

Journal of the Senate

SEVENTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, May 17, 2012, 10:00 a.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-eight senators present.
Senators Emler and Taddiken were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

When the days are getting longer,
And the nights are getting short;
When my patience's wearing thin
And I'm feeling out of sorts.

When I think I've been mistreated,
And I find it hard to pray;
When my body's gaining weight,
And my hair is turning gray.

When I thought I'd done my best,
But made people mad;
When things start out so good
And wind up really bad.

When I stop to smell the roses
And the thorns all prick my nose;
When I go to church for comfort,
And get stepped upon my toes.

That's when I turn to You, O God,
Who's there when ever I call;
Who is my closest friend
Who loves me—warts and all.

That's when You remind me,
Though life seems so unfair;
You promised I would never have
More than I could bear.

We thank You in the Name of Jesus Christ, AMEN

The Pledge of Allegiance was led by President Stephen Morris.

COMMUNICATIONS FROM STATE OFFICERS

Kansas Department of Corrections

May 10, 2012

In accordance with KSA 60-4117, Ray Roberts, Secretary of Corrections submitted the report for the Kansas Department of Corrections State Forfeiture Fund for the period of December 1, 2010 through December 1, 2011.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **SB 250**.

On motion of Senator V. Schmidt, the Senate recessed until 10:30 a.m..

The Senate met pursuant to recess with President Morris in the chair.

ORIGINAL MOTIONS

Senator V. Schmidt moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **SB 250, SB 273; Sub for SB 283; S Sub for Sub HB 2333; S Sub for HB 2390**.

CONSIDERATION OF MOTIONS TO CONCUR AND NONCONCUR

Senator Teichman moved the Senate concur in House amendments to **SB 273**.

SB 273, AN ACT concerning costs for examination of an insurance company; amending K.S.A. 2011 Supp. 40-223 and repealing the existing section.

On roll call, the vote was: Yeas 37; Nays 0; Present and Passing 0; Absent or Not Voting 3.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Absent or Not Voting: Emler, Taddiken, Wagle.

The Senate concurred.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 250** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee of the Whole amendments, as follows: on page 1, by striking all in lines 6 through 32;

By striking all in pages 2 through 5;

On page 6, by striking all in line 1 and inserting:

"Section 1. (a) (1) Except as provided in paragraphs (2) and (3), whenever a municipality provides for the payment of premiums for any health benefit plan for its firefighters, it shall pay premiums for the continuation of coverage under COBRA for the surviving spouse and dependent children of a firefighter who dies in the line of duty. Premiums for continuation of coverage under COBRA shall be paid for 18 months.

(2) A municipality may not be required to pay the premiums described in paragraph (1) for a surviving spouse:

(A) On or after the end of the 18th calendar month after the date of death of the deceased firefighter;

(B) upon the remarriage of the deceased firefighter's surviving spouse; or

(C) upon the deceased firefighter's surviving spouse reaching the age of 65.

(3) An individual is not a dependent child of a deceased firefighter for the purposes of paragraph (1) after such individual reaches the age of 18 years unless such individual is a:

(A) Full-time student in an accredited high school; or

(B) full-time student in a postsecondary educational institution, except that this subparagraph shall not apply to such an individual after the close of the calendar year in which the individual reaches the age of 24 as long as such individual continues to maintain such status as a full-time student.

(b) For the purposes of this section:

(1) "Firefighter" means an actual member of an organized fire department, of a municipality, whether regular or volunteer.

(2) "Health benefit plan" shall have the meaning ascribed to it in K.S.A. 40-4602, and amendments thereto.

(3) "Municipality" means city, county or township.

(4) "Postsecondary educational institution" shall have the meaning ascribed to it in K.S.A. 74-3201b, and amendments thereto.

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

On page 1, in line 1, in the title, by striking all after "ACT"; by striking all in line 2; in line 3, by striking all before the period and inserting "pertaining to the continuation of health insurance for firefighters";

And your committee on conference recommends the adoption of this report.

CLARK SCHULTZ
PHIL HERMANSON
BOB GRANT

Conferees on part of House

RUTH TEICHMAN
TY MASTERSON
ALLEN C. SCHMIDT

Conferees on part of Senate

Senator Teichman moved the Senate adopt the Conference Committee Report on **SB 250**.

On roll call, the vote was: Yeas 37; Nays 0; Present and Passing 0; Absent or Not Voting 3.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Absent or Not Voting: Emler, Taddiken, Wagle.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **Substitute for SB 283** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee amendments, as follows:

On page 2, in line 5, by striking the comma and inserting:

":

(1) On and after July 1, 2012 through June 30, 2013,";

Also on page 2, following line 7, by inserting "(2) On and after July 1, 2013, the sheriff of each Kansas county shall charge a fee of \$15 for serving, executing and returning any process.";

And your committee on conference recommends the adoption of this report.

LANCE KINZER

JOE PATTON

JANICE L. PAULS

Conferees on part of House

THOMAS C. OWENS

JEFF KING

DAVID HALEY

Conferees on part of Senate

Senator Owens moved the Senate adopt the Conference Committee Report on **Sub for SB 283**.

On roll call, the vote was: Yeas 37; Nays 0; Present and Passing 0; Absent or Not Voting 3.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Absent or Not Voting: Emler, Taddiken, Wagle.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **S Sub for Sub HB 2333** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 1, in line 16, by striking "2014" and inserting "2015"; in line 18, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 23, by striking the first "and"; in line 24, after "thereto" by inserting ", and security officers as provided in K.S.A. 74-4914a, and amendments thereto"; in line 26, by striking "pre-2014" and inserting "pre-2015";

On page 2, in line 13, before "employed" by inserting "first"; also in line 13, by striking "July 1,"; in line 14, by striking "2014" and inserting "January 1, 2015"; in line 21, by striking "2014" and inserting "2015"; in line 32, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 33, by striking "July 1,"; in line 34, by striking "2014" and inserting "January 1, 2015"; in line 36, by striking "July 1,"; in line 37, by striking "2014" and inserting "January 1, 2015"; in line 38, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 40, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 42, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 43, by striking "July 1, 2014" and inserting "January 1, 2015";

On page 3, in line 2, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 4, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 7, by striking "July 1, 2014" and inserting "January 1, 2015"; in line 12, by striking all after "service"; by striking all in line 13; in line 14, by striking all before the semicolon; in line 17, by striking "pre-2014" and inserting "pre-2015";

On page 4, in line 24, by striking "July 1, 2014" and inserting "January 1, 2015"; also in line 24, by striking "6%" and inserting "5.25%"; also in line 24, by striking ", except that"; by striking all in lines 25 and 26; in line 27, by striking all before the period; by striking all in line 34 and inserting the following:

"(2) if the funding ratio of the system as a whole is equal to or more than 80% as certified by the board, the board shall provide for an additional interest credit which may not exceed the lesser of 4% or a percentage of the rate of return on the system's assets that is above 8% for a fiscal year which such percentage is equal to the funding ratio of the system as a whole for each fiscal year;

(3) the additional interest rate for a fiscal year shall not be granted unless the rate of return on the system's assets is at least 10% for that fiscal year; and";

Also on page 4, in line 35, by striking "(3)" and inserting "(4) if the funding ratio of the system as a whole is less than 80% as certified by the board,"; in line 40, after "credits" by inserting "under subsections (a) and (b)"; in line 41, by striking "fifth" and inserting "second";

On page 5, in line 3, by striking "paid"; in line 4, by striking "out" and inserting "posted to the account"; in line 5, by striking "A participating employer shall credit,"; in line 6, by striking "4%" and inserting "a percentage"; also in line 6, after "compensation" by inserting "shall be credited"; also in line 6, after "account" by inserting ";", as follows:

(1) Three percent of compensation for each member who has less than five years of

service;

(2) four percent of compensation for each member who has at least five but less than 12 years of service;

(3) five percent of compensation for each member who has at least 12 but less than 24 years of service; and

(4) six percent of compensation for each member who has 24 or more years of service";

Also on page 5, in line 17, by striking "July"; in line 18, by striking "1, 2014" and inserting "January 1, 2015"; also in line 18, by striking "6%" and inserting "5.25%"; also in line 18, by striking all after "annum"; by striking all in lines 19 and 20; in line 21, by striking all before the period; by striking all in line 28, and inserting the following:

"(2) if the funding ratio of the system as a whole, is equal to or more than 80% as certified by the board, the board shall provide for an additional interest credit which may not exceed the lesser of 4% or a percentage of the rate of return on the system's assets that is above 8% for a fiscal year which such percentage is equal to the overall funded ratio of the system as a whole for each fiscal year;

(3) the additional interest rate for a fiscal year shall not be granted unless the rate of return on the system's assets is at least 10% for that fiscal year; and";

Also on page 5, in line 29, by striking "(3)" and inserting "(4) if the funding ratio of the system as a whole is less than 80% as certified by the board,"; in line 33, by striking "paid"; in line 34, by striking "out" and inserting "posted to the account"; in line 35, after "credits" by inserting "under subsections (a) and (b)"; in line 36, by striking "fifth" and inserting "second"; in line 41, after "the" by inserting "member's service credit,";

On page 6, in line 6, by striking all after "account"; in line 7, by striking all before the period; in line 21, after "(a)" by inserting "or (b)"; in line 22, after the second "distribution" by inserting "shall be made using mortality rates and interest rates as provided in subsection (a) of section 13, and amendments thereto, and"; in line 23, by striking "(b)" and inserting "(c)"; in line 27, by striking "in 10% increments" and inserting "of any fixed dollar amount or percent"; in line 29, by striking "(b)" and inserting "(c)"; in line 32, after "(a)" by inserting "or (b)";

On page 7, in line 5, by striking "normal"; in line 6, by striking "five-year" and inserting "10-year"; in line 16, after "service" by inserting ", employer credits and interest credits"; in line 18, by striking "(d)" and inserting "(e)"; in line 27, by striking "rate" and inserting "rates"; after line 28, by inserting the following:

"(b) Except as provided in subsection (e), a member who has a vested interest in the member's retirement annuity account, who terminates after attainment of age 55 with the completion of at least 10 years of service, shall receive an annuity based upon employer credits and interest credits in such member's retirement annuity account, using mortality rates established by the board by official action as of the member's annuity start date and an interest rate established by the legislature as of the member's annuity start date, and such interest rate shall initially be 6%. The legislature may from time to time prospectively change the interest rate and the board may from time to time prospectively change the mortality rates, and the legislature expressly reserves such rights to do so.";

And by redesignating subsections accordingly;

Also on page 7, in line 29, by striking "normal"; also in line 29, by striking

"subsection (a)" and inserting "subsections (a) and (b)"; in line 30, by striking "five-year" and inserting "10-year"; in line 32, by striking "adjustment"; in line 40, by striking "in 10% increments" and inserting "of any fixed dollar amount or percent";

On page 8, in line 12, by striking "normal"; also in line 12, by striking "five-year" and inserting "10-year"; in line 14, after the comma, by inserting "or the total of the member's vested retirement annuity account and annuity savings account balance is less than \$1,000,"; also in line 14, after "balance" by inserting "or balances"; in line 31, by striking "2014" and inserting "2015";

On page 9, in line 10, after "law" by inserting "or the terms of the plan as established by the board";

On page 11, in line 2, by striking "24" and inserting "25"; in line 6, by striking "24" and inserting "25"; in line 10, by striking "in no event"; in line 11, by striking "shall"; in line 12, before "be" by inserting "shall"; also in line 12, by striking all after "rate"; in line 13, by striking all before the period and inserting "which equals 1.4% of the member's final average salary for members that elect the 1.4% multiplier pursuant to subsection (b)(2) of section 25, and amendments thereto, and 1.75% of the member's final average salary for members that elect the 1.85% multiplier pursuant to subsection (b)(1) of section 25, and amendments thereto";

On page 13, in line 7, by striking "24" and inserting "25"; in line 18, by striking "24" and inserting "25"; in line 20, by striking "24" and inserting "25";

On page 18, in line 6, after the period, by inserting "Such actuarial cost shall be determined by the qualified actuary employed or retained by the system pursuant to K.S.A. 74-4908, and amendments thereto, and reported to the system and the joint committee on pensions, investments and benefits.";

On page 19, in line 14, by striking all after the comma; in line 15, by striking all before "the" the second time it appears, and inserting "but prior to January 1, 2014"; in line 17, after "salary" by inserting ", and for any member who retires after such member's normal retirement date, and on and after January 1, 2014, the amount for participating service shall be equal to 1.85% of the member's final average salary,"; in line 18, by striking "earned prior to January 1, 2014,"; in line 19, by striking all after "benefit"; by striking all in lines 20 through 28; in line 29, by striking all before the period; by striking all in lines 30 through 43;

On page 20, by striking all in lines 1 and 2; by striking all in lines 24 through 40; in line 41, by striking "(d)(1)" and inserting "(c)(1)";

On page 21, by striking all in lines 4 through 9; in line 10, by striking "(4)" and inserting "(3)"; in line 11, by striking "or (d)(3)";

On page 33, after line 33, by inserting the following:

"New Sec. 29. In addition to all requirements for fiscal notes pursuant to law, fiscal notes for bills which provide a new benefit, an increase in existing benefits or any other type of benefit enhancement for members of the Kansas public employees retirement system and systems thereunder, including a cost-of-living adjustment or postretirement benefit increase, shall include an actuarial valuation and appraisal of the liability to the system and the required contributions necessary to discharge such liability and maintain the system on an actuarial reserve basis created by such benefit enhancement to be conducted by the qualified actuary employed or retained by the system pursuant to K.S.A. 74-4908, and amendments thereto. Such fiscal note shall be available to members of any standing committee of the legislature to which such bill has been

assigned prior to such committee taking any action on such bill.

Sec. 30. K.S.A. 2011 Supp. 74-8768 is hereby amended to read as follows: 74-8768. (a) There is hereby created the expanded lottery act revenues fund in the state treasury. All expenditures and transfers from such fund shall be made in accordance with appropriation acts. All moneys credited to such fund shall be expended or transferred only for the purposes of reduction of state debt, state infrastructure improvements, the university engineering initiative act, ~~and~~ reduction of local *ad valorem* tax in the same manner as provided for allocation of amounts in the local *ad valorem* tax reduction fund and reduction of the unfunded actuarial liability of the system attributable to the state of Kansas and participating employers under K.S.A. 74-4931, and amendments thereto, by the Kansas public employees retirement system.

(b) On July 1, 2012, July 1, 2013, July 1, 2014, July 1, 2015, July 1, 2016, July 1, 2017, July 1, 2018, July 1, 2019, July 1, 2020, and July 1, 2021, or as soon thereafter such date as moneys are available, the first \$10,500,000 credited to the expanded lottery act revenues fund shall be transferred by the director of accounts and reports from the expanded lottery act revenues fund in one or more substantially equal amounts, to each of the following: the Kan-grow engineering fund – KU, Kan-grow engineering fund – KSU and Kan-grow engineering fund – WSU. Each such special revenue fund shall receive \$3,500,000 annually in each of such years. Commencing in fiscal year 2014, after such transfer has been made, 50% of the remaining moneys credited to the fund shall be transferred on a quarterly basis by the director of accounts and reports from the fund to the Kansas public employees retirement system fund to be applied to reduce the unfunded actuarial liability of the system attributable to the state of Kansas and participating employers under K.S.A. 74-4931 et seq., and amendments thereto, until the system as a whole attains an 80% funding ratio as certified by the board of trustees of the Kansas public employees retirement system.

Sec. 31. K.S.A. 2011 Supp. 75-6609 is hereby amended to read as follows: 75-6609. (a) When used in this section, "surplus real estate" means real estate which is no longer needed by the state agency which owns such real estate as determined in accordance with this section.

(b) (1) The secretary of administration shall develop criteria for the identification of surplus real estate, including, but not limited to, a review of any legal restrictions associated with the real estate and the reasons for the state agency to keep the real estate. In accordance with such criteria, the secretary shall assist state agencies in the identification of surplus real estate. The secretary of administration shall periodically review the status of all real estate of state agencies subject to this section to determine if any of the real estate owned by state agencies is potentially surplus real estate. If any real estate owned by a state agency is determined by the secretary of administration, in consultation with the head of the state agency, to be surplus real estate in accordance with the criteria developed under subsection (a), then the secretary of administration shall recommend to the governor that such real estate be sold under the procedures prescribed by this section.

(2) The secretary of administration shall develop guidelines for the sale of surplus real estate. In accordance with such guidelines and upon the approval of the governor, after consultation with the head of the state agency which owns such surplus real estate, after consultation with the joint committee on state building construction and after approval by the state finance council under subsection (c), the secretary may offer such

property for sale by one of the following means: (A) Public auction; (B) by listing the surplus property with a licensed real estate broker or salesperson; or (C) by sealed bid. Subject to the approval of the state finance council as required by subsection (c), the secretary of administration may sell surplus real estate and any improvements thereon on behalf of the state agency which owns such property.

(c) Prior to the sale of any surplus real estate under subsection (b), the state finance council shall approve the sale, which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711, and amendments thereto. The matter may be submitted to the state finance council for approval at any time, including periods of time during which the legislature is in session.

(d) Prior to offering any real estate for sale, such property shall be appraised pursuant to K.S.A. 75-3043a, and amendments thereto, unless the appraisal is waived as provided in this subsection. The secretary of administration may waive the requirement for appraisal for any parcel of surplus real estate that is to be sold at public auction under this section if the secretary of administration determines that it is in the best interests of the state to waive the requirement for appraisal for such parcel of surplus real estate. The costs of any such appraisal may be paid from the proceeds of the sale.

(e) Conveyance of title in surplus real estate offered for sale by the secretary of administration shall be executed on behalf of the state agency by the secretary of administration. The deed for the conveyance may be by warranty deed or by quitclaim deed as determined to be in the best interests of the state by the secretary of administration in consultation with the head of the state agency which owns the surplus real estate.

(f) (1) Any proceeds from the sale of surplus real estate and any improvements thereon, after deduction of the expenses of such sale and any cost of appraisal of the surplus real estate, shall be deposited in the state treasury as prescribed by this subsection, unless otherwise authorized by law. On and after ~~the effective date of this act~~ July 1, 2012, 20% of the proceeds from each such sale deposited in the state treasury shall be credited to the surplus real estate fund or another appropriate special revenue fund of the state agency which owned the surplus real estate, as is prescribed by law or as may be determined by the state agency, unless otherwise required by state or federal law or by the limitations or restrictions of the state's title to the real estate being sold. In the case of proceeds from the sale of surplus real estate at a state mental health institution or a state mental retardation institution, such portion of the proceeds shall be credited to the client benefit fund of such institution or to another special revenue fund of such institution for: (A) Rehabilitation and repair or other capital improvements for such institution; or (B) one-time expenditures for community mental health organizations if the real estate sold was at a state mental health institution or for community developmental disabilities organizations if the real estate sold was at a state mental retardation institution, and, in any such case, shall be expended in accordance with the provisions of appropriation acts. The remaining 80% of the proceeds from each such sale deposited in the state treasury shall be credited to the ~~state general fund~~ Kansas public employees retirement fund to be applied to the payment, in full or in part, of the unfunded actuarial pension liability as directed by the Kansas public employees retirement system. As used in this section, "unfunded actuarial pension liability" means the unfunded actuarially accrued liability of the state for the state of

Kansas and participating employers under K.S.A. 74-4931, and amendments thereto, portion of such liability of the Kansas public employees retirement system, determined as of the later of December 31, 2011, or the end of the most recent calendar year for which an actuarial valuation report is available.

(2) The amount of expenses and the cost of appraisal for each sale of surplus real estate pursuant to this section shall be transferred and credited to the property contingency fund created under K.S.A. 75-3652, and amendments thereto, and may be expended for any operations of the department of administration.

(3) Any state agency owning real estate may apply to the director of accounts and reports to establish a surplus real estate special revenue fund in the state treasury. Subject to the provisions of appropriation acts, moneys in a surplus real estate special revenue fund may be expended for the operating expenditures of the state agency.

(g) Any sale of property by the secretary of transportation pursuant to K.S.A. 68-413, and amendments thereto, shall not be subject to the provisions of this section. The provisions of this section shall not be applicable to real estate given as an endowment, bequest, or gift to a state educational institution as defined in K.S.A. 72-4412, and amendments thereto, or to the university of Kansas medical center.

(h) Sale of the Olathe travel information center shall not be subject to the provisions of this section.

New Sec. 32.

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

On and after July 1, 2012, during the fiscal year ending June 30, 2013, in addition to other purposes for which expenditures may be made by the above agency from the agency operations account of the Kansas public employees retirement fund for fiscal year 2013 as authorized by any appropriation act of the 2012 regular session of the legislature, notwithstanding the provisions of any other statute, expenditures shall be made by the above agency to implement the provisions of the Kansas public employees retirement system act of 2015. All such expenditures shall be in addition to any other expenditure limitation imposed on expenditures from the agency operations account of the Kansas public employees retirement fund for fiscal year 2013, except that such expenditures shall not exceed \$2,750,000.;

And by renumbering sections accordingly;

Also on page 33, in line 36, by striking "and" and inserting a comma; also in line 36, after "74-49,213" by inserting ", 74-8768 and 75-6609";

On page 1, in the title, in line 3, by striking "2014" and inserting "2015"; in line 8, before "amending" by inserting "fiscal notes on bills that provide retirement benefit enhancements, actuarial cost; sale of real estate of state agencies, disposition of proceeds to KPERS fund; authorized transfers from expanded lottery act revenues fund; making certain appropriations for fiscal year 2013;"; in line 11, by striking "and 74-49,213" and inserting ", 74-8768 and 75-6609"; also in line 11, after "sections" by inserting "; also repealing K.S.A. 2011 Supp. 74-49,213";

And your committee on conference recommends the adoption of this report.

STEVE MORRIS

JEFF KING

LAURA KELLY

Conferees on part of Senate

MITCH HOLMES
JOHN C. GRANGE
LOUIS E. RUIZ

Conferees on part of House

Senator King moved the Senate adopt the Conference Committee Report on **S Sub for Sub HB 2333**.

On roll call, the vote was: Yeas 35; Nays 2; Present and Passing 0; Absent or Not Voting 3.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Nays: Marshall, Pilcher-Cook.

Absent or Not Voting: Emler, Taddiken, Wagle.

The Conference Committee Report was adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote aye on **S Sub for Sub HB 2333**. I would like to personally and professionally thank those members of the KPERs Conference Committee for taking difficult issues from a vigorous floor debate to come up with a bipartisan compromise which addresses those issues most important to ensure state fiscal responsibility and fairness to Kansas employees under this plan.—ALLEN SCHMIDT.

Senator Francisco requests the record to show she concurs with the "Explanation of Vote" offered by Senator A. Schmidt on **S Sub for Sub HB 2333**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **S Sub for HB 2390** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed as Senate Substitute for House Bill No. 2390, as amended by Senate Committee of the Whole, as follows:

On page 2, in line 2, after "(e)" by inserting "(1)"; by striking all in lines 22 through 24; in line 25, by striking all before "Upon" and inserting:

"(2) Subject to the provisions of appropriations acts, for fiscal year 2013, the KUSF administrator may transfer moneys from the KUSF to the state treasurer.";

Also on page 2, also in line 25, by striking the last "the" and inserting "any";

On page 4, in line 32, by striking all after the period; by striking all in line 33;

On page 5, by striking all in lines 37 through 39;

And by redesignating remaining subparagraphs accordingly;

On page 7, in line 14, by striking the second "or"; in line 20, before "use" by inserting "state ownership or construction of any network facilities other than those owned or being constructed by the state on the effective date of this act; (3) switched voice access, except to the extent switched access is being provided by state-owned, leased or operated facilities as of the effective date of this act; (4) transmission of voice

over internet or voice over internet protocol, except to the extent necessary to facilitate interactive two-way video; (5) content; or (6)";

Also on page 7, by striking all in lines 41 through 43;

On page 8, by striking all in lines 1 through 22 and inserting:

"(2) transition schools, libraries and hospitals that have a direct KAN-ED connection as of January 1, 2012, to a commercially provided broadband internet connection no later than June 30, 2013. At the time a school, library or hospital has been transitioned off a KAN-ED connection, the board shall pay up to \$350 per month to such school, library or hospital for the cost of broadband service until June 30, 2013;

(3) provide the secretary of commerce any information necessary to conduct the needs assessment described in subsection (b);";

Also on page 8, in line 33, after "(b)" by inserting:

"(1) The secretary of commerce shall facilitate the execution of the needs assessment and the creation of the report. The secretary shall contract with a third party that has expertise in telecommunications services for educational institutions to conduct such needs assessment and create such report.

(2) The needs assessment shall include, for each school, library and hospital connected to the network as of January 1, 2012: Current and future broadband service and quality needs and a determination of all KAN-ED expenses for shared services or infrastructure, including any costs deferred by federal moneys, that are providing services and network connections. Based on the results of the needs assessment, the secretary of commerce, in coordination with the third party contractor, shall create a report that: (A) Compares the utilization, efficiency and effectiveness of KAN-ED to other similar programs in other states for schools, libraries and hospitals; (B) determines if the KAN-ED program, as of the effective date of this act, is worth its cost in terms of price, service, quality, needed network upgrades and increased utilization of broadband by schools, libraries and hospitals; (C) determines if there are alternative models or opportunities for broadband procurement by schools, libraries and hospitals; (D) determines if the services and applications offered by KAN-ED lead to full utilization of broadband technology by schools, libraries, hospitals and their surrounding communities; and (E) recommends any cost-effective broadband services that are available.

(3) The board shall reimburse the cost of conducting such needs assessment and report described in paragraph (2), not to exceed \$250,000.

(4) The results of such needs assessment and the report shall be submitted to the board on or before January 1, 2013.

(c)";

Also on page 8, in line 37, by striking "plan and establish such standards and priorities" and inserting "program";

On page 9, in line 27, by striking all after "connection"; by striking all in line 28 and 29; in line 30, by striking all before the period and inserting "no later than June 30, 2013";

On page 10, by striking all in lines 2 through 4;

And by redesignating remaining subsections accordingly;

Also on page 10, in line 15, after "act" by inserting "at no cost to such agencies"; in line 38, by striking all before the semicolon;

And your committee on conference recommends the adoption of this report.

PAT APPLE
MIKE PETERSEN
KELLY KULTALA
Conferees on part of Senate

JOE McLELAND
CARL DEAN HOLMES
TOM BURROUGHS
Conferees on part of House

Senator Apple moved the Senate adopt the Conference Committee Report on **S Sub for HB 2390**.

On roll call, the vote was: Yeas 37; Nays 0; Present and Passing 0; Absent or Not Voting 3.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Steineger, Teichman, Umbarger, Vratil.

Absent or Not Voting: Emler, Taddiken, Wagle.
The Conference Committee Report was adopted.

REPORT ON ENGROSSED BILLS

SB 306; H Sub for Sub SB 148 reported correctly engrossed May 16, 2012.

SB 250, SB 273; Sub SB 283; H Sub for SB 287; SB 304 reported correctly engrossed May 17, 2012.

REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **HB 2792** be amended on page 47, following line 2, by inserting:

"Sec. 11. K.S.A. 2011 Supp. 65-1626, as amended by section 1 of 2012 Senate Bill No. 134, is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner;
(2) the patient or research subject at the direction and in the presence of the practitioner; or

(3) a pharmacist as authorized in K.S.A. 65-1635a, and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Application service provider" means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

(d) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the internal revenue code, complies with any one of the following: (1) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and (2) the wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(e) "Board" means the state board of pharmacy created by K.S.A. 74-1603, and amendments thereto.

(f) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name as the brand name drug product prescribed.

(g) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(h) "Chain pharmacy warehouse" means a permanent physical location for drugs or devices, or both, that acts as a central warehouse and performs intracompany sales or transfers of prescription drugs or devices to chain pharmacies that have the same ownership or control. Chain pharmacy warehouses must be registered as wholesale distributors.

(i) "Co-licensee" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug and the national drug code on the drug product label shall be used to determine the identity of the drug manufacturer.

(j) "DEA" means the U.S. department of justice, drug enforcement administration.

(k) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(l) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(m) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

(n) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(o) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(p) "Distributor" means a person who distributes a drug.

(q) "Drop shipment" means the sale, by a manufacturer, that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, of the manufacturer's prescription drug, to a wholesale distributor whereby the wholesale distributor takes title but not possession of such prescription drug and the wholesale distributor invoices the pharmacy, the chain pharmacy

warehouse, or other designated person authorized by law to dispense or administer such prescription drug, and the pharmacy, the chain pharmacy warehouse, or other designated person authorized by law to dispense or administer such prescription drug receives delivery of the prescription drug directly from the manufacturer, that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, of such prescription drug. Drop shipment shall be part of the "normal distribution channel."

(r) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated, prior to its repeal.

(s) "Durable medical equipment" means technologically sophisticated medical devices that may be used in a residence, including the following: (1) Oxygen and oxygen delivery system; (2) ventilators; (3) respiratory disease management devices; (4) continuous positive airway pressure (CPAP) devices; (5) electronic and computerized wheelchairs and seating systems; (6) apnea monitors; (7) transcutaneous electrical nerve stimulator (TENS) units; (8) low air loss cutaneous pressure management devices; (9) sequential compression devices; (10) feeding pumps; (11) home phototherapy devices; (12) infusion delivery devices; (13) distribution of medical gases to end users for human consumption; (14) hospital beds; (15) nebulizers; or (16) other similar equipment determined by the board in rules and regulations adopted by the board.

(t) "Electronic prescription" means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

(u) "Electronic prescription application" means software that is used to create electronic prescriptions and that is intended to be installed on the prescriber's computers and servers where access and records are controlled by the prescriber.

(v) "Electronic signature" means a confidential personalized digital key, code, number or other method for secure electronic data transmissions which identifies a particular person as the source of the message, authenticates the signatory of the message and indicates the person's approval of the information contained in the transmission.

(w) "Electronic transmission" means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application.

(x) "Electronically prepared prescription" means a prescription that is generated using an electronic prescription application.

(y) "Exclusive distributor" means any entity that: (1) Contracts with a manufacturer

to provide or coordinate warehousing, wholesale distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must be an authorized distributor of record.

(z) "Facsimile transmission" or "fax transmission" means the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. "Facsimile transmission" includes but is not limited to transmission of a written prescription between the prescriber's fax machine and the pharmacy's fax machine; transmission of an electronically prepared prescription from the prescriber's electronic prescription application to the pharmacy's fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber's fax machine to the pharmacy's fax machine, computer or printer.

(aa) "Generic name" means the established chemical name or official name of a drug or drug product.

(bb) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the revised Kansas code for care of children and the revised Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(cc) "Intermediary" means any technology system that receives and transmits an electronic prescription between the prescriber and the pharmacy.

(dd) "Intracompany transaction" means any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership or control of a corporate entity, or any transaction or transfer between co-licensees of a co-licensed product.

(ee) "Medical care facility" shall have the meaning provided in K.S.A. 65-425, and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b, and amendments thereto, except community mental health centers and facilities for ~~the mentally-retarded~~ people with intellectual disability.

(ff) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the

individual's own use or the preparation, compounding, packaging or labeling of a drug by:

(1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice;

(2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or

(3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(gg) "Manufacturer" means a person licensed or approved by the FDA to engage in the manufacture of drugs and devices.

(hh) "Mid-level practitioner" means an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08, and amendments thereto.

(ii) "Normal distribution channel" means a chain of custody for a prescription-only drug that goes from a manufacturer of the prescription-only drug, from that manufacturer to that manufacturer's co-licensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, directly or by drop shipment, to:

(1) A pharmacy to a patient or to other designated persons authorized by law to dispense or administer such drug to a patient;

(2) a wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(3) a wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(4) a chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(ij) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(kk) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(ll) "Pharmacist-in-charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist-in-charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(mm) "Pharmacist intern" means: (1) A student currently enrolled in an accredited pharmacy program; (2) a graduate of an accredited pharmacy program serving an internship; or (3) a graduate of a pharmacy program located outside of the United States which is not accredited and who has successfully passed equivalency examinations approved by the board.

(nn) "Pharmacy," "drugstore" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(oo) "Pharmacy prescription application" means software that is used to process prescription information, is installed on a pharmacy's computers or servers, and is controlled by the pharmacy.

(pp) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(qq) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(rr) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(ss) "Prescriber" means a practitioner or a mid-level practitioner.

(tt) "Prescription" or "prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a prescriber in the authorized course of such prescriber's professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such prescriber, regardless of whether the communication is oral, electronic, facsimile or in printed form.

(uu) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(vv) "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 U.S.C. § 353), to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(ww) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or

profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(xx) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

(yy) "Readily retrievable" means that records kept by automatic data processing applications or other electronic or mechanized record-keeping systems can be separated out from all other records within a reasonable time not to exceed 48 hours of a request from the board or other authorized agent or that hard-copy records are kept on which certain items are asterisked, redlined or in some other manner visually identifiable apart from other items appearing on the records.

(zz) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

(aaa) "Secretary" means the executive secretary of the board.

(bbb) "Third party logistics provider" means an entity that: (1) Provides or coordinates warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition; (2) is registered as a wholesale distributor under the pharmacy act of the state of Kansas; and (3) to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(ccc) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654, and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

(ddd) "Vaccination protocol" means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(eee) "Valid prescription order" means a prescription that is issued for a legitimate medical purpose by an individual prescriber licensed by law to administer and prescribe drugs and acting in the usual course of such prescriber's professional practice. A prescription issued solely on the basis of an internet-based questionnaire or consultation without an appropriate prescriber-patient relationship is not a valid prescription order.

(fff) "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a nonhuman.

(ggg) "Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs or devices in or into the state, including, but not limited to, manufacturers, repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, including manufacturers' and distributors' warehouses, co-licensees, exclusive distributors, third party logistics providers, chain pharmacy warehouses that conduct wholesale distributions, and wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distributions. Wholesale distributor shall not include persons engaged in the sale of durable medical equipment to consumers or patients.

(hhh) "Wholesale distribution" means the distribution of prescription drugs or devices by wholesale distributors to persons other than consumers or patients, and includes the transfer of prescription drugs by a pharmacy to another pharmacy if the total number of units of transferred drugs during a twelve-month period does not exceed 5% of the total number of all units dispensed by the pharmacy during the immediately preceding twelve-month period. Wholesale distribution does not include:

(1) The sale, purchase or trade of a prescription drug or device, an offer to sell, purchase or trade a prescription drug or device or the dispensing of a prescription drug or device pursuant to a prescription;

(2) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device for emergency medical reasons;

(3) intracompany transactions, as defined in this section, unless in violation of own use provisions;

(4) the sale, purchase or trade of a prescription drug or device or an offer to sell, purchase or trade a prescription drug or device among hospitals, chain pharmacy warehouses, pharmacies or other health care entities that are under common control;

(5) the sale, purchase or trade of a prescription drug or device or the offer to sell, purchase or trade a prescription drug or device by a charitable organization described in 503(c)(3) of the internal revenue code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(6) the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a prescription drug or device for

its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations;

(7) the transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing agreement;

(8) the sale, purchase or trade of blood and blood components intended for transfusion;

(9) the return of recalled, expired, damaged or otherwise non-salable prescription drugs, when conducted by a hospital, health care entity, pharmacy, chain pharmacy warehouse or charitable institution in accordance with the board's rules and regulations;

(10) the sale, transfer, merger or consolidation of all or part of the business of a retail pharmacy or pharmacies from or with another retail pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets, in accordance with the board's rules and regulations;

(11) the distribution of drug samples by manufacturers' and authorized distributors' representatives;

(12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use; or

(13) the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a third party returns processor in accordance with the board's rules and regulations.";

And by renumbering sections accordingly;

On page 78, in line 27, by striking "K.K.S.A." and inserting "K.S.A."; in line 31, following "65-1436a," by inserting "65-1626, as amended by section 1 of 2012 Senate Bill No. 134, 65-1626, as amended by section 42 of 2012 Substitute for Senate Bill No. 397,"

On page 1, in the title, in line 4, following "2660," by inserting "65-1626, as amended by section 1 of 2012 Senate Bill No. 134,"; in line 17, following "65-1436a," by inserting "65-1626, as amended by section 42 of 2012 Substitute for Senate Bill No. 397,";

And the bill be passed as amended.

On motion of Senator V. Schmidt, the Senate recessed until 2:00 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with President Morris in the chair.

MESSAGE FROM THE HOUSE

The House accedes to the request of the Senate for a conference on **Sub SB 307** and has appointed Representatives Colloton, Kinzer and Meier as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **House Substitute for SB 425** and has appointed Representatives Rhoades, Kelley, and Feuerborn as conferees on the part of the House.

CONSIDERATION OF MOTIONS AND SENATE RESOLUTIONS

Having voted on the prevailing side Senator Reitz moved to reconsider the Senate's action on **HB 2764**. The motion carried and the Senate considered the motion submitted in writing by Senator Rob Olson, citing rule 11 to withdraw **HB 2764** from the Committee on **Financial Institution and Insurance**.

HB 2764, AN ACT concerning insurance; providing coverage for autism spectrum disorder; amending K.S.A. 2011 Supp. 40-2,103 and 40-19c09 and repealing the existing sections.

On roll call, the vote was: Yeas 22; Nays 11; Present and Passing 1; Absent or Not Voting 6.

Yeas: Abrams, Apple, Donovan, Francisco, Haley, Hensley, Holland, Huntington, Kelsey, King, Kultala, Longbine, Love, Lynn, Merrick, Olson, Ostmeyer, Owens, Petersen, Pyle, Reitz, A. Schmidt.

Nays: Bruce, Kelly, Marshall, McGinn, Morris, V. Schmidt, Schodorf, Teichman, Umbarger, Vratil, Wagle.

Present and Passing: Steineger.

Absent or Not Voting: Brungardt, Emler, Faust-Goudeau, Masterson, Pilcher-Cook,

Motion to withdraw from Committee and place on General Orders, failed and **HB 2764** remains in committee.

On motion of Senator V. Schmidt, the Senate adjourned until 10:00 a.m., Friday, May 18, 2012.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

