned meeting.~~

~~(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may~~

(continued)

fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting except that the board of directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by this act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by this act, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Sec. 24. K.S.A. 17-6505 is hereby amended to read as follows: 17-6505. (a) The provisions of K.S.A. 17-6501 to 17-6504, inclusive and K.S.A. 17-6506, and amendments thereto, shall not apply to corporations not authorized to issue stock.

(b) Unless otherwise provided in the articles of incorporation of a non-stock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted after three (3) years from its date, unless the proxy provides for a longer period.

(c) Unless otherwise provided in this act, the articles of incorporation or bylaws of a non-stock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the articles of incorporation or bylaws of a nonstock corporation, $\frac{1}{3}$ of the members of such corporation shall constitute a quorum at a meeting of such members, and the affirmative vote of a majority of such members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by this chapter, the articles of incorporation or bylaws.

(d) If the election of the governing body of any non-stock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture or dissolution of the corporation, but the district court may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order, the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the articles of incorporation or the bylaws of the corporation to the contrary.

Sec. 25. K.S.A. 17-6506 is hereby amended to read as follows: 17-6506. Subject to the provisions of this act with respect to the vote that shall be required for a specified action, the articles of incorporation or bylaws of any corporation may specify the number of shares or the amount of other securities having voting power, the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business but in no event shall a quorum consist of less than $\frac{1}{3}$ of the shares entitled to vote at the meeting. In the absence of such specification in the articles of incorporation or bylaws of the corporation:

(a) A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders;

(b) in all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders;

(c) directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and

(d) where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

Sec. 26. K.S.A. 17-6508 is hereby amended to read as follows: 17-6508. (a) One or more stockholders, by agreement in writing, may transfer capital stock to any person or persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in such person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, not exceeding ~~ten (10)~~ 10 years, upon the terms and conditions stated in such agreement. The validity of a voting trust agreement, otherwise lawful, shall not be affected during a period of ~~ten (10)~~ 10 years from the date when it was created or last extended, as provided in subsection (b), by the fact that under its terms it will or may last beyond such ~~ten-year~~ 10-year period. The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the corporation in this state, which copy shall be open to the inspection of any stockholder of the corporation, or any beneficiary of the trust under the agreement, daily during business hours, any certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such trustee or such trustees, and any certificates of stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock therefor shall be issued to the voting trustee or trustees. In the certificates so issued, if any, it shall be stated that they are issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the

stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for his or their own individual malfeasance. In any case where two or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

(b) At any time within two (2) years prior to the time of expiration of any voting trust agreement, as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement, by written agreement and with the written consent of the voting trustee or trustees, may extend the duration of the voting trust agreement for an additional period not exceeding ten (10) 10 years from the expiration date of the trust as originally fixed or as last extended, as provided in this subsection. Prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, the voting trustee or trustees shall file in the registered office of the corporation in this state a copy of such extension agreement and of his or their consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement; but no such extension agreement shall affect the rights or obligations of persons not parties thereto.

(c) This section shall not be deemed to invalidate or otherwise affect any voting or other agreement among stockholders or any irrevocable proxy which is not otherwise illegal.

Sec. 27. K.S.A. 17-6509 is hereby amended to read as follows: 17-6509. (a) ~~If~~ The officer who has charge of the stock ledger of a corporation is requested in writing by any stockholder at least twenty (20) days prior to any shall prepare and make, at least 10 days before every meeting of stockholders, he shall prepare and make a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

(b) Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting.

(c) The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of the stockholders.

Sec. 28. K.S.A. 17-6510 is hereby amended to read as follows: 17-6510. (a) As used in this section, "stockholder" means a stockholder of record.

(b) Any stockholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose the corporation's bylaws, stock register, a list of its stockholders, books of account, records of the proceedings of the stockholders and directors and the corporation's other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right of inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this state or at its principal place of business.

(c) If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to subsection (b) or does not reply to the demand within five (5) business days after the demand has been made, the stockholder may apply to the district court for an order to compel such inspection. The district court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the stockholder to inspect any such records or instruments, and to make copies or extracts therefrom; or the court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the court deems appropriate. Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, he such stockholder shall first establish (1) that he such stockholder has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents; and (2) that the inspection he such stockholder seeks is for a proper purpose. Where the stockholder seeks to inspect the corporation's stock ledger or list of stockholders and he such stockholder has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection he such stockholder seeks is for an improper purpose. The court, in its discretion, may prescribe any limitations or conditions with reference to the inspection, or award such other or further relief as the court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this state and kept in this state upon such terms and conditions as the order may prescribe.

(d) Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to such director's position as a director. The district court is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the stock list and to make copies or extracts therefrom. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the court may deem just and proper.

Sec. 29. K.S.A. 17-6511 is hereby amended to read as follows: 17-6511. In its articles of incorporation, every corporation may confer upon the holders of any bonds, debentures or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the articles of incorporation, and it may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the stockholders of the corporation have or may have by reason of the provisions of this act or of its articles of incorporation. If the articles of incorporation so provide such holders of bonds, debentures or other obligations shall be deemed to be stockholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of this chapter which requires the vote of stockholders as a prerequisite to any corporate action and the articles of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever, except as set forth in K.S.A. 17-6602 and amendments thereto.

Sec. 30. K.S.A. 17-6512 is hereby amended to read as follows: 17-6512. (a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Unless otherwise provided in this act, the written notice of any meeting shall be given not less than ~~ten (10)~~ 10 nor more than ~~fifty (50)~~ 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall be prima facie evidence of the facts stated therein in the absence of fraud.

(c) When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than ~~thirty (30)~~ 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Sec. 31. K.S.A. 17-6513 is hereby amended to read as follows: 17-6513. (a) Unless otherwise provided in the articles of incorporation or bylaws: (1) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director or; (2) whenever the holders of any class or classes of stock or series thereof are entitled, to elect one or more directors by the articles of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the articles of incorporation or the bylaws, or may apply to the district court for a decree summarily ordering an election as provided in K.S.A. 17-6501, and amendments thereto.

(b) In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection (a) of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

(c) If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board, as constituted immediately prior to any such increase, the district court, upon application of any stockholder or stockholders holding at least ~~ten percent (10%)~~ 10% of the total number of the shares at the time outstanding having the right to vote for such directors, may summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of K.S.A. 17-6501, and amendments thereto, as far as applicable.

(d) Unless otherwise provided in the articles of incorporation or bylaws, when one or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Sec. 32. K.S.A. 17-6515 is hereby amended to read as follows: 17-6515. (a) Upon application of any stockholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the district court may hear and determine the validity of any election of any director, member of the governing body, or officer of any corpo-

ration, and the right of any person to hold such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto. In making such determination, the court may make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the court may order an election to be held in accordance with K.S.A. 17-6501 or 17-6505, and amendments thereto. In any such application, service of copies of the application upon the resident agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the resident agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post-office addresses last known to the resident agent or furnished to the resident agent by the applicant stockholder. The court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

(b) Upon application of any stockholder or any member of a corporation without capital stock, the district court may hear and determine the result of any vote of stockholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the court to adjudicate the result of the vote. The court may make such order respecting notice of the application as it deems proper under the circumstances.

Sec. 33. K.S.A. 17-6520 is hereby amended to read as follows: 17-6520. (a) Whenever notice is required to be given, under any provision of this act or of the articles of incorporation or bylaws of any corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this act, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(b) whenever notice is required to be given, under any provision of this act or the articles of incorporation or bylaws of any corporation, to any stockholder or, if the corporation is a nonstock corporation, to any member, to whom (1) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (2) all, and at least two payments, if sent by first class mail, of dividends or interest on securities during a 12-month period, have been mailed addressed to such person at the address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth the then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this chapter, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this subsection.

Sec. 34. K.S.A. 17-6601 is hereby amended to read as follows: 17-6601. (a) Before a corporation has received any payment

for any of its stock, it may amend its articles of incorporation at any time or times, in any and as many respects as may be desired, so long as its articles of incorporation, as amended, would contain only such provisions as it would be lawful and proper to insert in an original articles of incorporation filed at the time of filing the amendment.

(b) The amendment of the articles of incorporation authorized by this section shall be adopted by a majority of the incorporators, if directors were not named in the original articles of incorporation or have not yet been elected, or, if directors were named in the original articles of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock and that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003, *and amendments thereto*. Upon such filing, the corporation's articles of incorporation shall be deemed to be amended accordingly as of the date on which the original articles of incorporation became effective *except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date*.

Sec. 35. K.S.A. 17-6602 is hereby amended to read as follows: 17-6602. (a) After a corporation has received payment for any of its capital stock, it may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation, as amended, would contain only such provisions as it would be lawful and proper to insert in an original articles of incorporation filed at the time of the filing of the amendment. If a change in stock or the rights of stockholders, or an exchange, reclassification or cancellation of stock or rights of stockholders is to be made, the amendment to the articles of incorporation shall contain such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (1) To change its corporate name; or
- (2) To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or
- (3) To increase or decrease its authorized capital stock or to reclassify the same; by changing the number, par value, designations, preferences, or relative, participating, optional or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or
- (4) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or
- (5) To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or
- (6) To change the period of its duration. Any or all such changes or alterations may be effected by one certificate of amendment.

(b) Whenever an amendment effects any change in the issued shares of the corporation, the aggregate amount of capital represented by all issued shares immediately after the amendment shall not be less than the aggregate amount of capital represented by all issued shares immediately before the amendment and the certificate of amendment shall state that the capital of the corporation will not be reduced under or by reason of the amendment.

(c) Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner:

(1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment

proposed be considered at the next annual meeting of the stockholders. Such special or annual meeting shall be called and held upon notice in accordance with K.S.A. 17-6512, *and amendments thereto*. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the stockholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged, filed and recorded, and shall become effective, in accordance with K.S.A. 17-6003, *and amendments thereto*.

(2) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any such class or classes of stock may be increased or decreased, *but not below the number of shares then outstanding*, by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote, if so provided in the original articles of incorporation or in any amendment thereto which created such class or classes of stock or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

(3) If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If at a subsequent meeting, held not earlier than ~~fifteen (15)~~ 15 days and not later than ~~sixty (60)~~ 60 days from the meeting at which such resolution has been passed, a majority of all the members of the governing body shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged, filed and recorded, and shall become effective, in accordance with K.S.A. 17-6003. ~~Notice of the subsequent meeting, stating the purpose thereof, shall be given by publication at least once each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the corporation's registered office is located, or in lieu of publication, notice may be mailed to each member of the corporation in substantial compliance with subsection (b) of K.S.A. 17-6512, and amendments thereto.~~ The articles of incorporation of any such corporation without capital stock may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation, in which event only one meeting of the governing body thereof shall be necessary, and such proposed amendment shall be submitted to the members or to any specified class of members of such corporation without capital stock in the same manner, so far as applicable, as is provided in this section for an amendment to the articles of incorporation of a stock corporation; and in the event of the adoption thereof, a certificate evidencing such amendment shall be executed, filed, acknowledged, recorded and shall become effective in accordance with K.S.A. 17-6003, *and amendments thereto*.

(4) Whenever the articles of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by any section of this act, the provision of the articles of

(continued)

incorporation requiring such greater vote shall not be altered, amended or repealed except by such greater vote.

Sec. 36. K.S.A. 1987 Supp. 17-6603 is hereby amended to read as follows: 17-6603. (a) Subject to the provisions of the articles of incorporation, whenever any corporation has issued any preferred or special shares it may:

(1) Redeem all or any part of such shares, if subject to redemption, at such time or times, at such price or prices, and otherwise as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation; or

(2) at any time or from time to time purchase all or any part of such shares, but in the case of shares subject to redemption, at not exceeding the price or prices at which such shares may be redeemed; or

(3) at any time or from time to time, by resolution of the board of directors, retire any such shares redeemed or purchased out of surplus, as defined in K.S.A. 17-6404 and amendments thereto.

(b) The corporation may apply to such redemption or purchase an amount of its capital which shall not be greater than the sum of:

(1) That part of the consideration received for such shares which shall be capital pursuant to the provisions of K.S.A. 17-6404 and amendments thereto and that part of surplus which shall have been transferred and treated as capital in respect of such shares pursuant to the provisions of that section; and

(2) any amounts by which the capital of the corporation shall have been increased by other transfers from surplus in accordance with the provisions of that section, except those transfers, if any, which shall have been made in respect of other preferred or special shares.

(c) Whenever, upon the conversion or exchange of any shares, regardless of class, into or for any other shares of the corporation, the amount of capital represented by such shares exceeds the total aggregate par or allocated value represented by such other shares, the corporation by resolution of the board of directors may as herein provided reduce its capital at any time thereafter by all or any part of such excess.

(d) No redemption or purchase of shares pursuant to subsection (a) shall be made out of capital, and there shall be no reduction of capital after the conversion of shares pursuant to subsection (c), unless the assets of the corporation remaining after such redemption or purchase shall be sufficient to pay any debts of the corporation, the payment of which shall not have been otherwise provided for. Upon the filing of the certificate required by this section, any such shares so redeemed or purchased by the application of capital or otherwise retired pursuant to the provisions of this section, and any such shares of the corporation surrendered to it on the conversion or exchange thereof into or for other shares of the corporation, after such conversion or exchange, shall have the status of authorized and unissued shares of the class of stock to which such shares belong; but if the articles of incorporation prohibit the reissue of such shares, the authorized capital stock of the corporation of the class to which such shares belong, upon such redemption, purchase, retirement, conversion or exchange shall be deemed to be reduced, and upon such filing shall be reduced, to the extent of the aggregate par value of the shares so redeemed, purchased, retired, converted or exchanged or, if such shares are without par value, shall be reduced to the extent of the total number of such shares.

(e) Whenever any capital of the corporation is applied to the redemption or the purchase of shares or any shares are retired pursuant to the provisions of this section, or whenever following the conversion or exchange of shares of the corporation pursuant to subsection (c) the capital of the corporation is to be reduced as provided herein, a certificate thereof shall be executed, acknowledged, filed and recorded, and shall become effective, in accordance with K.S.A. 17-6003 and amendments thereto. Upon such certificate becoming effective, the capital of the corporation shall be deemed to be and shall thereby be reduced by the amount thereof so applied to such redemption or purchase or the amount thereof represented by the shares so redeemed or pur-

chased, whichever shall be greater, or, in the case of shares redeemed or purchased out of surplus and so retired, or, following the conversion or exchange of shares of the corporation, by the amount specified by resolution of the board of directors as aforesaid, without the necessity of any other proceedings under any other section of this act.

(f) If the articles of incorporation prohibit the reissue of the shares so redeemed, purchased, retired or surrendered to the corporation on the conversion or exchange thereof into other shares of the corporation, the filing of such certificate containing a recital of such fact shall constitute an amendment to the articles of incorporation effecting a reduction in the authorized capital stock of the corporation to the extent of the aggregate par value of the shares so redeemed, purchased, retired or surrendered on conversion or exchange, or, if such shares are without par value, to the extent of the total number of such shares subject to the provisions of subsection (d) of K.S.A. 17-6003 and amendments thereto. If the shares so redeemed, purchased, retired or surrendered on conversion or exchange constitute all the outstanding shares of any particular class and the reissue thereof is so prohibited, the filing of such certificate, containing a recital of such fact, shall constitute an amendment to the articles of incorporation effecting a reduction in the authorized capital stock of the corporation by the elimination therefrom of all reference to the particular class of stock, subject to the provisions of subsection (d) of K.S.A. 17-6003 and amendments thereto.

(g) Nothing in this section shall be construed as limiting the exercise of the rights given by K.S.A. 17-6410 and amendments thereto, or as in any way affecting the right of any corporation to resell any of its shares theretofore purchased or redeemed out of surplus for such consideration as shall be fixed from time to time by the board of directors.

(h) Whenever any corporation operated as an investment company shall be obligated, pursuant to its articles of incorporation, to redeem or repurchase any of its shares at the option of the shareholder, the provisions of this section shall be applicable to all shares redeemed or repurchased pursuant to any method authorized under its articles of incorporation for the purpose of effecting redemption or repurchase of its shares at the option of the shareholder; and such shares may be retired; the capital of the corporation reduced and such shares restored to the status of authorized and issued shares, by compliance with the provisions of this section.

(i) Certificated shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such certificated shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

(a) A corporation, by resolution of its board of directors, may retire any shares of its capital stock that are issued but are not outstanding.

(b) Whenever any shares of the capital stock of a corporation are retired, they shall resume the status of authorized and unissued shares of the class or series to which they belong unless the articles of incorporation otherwise provides. If the articles of incorporation prohibits the reissuance of such shares, or prohibits the reissuance of such shares as a part of a specific series only, a certificate stating that reissuance of the shares, as part of the class or series, is prohibited, identifying the shares and reciting that their retirement shall be executed, acknowledged and filed and shall become effective in accordance with K.S.A. 17-6003, and amendments thereto. When such certificate becomes effective, it shall have the effect of amending the articles of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the class or series to which they belong, of eliminating from the articles of incorporation all reference to such class or series of stock.

(c) If the capital of the corporation shall be reduced by or in connection with the retirement of shares, the reduction of capi-

tal shall be effected pursuant to K.S.A. 17-6604, and amendments thereto.

Sec. 37. K.S.A. 17-6604 is hereby amended to read as follows: 17-6604. (a) Any corporation may reduce its capital at any time in one or more of the following manners:

(1) By retiring or reducing the outstanding shares of any class.

(2) By purchasing shares of any class for retirement either by lot or pro rata from all holders of shares of the class.

(3) By purchasing shares for retirement from time to time in the open market or at private sale, in both cases at not exceeding such price or prices as may be fixed or approved by the stockholders entitled to vote upon the reduction of capital to be effected in that manner.

(4) By the exchange by the holders of outstanding shares of any class of stock, with or without par value, for the same or a greater or lesser number of shares of the same or of a different class or classes of stock, with or without par value, the effect of which is to work a reduction in capital.

(5) By reducing the par value of the shares of any class of stock having par value in conjunction with appropriate action under K.S.A. 17-6602.

(6) By reducing the aggregate amount of capital represented by shares of par or no par stock, but the capital represented by shares of stock having par value shall not be reduced to an amount less than the aggregate par value of such shares.

(7) By retransferring to surplus all or any part of the amount by which capital shall have been increased by the transfer thereto from surplus pursuant to the provisions of K.S.A. 17-6404 if such transfer shall not have been made in respect of any designated class or classes of stock.

(8) By retiring shares owned by the corporation. If such reduction of capital be effected by retiring shares, then, if the consent or resolution of stockholders referred to in subsection (b) shall so provide, an amount not exceeding that part of the capital of the corporation represented by such shares may be charged against or paid out of the capital of the corporation in respect of such shares.

No reduction of capital however, shall be made unless the assets of the corporation remaining after such reduction are sufficient to pay any debts, the payment of which shall not have been otherwise provided for, and the certificate of reduction required by subsection (b) shall so state.

(b) Any reduction of capital may be effected by resolution of the directors of the corporation, supplemented by a resolution adopted by the holders of record of a majority of the shares of the corporation having voting power at a meeting of the stockholders held upon notice given in accordance with K.S.A. 17-6512. A certificate stating that such resolutions have been adopted and specifying the manner in and the extent to which the capital of the corporation is to be reduced shall be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003.

(c) If such reduction of capital shall have been effected by retiring or reducing the issued shares of any class, whether or not already owned by the corporation, in any of the manners permitted by subsection (a), and if the articles of incorporation do not prohibit the reissue thereof, such shares, upon filing of such certificate and subject to the provisions of subsection (d) of K.S.A. 17-6003, shall have the status of authorized and unissued shares of the class of stock to which such shares belong.

(d) If the articles of incorporation prohibit the reissue of such shares, the filing and recording of the certificate required by subsection (b), containing a recital of such fact, shall constitute an amendment to the articles of incorporation effecting a reduction of the authorized capital stock of the corporation to the extent of the aggregate par value of such shares, or, if such shares are without par value, to the extent of the total number of such shares, subject to the provisions of subsection (d) of K.S.A. 17-6003. If such shares constitute all the outstanding shares of any particular class and the reissue is so prohibited, the filing of such certificate containing a recital of such fact shall constitute an amendment of the articles of incorporation effecting a reduction in the authorized capital stock of the corporation by the elimination therefrom of all reference to the particular class of

stock, subject to the provisions of subsection (d) of K.S.A. 17-6003.

(e) When any corporation shall decrease the amount of its capital as provided in this section, notice of the reduction of capital shall be published at least once in a newspaper of general circulation in the county in which the registered office of the corporation is located within fifteen (15) days after the filing of the certificate as provided in this section, and in default thereof the directors of the corporation shall be jointly and severally liable to any creditors of the corporation who shall suffer loss by reason of the noncompliance with the provisions of this section, and the stockholders shall be similarly liable up to the amount of such sums as they may respectively receive of the amount so reduced. No such decrease of capital shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted.

(a) A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways by:

(1) Reducing or eliminating the capital represented by shares of capital stock which have been retired;

(2) Applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock;

(3) Transferring to surplus: (A) Some or all of the capital not represented by any particular class of its capital stock; (B) some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or (C) some of the capital represented by issued shares of its capital stock without par value.

(b) Notwithstanding the other provisions of this section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any stockholder whose shares have not been fully paid.

Sec. 38. K.S.A. 17-6605 is hereby amended to read as follows: 17-6605. (a) Whenever it is so desired, a corporation may integrate into a single instrument all of the provisions of its articles of incorporation which are then in effect and operative as a result of there having theretofore been filed with the secretary of state one or more certificates or other instruments pursuant to any of the sections referred to in K.S.A. 17-6004, and amendments thereto, and it may at the same time also further amend its articles of incorporation by adopting a restated articles of incorporation.

(b) If the restated articles of incorporation merely restate and integrate but do not further amend the articles of incorporation, as theretofore amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in K.S.A. 17-6004, and amendments thereto, said such restated articles may be adopted by the board of directors without a vote of the stockholders, or they may be proposed by the directors and submitted by them to the stockholders for adoption, in which case the procedure and vote required by K.S.A. 17-6602, and amendments thereto, for amendment of the articles of incorporation shall be applicable. If the restated articles of incorporation restate and integrate and also further amend in any respect the articles of incorporation, as theretofore amended or supplemented, they shall be proposed by the directors and adopted by the stockholders in the manner and by the vote prescribed by K.S.A. 17-6602, and amendments thereto, or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by K.S.A. 17-6601, and amendments thereto.

(c) Any restated articles of incorporation shall be specifically designated as such in its heading. They shall state, either in the heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original articles of incorporation with the secretary of state. Any restated

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articles shall also state that they were duly adopted by the directors or stockholders, as the case may be, in accordance with the provisions of this section. If they were adopted by the board of directors without a vote of the stockholders *unless it was adopted pursuant to the provisions of K.S.A. 17-6601, and amendments thereto*, they shall state that they only restate and integrate and do not further amend the provisions of the corporation's articles of incorporation as theretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated articles. ~~Any restated articles of incorporation may omit such provisions of the original articles of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares; and such omission shall not be deemed a further amendment. A restated articles of incorporation may omit: (1) Such provisions of the original articles of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and (2) such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock if such change, exchange, reclassification or cancellation has become effective. Any such omissions shall not be deemed a further amendment.~~

(d) Any restated articles of incorporation shall be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003, and amendments thereto. Upon filing with the secretary of state, the corporation's original articles of incorporation, as theretofore amended or supplemented, shall be superseded; and thenceforth the restated articles, including any further amendments or changes made thereby, shall be the articles of incorporation of the corporation, *but the original date of incorporation shall remain unchanged.*

(e) Any amendment or change effected in connection with the restatement and integration of the articles of incorporation shall be subject to any other provisions of this act, not inconsistent with this section, which would apply, if a separate certificate of amendment were filed to effect such amendment or change.

Sec. 39. K.S.A. 1987 Supp. 17-6701 is hereby amended to read as follows: 17-6701. (a) Any two or more corporations existing under the laws of this state and authorized to issue capital stock may merge into a single corporation, which may be any one of the constituent corporations or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) *in the case of a merger, such amendments or changes in the articles of incorporation of the surviving or resulting corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the articles of incorporation of one of the constituent surviving corporations shall be the its articles of incorporation of the surviving or resulting corporation;* (4) *in the case of consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;* (5) the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing certificated shares, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and (5) (6) such other details or provisions as are deemed desirable, including, without limiting, the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or

for any other arrangement with respect thereto, consistent with the provisions of K.S.A. 17-6405 and amendments thereto. The agreement so adopted shall be executed in accordance with K.S.A. 17-6003 and amendments thereto. *Any terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.*

(c) The agreement required by subsection (b) shall be submitted to the stockholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock of the corporation, whether voting or nonvoting, at the stockholder's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation ~~under the seal thereof~~. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be executed, acknowledged and filed, and shall become effective, in accordance with K.S.A. 17-6003 and amendments thereto. It shall be recorded in the office of the register of deeds of each county of this state in which the registered office of any such constituent corporation is located; or if any of the constituent corporations shall have been specially created by an act of the legislature, then the agreement shall be recorded in the county where such corporation had its principal place of business in this state. *In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states: (1) The name and state of incorporation of each of the constituent corporations; (2) that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with this subsection; (3) the name of the surviving or resulting corporation; (4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such changes or amendments are desired, a statement that the articles of incorporation of one of the surviving corporations shall be the articles of incorporation; (5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate; (6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and (7) that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.*

(d) Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement with the secretary of state, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the stockholders of all or any of the constituent corporations. *Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the secretary of state provided that an amendment made subsequent to the adoption of the agreement by the stockholders of any constituent corporation shall not: (1) Alter or change the amount or kind of shares, securities, cash, property or rights, or any of the proceedings, in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation; (2) alter or change any term of the articles of incorporation of the surviving corporation to be effected by the merger or consolidation; or (3) alter or change any of the terms and conditions of the agreement if such*

alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation.

(e) In the case of a merger, the articles of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the articles of incorporation are set forth in the agreement of merger.

(f) Notwithstanding the requirements of subsection (c), unless required by its articles of incorporation, no vote of stockholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if: (1) The agreement of merger does not amend in any respect the articles of incorporation of the surviving corporation, and (2) the authorized unissued shares or the treasury shares of any class of stock of the surviving corporation to be issued or delivered under the plan of merger do not exceed 15% of the shares of the surviving corporation of the same class outstanding immediately prior to the effective date of the merger. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its stockholders pursuant to this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement, under its seal, that the agreement has been adopted pursuant to this subsection and that, as of the date of such certificate, the outstanding shares of the corporation were such as to render this subsection applicable. The agreement so adopted and certified shall then be executed, acknowledged and filed, and shall become effective, in accordance with K.S.A. 17-6003 and amendments thereto. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

Sec. 40. K.S.A. 1987 Supp. 17-6702 is hereby amended to read as follows: 17-6702. (a) Any one or more corporations of this state authorized to issue capital stock may merge or consolidate with one or more other stock corporations of any other state or states of the United States, or of the District of Columbia if the laws of such other jurisdiction permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this state, if the surviving or resulting corporation will be a corporation of this state, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge or consolidate with a corporation of another jurisdiction.

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing certificated shares, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation; (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the

provisions of K.S.A. 17-6405 and amendments thereto; and (5) such other provisions or facts as shall be required to be set forth in articles of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. *Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.*

(c) The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of a Kansas corporation, in the same manner as provided in K.S.A. 17-6701 and amendments thereto. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6701 and amendments thereto with respect to the merger or consolidation of corporations of this state. *In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states: (1) The name and state of incorporation of each of the constituents; (2) that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with this subsection; (3) the name of the surviving or resulting corporation; (4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation; (5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate; (6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof; (7) that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation; (8) if the corporation surviving or resulting from the merger or consolidation is to be a corporation of this state, the authorized capital stock of each constituent corporation which is not a corporation of this state; and (9) the agreement, if any, required by subsection (d).*

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholder as determined in appraisal proceedings pursuant to the provisions of K.S.A. 17-6712 and amendments thereto, and shall irrevocably appoint the secretary of state as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

(e) The provisions of subsection (d) of K.S.A. 17-6701 and amendments thereto shall apply to any merger or consolidation under this section; the provisions of subsection (e) of K.S.A. 17-6701 and amendments thereto shall apply to a merger under this section in which the surviving corporation is a corporation of

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this state; the provisions of subsection (f) of K.S.A. 17-6701 and amendments thereto shall apply to any merger under this section.

Sec. 41. K.S.A. 1987 Supp. 17-6703 is hereby amended to read as follows: 17-6703. (a) In any case in which at least 90% of the outstanding shares of each class of the stock of a corporation or corporations is owned by another corporation and one of such corporations is a corporation of this state and the other or others are corporations of this state or of any other state or states or of the District of Columbia and the laws of such other jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge such other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other corporations, into one of such other corporations by executing, acknowledging and filing, in accordance with K.S.A. 17-6003 and amendments thereto, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption thereof, except that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation and for the surrender of the certificates evidencing certificated shares, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after 20 days' notice of the purpose of the meeting mailed to each such stockholder at the stockholder's address as it appears on the records of the corporation. A certified copy of the certificate shall be recorded in the office of the register of deeds of the county in this state in which the registered office of each constituent corporation which is a corporation of this state is located. If the surviving corporation exists under the laws of the District of Columbia or any state other than this state, the provisions of subsection (d) of K.S.A. 17-6702 and amendments thereto shall also apply to a merger under this section.

(b) If the surviving corporation is a Kansas corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

(c) Any merger which effects any changes other than those herein specifically authorized with respect to the parent corporation shall be accomplished under the provisions of K.S.A. 17-6701 or 17-6702 and amendments thereto. The provisions of K.S.A. 17-6712 and amendments thereto shall not apply to any merger effected under this section, except as provided in subsection (d).

(d) In the event all of the stock of a subsidiary Kansas corporation party to a merger effected under this section is not owned by the parent corporation immediately prior to the merger, the surviving corporation shall, within 10 days after the effective date of the merger, notify each stockholder of such Kansas corporation that the merger has become effective. The notice shall be sent by certified or registered mail, return receipt requested, addressed to the stockholder at the stockholder's address as it appears on the records of the corporation. Any such stockholder, within 30 days after the date of mailing of the notice, may demand in writing from the surviving corporation payment of the value of the stockholder's stock exclusive of any element of value arising from the expectation or accomplishment of the merger. If during a period of 30 days after such period of 30 days the surviving corporation and any such objecting stock-

holder fail to agree as to the value of such stock, any such stockholder or the corporation may file a petition in the district court as provided in subsection (e) of K.S.A. 17-6712 and amendments thereto and thereupon the parties shall have the rights and duties and follow the procedure set forth in subsections (d) through (j) of K.S.A. 17-6712 and amendments thereto.

(e) A merger may be effected under this section although one or more of the corporations party to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States, if the laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction and if the surviving or resulting corporation shall be a corporation of this state.

(f) The provisions of subsection (d) of K.S.A. 17-6701 and amendments thereto shall apply to a merger under this section and the provisions of subsection (e) of K.S.A. 17-6701 and amendments thereto shall apply to a merger under this section in which the surviving corporation is a corporation of this state.

(c) The provisions of subsection (d) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section in which the surviving corporation is the subsidiary corporation and is a corporation of this state. References to "agreement of merger" in subsections (d) and (e) of K.S.A. 17-6701, and amendments thereto, shall mean, for the purposes of this subsection (c), the resolution of merger adopted by the board of directors of the parent corporation. Any merger which effects any changes other than those authorized by this section or made applicable by this subsection shall be accomplished under the provisions of K.S.A. 17-6701 or 17-6702, and amendments thereto. The provisions of K.S.A. 17-6712, and amendments thereto, shall not apply to any merger effected under this section, except as provided in subsection (d).

(d) In the event all of the stock of a subsidiary Kansas corporation party to a merger effected under this section is not owned by the parent corporation immediately prior to the merger, the stockholders of the subsidiary Kansas corporation party to the merger shall have appraisal rights as set forth in K.S.A. 17-6712, and amendments thereto.

(e) A merger may be effected under this section although one or more of the corporations party to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States; provided that the laws of such jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction; and provided further that the surviving corporation shall be a corporation of this state.

Sec. 42. K.S.A. 17-6704 is hereby amended to read as follows: 17-6704. (a) The term "joint-stock association," as used in this section, includes any association of the kind commonly known as joint-stock association or joint-stock company and any unincorporated association, trust or enterprise having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed by agreement or under statutory authority or otherwise, but does not include a corporation. The term "stockholder," as used in this section, includes every member of such joint-stock association or holder of a share of stock or other evidence of financial or beneficial interest therein.

(b) Any one or more corporations of this state may merge or consolidate with one or more joint-stock associations, except a joint-stock association formed under the laws of a state which forbids such merger or consolidation. Such corporation or corporations and any such joint-stock association or associations may merge into a single corporation, which may be any one of such corporations, or they may consolidate into a new corporation formed by the consolidation, which shall be a corporation of this state, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving constituent corporation or the new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

(c) Each such corporation and joint-stock association shall enter into a written agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3)

the manner of converting the shares of each of the corporations and the shares of each of the joint-stock associations or financial or beneficial interests therein into shares or other securities of the corporation surviving or resulting from such merger or consolidation; and if any shares of any of the corporations or any shares of any of the joint-stock associations, or any of the financial or beneficial interests therein, are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation which is to be paid or delivered in exchange for or upon the surrender of such shares or interests, which cash or securities of any other corporation may be in addition to the shares or other securities of the surviving or resulting corporation into which any of such shares or interests are to be converted the manner of converting the shares of stock of each stock corporation, the interests of members of each nonstock corporation, and the shares, memberships or financial or beneficial interests in each of the joint-stock associations into shares or other securities of a stock corporation surviving or resulting from such merger or consolidation, or into shares or other securities of any other corporation, or into cash or other consideration, or of converting the shares of stock of each stock corporation, the interest of members of each nonstock corporation and the shares, memberships or financial or beneficial interests in each of the joint-stock associations into membership interests of a nonstock corporation surviving or resulting from such merger or consolidation or into cash or other property, as the case may be; and (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares of the surviving or resulting corporation. There shall also be set forth in the agreement such other matters or provisions as shall then be required to be set forth in articles of incorporation by the laws of this state and that can be stated in the case of such merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(d) The agreement shall be adopted, approved, executed and acknowledged by each of the corporations in the same manner as is provided in K.S.A. 17-6701, and amendments thereto, and in the case of the joint-stock associations in accordance with their articles of association or other instrument containing the provisions by which they are organized or regulated or in accordance with the laws of the state under which they are formed, as the case may be. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6701, and amendments thereto, with respect to the merger or consolidation of corporations of this state. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states:

(1) The name and state of domicile of each of the constituent entities;

(2) that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;

(3) the name of the surviving or resulting corporation;

(4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;

(5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof; and

(7) that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent entity.

(e) The provisions of subsections (d) and (e) of K.S.A. 17-6701, 17-6709 to through 17-6712, inclusive, and 17-7103, and amendments thereto, shall apply, insofar as they are applicable, to mergers or consolidations between corporations and joint-stock associations; and the word "corporation" where applicable, as used in those sections, shall be deemed to include joint-stock associations as defined herein. The personal liability, if any, of any stockholder of a joint-stock association existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such stockholder and shall not become the liability of any subsequent transferee of any share of stock in such surviving or resulting corporation or of any other stockholder of such surviving or resulting corporation.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired, but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Sec. 43. K.S.A. 17-6705 is hereby amended to read as follows: 17-6705. (a) Any two or more nonstock, nonprofit corporations of this state may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, nonprofit corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this act to be stated in articles of incorporation for nonstock, nonprofit corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4) the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and (5) such other details or provisions as are deemed desirable. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(c) The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of his such corporation, at his the member's address as it appears on the records of the corporation, at least ~~twenty~~ (20) 20 days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable. At the meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each member who has the right to vote for the election of the members of the governing body of his corporation being entitled to one vote. If the votes of ~~two-thirds~~ (4/5) 2/3 of the total number of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation, under the seal of each such corporation. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. It shall be recorded in the

(continued)

office of the register of deeds of the county in this state in which the registered office of each such constituent corporation is located; or if any of the constituent corporations shall have been specially created by act of the legislature, then the agreement shall be recorded in the county where such corporation had its principal place of business in this state. *The provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the reference therein to "stockholder" shall be deemed to include "member" hereunder.*

(d) If, under the provisions of the articles of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided in subsection (b) of this section shall be submitted to the members of the governing body of such corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting ~~two-thirds~~ ^(2/3) $\frac{2}{3}$ of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation; thereafter, the same procedure shall be followed to consummate the merger or consolidation.

(e) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section.

(f) *Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired, but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.*

Sec. 44. K.S.A. 17-6706 is hereby amended to read as follows: 17-6706. (a) Any one or more nonstock, nonprofit corporations of this state may merge or consolidate with one or more other nonstock, nonprofit corporations of any other state or states of the United States or of the District of Columbia, if the laws of such other jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, nonprofit corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more nonstock, nonprofit corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock, nonprofit corporations of this state if the surviving or resulting corporation will be a corporation of this state, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from such merger or consolidation; (4) such other details and provisions as shall be deemed desirable; and (5) such other provisions or facts as shall then be required to be stated in articles of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. *Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.*

(c) The agreement shall be adopted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed and, in the case of a Kansas corporation, in the same manner as is provided in K.S.A. 17-6705, and amendments thereto. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6705, and amendments thereto, with respect to the merger of nonstock, nonprofit corporations of this state. *Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6702, and amendments thereto, shall apply to a merger under this section, and the reference therein to "stockholder" shall be deemed to include "member" hereunder.*

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, and shall irrevocably appoint the secretary of state as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

(e) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, if the corporation surviving the merger is a corporation of this state.

Sec. 45. K.S.A. 17-6707 is hereby amended to read as follows: 17-6707. (a) Any one or more nonstock corporations of this state, whether or not organized for profit, may merge or consolidate with one or more stock corporations of this state, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving constituent corporation or the new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

(b) The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this act to be stated in articles of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4) the manner of converting the shares of stock of a stock corporation and the interests of members of a nonstock corporation into shares or other securities of a stock corporation surviving or resulting from such merger or consolidation or of any other corporation or into cash or other consideration, or of converting the shares of stockholders in a stock corporation and the interests of members of a nonstock corporation into membership interests of a nonstock corporation surviving or resulting from such merger or consolidation, or into cash or other property, as the case may be; and (5) such other details or provisions as are deemed desirable. In such merger or consolidation, the interests of members of a constituent nonstock corporation may be treated in various ways so as to convert such interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or

resulting stock corporation, voting or non-voting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporation received by stockholders of a constituent stock corporation, and the voting or non-voting shares of a stock corporation may be converted into voting or non-voting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in any nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. *Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.*

(c) The agreement, in the case of each constituent stock corporation, shall be adopted, approved, executed and acknowledged by each constituent corporation in the same manner as is provided in K.S.A. 17-6701, and amendments thereto, and, in the case of each constituent nonstock corporation, shall be adopted, approved, executed and acknowledged by each of said constituent corporations in the same manner as is provided in K.S.A. 17-6705, and amendments thereto. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6701, and amendments thereto, with respect to the merger of stock corporations of this state. *Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the reference therein to "stockholder" shall be deemed to include "member" hereunder.*

(d) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, if the surviving corporation is a corporation of this state; the provisions of subsection (d) of K.S.A. 17-6701, and amendments thereto, shall apply to any constituent stock corporation participating in a merger or consolidation under this section; and the provisions of subsection (f) of K.S.A. 17-6701, and amendments thereto, shall apply to any constituent stock corporation participating in a merger under this section.

(e) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

Sec. 46. K.S.A. 17-6709 is hereby amended to read as follows: 17-6709. (a) No merger or consolidation shall become effective under this act until all corporate fees and taxes due to or assessable by the state have been paid by the constituent corporations. Any fees or taxes which become due to or assessable by the state with respect to any such constituent corporation, subsequent to the merger or consolidation, shall become the debt of the resulting or surviving corporation. When any merger or consolidation shall have become effective under this act, for all purposes of the laws of this state the separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations,

and all property, real, personal and mixed, and all debts due to any of said such constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of this state, in any of such constituent corporations, shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of any of said such constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said such surviving or resulting corporation, and may be enforced against it to the same extent as if said such debts, liabilities and duties had been incurred or contracted by it.

(b) *In the case of a merger of banks or trust companies, without any order or action on the part of any court or otherwise, all appointments, designations and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, shall be automatically vested in the corporation surviving such merger; provided, however, that any party in interest shall have the right to apply to an appropriate court or tribunal for a determination as to whether the surviving corporation shall continue to serve in the same fiduciary capacity as the merged corporation, or whether a new and different fiduciary should be appointed.*

Sec. 47. K.S.A. 17-6805 is hereby amended to read as follows: 17-6805. (a) Whenever it shall be desired to dissolve any corporation not for profit and having no capital stock, the governing body shall perform all the acts necessary for dissolution which are required by K.S.A. 17-6804, and amendments thereto, to be performed by the board of directors of a corporation having capital stock. If the members of a corporation not for profit and having no capital stock are entitled to vote for the election of members of its governing body, they shall perform all the acts necessary for dissolution which are required by K.S.A. 17-6804, and amendments thereto, to be performed by the stockholders of a corporation having capital stock. If there is no member entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to dissolve by the vote of a majority of members of its governing body then in office. In all other respects, the method and proceedings for the dissolution of a corporation not for profit or having no capital stock shall conform as nearly as may be possible to the proceedings prescribed by K.S.A. 17-6804, and amendments thereto, for the dissolution of corporations having capital stock.

(b) *If a corporation having no capital stock has not commenced the business for which the corporation was organized, a majority of the governing body or, if none, a majority of the incorporators may surrender all of the corporation's rights and franchises by filing in the office of the secretary of state a certificate, executed and acknowledged by a majority of the incorporators or governing body, conforming as nearly as may be possible to the certificate prescribed by K.S.A. 17-6803, and amendments thereto, for the dissolution of corporations having capital stock prior to commencing business.*

Sec. 48. K.S.A. 17-6807 is hereby amended to read as follows: 17-6807. All corporations, whether they expire by their own limitation or are otherwise dissolved, including revocation or forfeiture of articles of incorporation pursuant to K.S.A. 17-6812 or 17-7510, and amendments thereto, shall be continued, nevertheless, for the term of three (3) years from such expiration or dissolution or for such longer period as the district court in its discretion shall direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their

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property, to discharge their liabilities and to distribute to their stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, and for the purpose of such actions, suits or proceedings, the corporation shall be continued a body corporate beyond the three-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the district court the action shall not abate by reason of the dissolution of the corporation; and the corporation shall, solely for the purpose of such action, suit or proceeding, be continued as a body corporate beyond the three-year period and until any judgments, orders or decrees thereon shall be executed, without the necessity for any special direction to that effect.

Sec. 49. K.S.A. 17-6808 is hereby amended to read as follows: 17-6808. When any corporation organized under this act shall be dissolved in any manner whatever, the district court, on application of any creditor or stockholder of the corporation, or on application of any one, who, in the court's discretion, stockholder or director of the corporation, or any other person who shows good cause therefor, at any time, either may appoint one or more of the directors of the corporation to be trustees, or may appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the court shall think necessary for the purposes aforesaid.

New Sec. 50. There is hereby established a swine technology center at Kansas state university. The objectives of the center shall include, but not be limited to, providing a unique center for interaction between the swine industry and the university for the enhancement of swine profitability in Kansas; supporting the current swine producers of the state with a nontraditional, interdisciplinary center for education, communication and delivery of swine production expertise; stimulating growth and efficiency in the Kansas swine industry thereby increasing economic development; disseminating current technology to the Kansas swine industry; and bringing national and international visibility to the Kansas swine industry and Kansas state university.

New Sec. 51. (a) The swine technology center shall have technical support through the following faculty positions:

- (1) Agricultural engineer;
 - (2) veterinarian;
 - (3) nutritionist;
 - (4) financial and marketing analyst; and
 - (5) breeding herd physiologist and production record analyst.
- (b) Such faculty positions shall be supported by technical assistants and clerical staff.

New Sec. 52.

KANSAS STATE UNIVERSITY

Expenditures may be made for the fiscal year ending June 30, 1989, from the swine technology center account of the state general fund for salaries and wages for positions established for Kansas state university for the swine technology center and all such positions shall be in addition to any limitation imposed on the number of full-time and regular part-time positions equated to full-time, in the classified service or unclassified service under the Kansas civil service act, excluding seasonal and temporary positions, paid from any appropriations for the fiscal year ending June 30, 1989, for Kansas state university, except that the number of full-time and regular part-time positions equated to full-time, excluding seasonal and temporary positions, paid from moneys appropriated for the fiscal year ending June 30, 1989, in the swine technology center account of the state general fund shall not exceed the following, except upon approval of the state

finance council: (1) Positions in the unclassified service shall not exceed 10.0 and (2) positions in the classified service shall not exceed 1.25.

Sec. 53. K.S.A. 1987 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 1954 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, and amendments thereto, which has within the association one or more corporations.

(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 eggs, 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 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;

(2) the stockholders are all natural persons or persons acting

in a fiduciary capacity for the benefit of natural persons or nonprofit corporations; and

(3) at least 30% of the stockholders are persons residing on the farm or actively engaged in the day-to-day labor or management of the farming operation. If only one of the stockholders 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.

For the purposes of this definition, if more than one person receives stock by bequest from a deceased stockholder, all of such persons, collectively, shall be deemed to be one stockholder, and a husband and wife, and their estates, collectively, shall be deemed to be one stockholder.

(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) "Processor" means a person, firm, corporation or limited partnership, which alone or in conjunction with others, directly or indirectly, controls the manufacturing, processing or preparation for sale of pork products having a total annual wholesale value of \$10,000,000 or more. Any person, firm, corporation or limited partner with a 10% or greater interest in another person, firm, corporation or limited partnership involved in the manufacturing, processing or preparation for sale of pork products having a total annual wholesale value of \$10,000,000 or more shall also be considered a processor. The term "processor" shall not include collective bargaining units or farmer-owned cooperatives.

(s) "Swine confinement facility" means the land, structures and related equipment owned or leased by a corporation and used for housing, breeding, farrowing or feeding of swine in an enclosed environment. 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.

New Sec. 54. (a) In order to preserve free and private enterprise, prevent monopoly and protect consumers, it is unlawful for any processor of pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner to: (1) Contract for the production of hogs of which the processor is the owner or (2) own hogs, except such processor may own hogs for 30 days before such hogs are manufactured, processed or prepared for sale as pork products.

(b) This section shall be part of and supplemental to the provisions of K.S.A. 17-5902 through 17-5904, and amendments thereto.

New Sec. 55. The violation of the provisions of section 6 shall subject the violator to a fine of not more than \$50,000. The district courts of this state may prevent and restrain violations of section 54 through the issuance of an injunction or other equitable and legal relief which the court may find appropriate. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of section 54.

Sec. 56. K.S.A. 1987 Supp. 17-5904 is hereby amended to read as follows: 17-5904. (a) No corporation, trust, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state. The restrictions provided in this section do not apply to the following:

(1) A bona fide encumbrance taken for purposes of security.

(2) Agricultural land when acquired as a gift, either by grant or devise, by a bona fide educational, religious or charitable nonprofit corporation.

(3) Agricultural land acquired by a corporation in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation.

(4) Agricultural land acquired by a corporation by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure, except that provisions of K.S.A. 9-1102, and amendments thereto, shall apply to any bank which acquires agricultural land.

(5) A municipal corporation.

(6) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation.

(7) Agricultural land owned or leased or held under a lease purchase agreement as described in K.S.A. 12-1741, and amendments thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; or (B) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the

(continued)

provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901 shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.

(8) Agricultural land held or leased by a corporation for use as a feedlot, a poultry confinement facility or rabbit confinement facility.

(9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod.

(10) Agricultural land used for bona fide educational research or scientific or experimental farming.

(11) Agricultural land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa by an alfalfa processing entity if such land is located within 30 miles of such entity's plant site.

(12) Agricultural land owned or leased by a corporate partnership or limited corporate partnership in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, family trusts, authorized trusts or testamentary trusts.

(13) Any corporation, either domestic or foreign, organized for coal mining purposes which engages in farming on any tract of land owned by it which has been strip mined for coal.

(14) Agricultural land owned or leased by a limited partnership prior to the effective date of this act.

(b) *Except as provided in section 54, production contracts entered into by a corporation, trust, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.*

(b)(c) Any corporation, trust, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divest itself of any land acquired in violation of this section within one year after judgment is entered in the action. The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section.

(e)(d) Civil penalties sued for and recovered by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

Sec. 57. K.S.A. 1987 Supp. 79-250 is hereby amended to read as follows: 79-250. No city or county may grant any exemption from ad valorem taxation under section 13 of article 11 of the Constitution of the state of Kansas for all or any portion of the appraised valuation of all or any part of the buildings, improvements, tangible personal property and land of any poultry confinement facility or, rabbit confinement facility or swine confinement facility which is on agricultural land and which is owned or operated by a corporation. As used in this section, "corporation," "agricultural land", "poultry confinement facility" and, "rabbit confinement facility" and "swine confinement facility" have the meanings respectively ascribed thereto by K.S.A. 17-5903, and amendments thereto.

New Sec. 58. No revenue bonds shall be issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, in which all or part of the proceeds of such bond issue are to be used to purchase, acquire, construct, reconstruct, improve, equip, furnish, repair, enlarge or remodel property for any swine confinement facility on agricultural land which is owned, acquired, obtained or leased by a corporation. As used in this section, "corporation," "agricultural land" and "swine confine-

ment facility" have the meanings respectively ascribed thereto by K.S.A. 17-5903, and amendments thereto.

New Sec. 59. The governing body of a city or the board of county commissioners of any county shall not designate an area as an enterprise zone pursuant to K.S.A. 12-17,108 *et seq.*, and amendments thereto, if within such area there is located a swine confinement facility as defined in K.S.A. 17-5903, and amendments thereto.

Sec. 60. K.S.A. 1987 Supp. 79-32,154 is hereby amended to read as follows: 79-32,154. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein: (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) "Qualified business facility" shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons; such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (1), at such facility.

(c) "Revenue producing enterprise" shall mean: (1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) the storage, warehousing, distribution or sale of any products of agriculture, mining or manufacturing;

(3) the feeding of livestock at a feedlot;

(4) the operation of laboratories or other facilities for scientific, agricultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type;

(6) the administrative management of any of the foregoing activities; or

(7) any combination of any of the foregoing activities.

"Revenue producing enterprise" shall not mean a swine confinement facility as defined in K.S.A. 17-5903, and amendments thereto.

(d) "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the qualified business facility on: (1) a regular, full-time basis; (2) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (3) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of qualified business facility employees during any taxable year shall be determined by dividing by 12 the sum of the number of qualified

business facility employees on the last business day of each month of such taxable year. If the qualified business facility is in operation for less than the entire taxable year, the number of qualified business facility employees shall be determined by dividing the sum of the number of qualified business facility employees on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment, the number of qualified business facility employees employed in the operation of such facility shall be reduced by the average number, computed as provided in this subsection, of individuals employed in the operation of the facility during the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(e) "Qualified business facility investment" shall mean the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

(g) "Qualified business facility income" shall mean the Kansas taxable income, as defined in article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income, computed in accordance with article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two.

(1) The property factor is a fraction, the numerator of which is

the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of the qualified business facility during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. The average value of all such property shall be determined as provided in K.S.A. 79-3281 and 79-3282, and amendments thereto.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as qualified business facility employees, as determined under subsection (d), at the qualified business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in K.S.A. 79-3283, and amendments thereto.

The formula set forth in this subsection (g) shall not be used for any purpose other than determining the qualified business facility income attributable to a qualified business facility.

(h) "Related taxpayer" shall mean (1) a corporation, partnership, trust or association controlled by the taxpayer; (2) an individual, corporation, partnership, trust or association in control of the taxpayer; or (3) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. For the purposes of this act, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; "control of a partnership or association" shall mean ownership of at least 80% of the capital or profits interest in such partnership or association; and "control of a trust" shall mean ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of such trust.

(i) "Same or substantially identical revenue producing enterprise" shall mean a revenue producing enterprise in which the products produced or sold, services performed or activities conducted are the same in character and use, are produced, sold, performed or conducted in the same manner and to or for the same type of customers as the products, services or activities produced, sold, performed or conducted in another revenue producing enterprise.

Sec. 61. K.S.A. 17-6009, 17-6102, 17-6204, 17-6302, 17-6402, 17-6404, 17-6410, 17-6417, 17-6418, 17-6420, 17-6422, 17-6423, 17-6426, 17-6501, 17-6503, 17-6504, 17-6505, 17-6506, 17-6508, 17-6509, 17-6510, 17-6511, 17-6512, 17-6513, 17-6515, 17-6520, 17-6601, 17-6602, 17-6604, 17-6605, 17-6704, 17-6705, 17-6706, 17-6707, 17-6709, 17-6805, 17-6807, 17-6808 and 17-7507 and K.S.A. 1987 Supp. 17-5903, 17-5904, 17-6002, 17-6301, 17-6401, 17-6406, 17-6408, 17-6409, 17-6603, 17-6701, 17-6702, 17-6703, 79-250 and 79-32,154 are hereby repealed.

Sec. 62. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body March 23, 1988.

HOUSE concurred in SENATE amendments April 9, 1988.

JAMES D. BRADEN
Speaker of the House.
GENEVA SEWARD
Chief Clerk of the House.

Passed the SENATE as amended April 8, 1988.

ROBERT V. TALKINGTON
President of the Senate.
LU KENNEY
Secretary of the Senate.

APPROVED April 18, 1988.

MIKE HAYDEN
Governor.

STATE OF KANSAS
Office of Secretary of State

I, BILL GRAVES, Secretary of State of the State of Kansas, do hereby certify that the above and foregoing is a correct copy of the original enrolled bill now on file in my office. IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 18th day of April, 1988.

(SEAL)

BILL GRAVES
Secretary of State.

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