

Journal of the House

FORTY-THIRD DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Friday, March 9, 2001, 11:00 a.m.

The House met pursuant to adjournment with Speaker pro tem Aurand in the chair.

The roll was called with 118 members present.

Reps. Flaharty and Kline were excused on verified illness.

Reps. Glasscock, O'Neal, Patterson, Powers and Shultz were excused on excused absence by the Speaker.

Prayer by Chaplain Svoboda-Barber:

Holy God,

it has been a long week.

Help us to use today wisely,

so that we may take some Sabbath time

this weekend.

Give us grace

to be gentle with ourselves

and kind to those around us.

Help us to notice

the little things this weekend

and to rest in Your love

so that we may return to this place on Monday

refreshed and ready to take seriously

Your call to us to lead this state

with compassion and sensitivity to others.

I ask these things in Your name. Amen.

The Pledge of Allegiance was led by Rep. Loyd.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to committees as indicated:

Federal and State Affairs: **HB 2563**.

Taxation: **HB 2562**.

MESSAGES FROM THE SENATE

Announcing passage of **SB 128, SB 205**.

Announcing passage of **HB 2001, HB 2036, HB 2045, HB 2049, HB 2052, HB 2053, HB 2184, HB 2190, HB 2217**.

Announcing passage of **HB 2050**, as amended.

The Senate concurs in House amendments to **SB 5**.

Also, announcing passage of **SB 96, SB 134, SB 170, SB 294, SB 309, SB 313**.

Announcing passage of **HB 2115**.

Announcing passage of **HB 2149**, as amended; **HB 2210**, as amended.

The Senate adopts conference committee report on **HB 2038**.

INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

The following Senate bills were thereupon introduced and read by title:

SB 96, SB 128, SB 134, SB 170, SB 205, SB 294, SB 309, SB 313.

CONSENT CALENDAR

Objection was made to **SB 9** appearing on the Consent Calendar; the bill was placed on the calendar under the heading of General Orders.

No objection was made to **SB 54, SB 139, SB 155** appearing on the Consent Calendar for the first day.

No objection was made to **SB 59, SB 162, SB 196** appearing on the Consent Calendar for the third day. The bills were advanced to Final Action on Bills and Concurrent Resolutions.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

Speaker pro tem Aurand announced that order of business, Final Action on Bills and Concurrent Resolutions, would be passed over today.

On motion of Rep. Weber, the House went into Committee of the Whole, with Rep. Schwartz in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Schwartz, Committee of the Whole report, as follows, was adopted: Recommended that **SB 70, SB 130, SB 142** be passed.

REPORTS OF STANDING COMMITTEES

The Committee on **Appropriations** recommends **HB 2493** be amended on page 1, in line 30, by striking "state general fund" and inserting "state economic development initiatives fund"; in line 32, after the period, by inserting "Subject to the provisions of appropriation acts, moneys credited to the state economic development initiatives fund may be expended for payment of principal and interest on bonds issued to finance such capital improvements.";

Also on page 1, in line 40, before the period, by inserting "acting on this matter after a review by the joint committee on state building construction";

On page 2, by striking all of lines 2 through 11 and inserting the following:

"(c) There is hereby established the state fair debt service special revenue fund in the state treasury. All moneys credited to this fund shall be expended for the payment of principal and interest on bonds issued to finance capital improvements for the Kansas state fairgrounds under this section. All expenditures from the state fair debt service special revenue fund shall be in accordance with the provisions of appropriation acts pursuant to vouchers approved by the general manager of the Kansas state fair board or by the designee of the general manager.

(d) During the fiscal year ending June 30, 2003, after bonds are issued by the Kansas development finance authority to finance capital improvements for the Kansas state fairgrounds in accordance with this section, the general manager of the Kansas fair board shall certify that fact to the director of accounts and reports and, upon receipt of such certification, or as soon thereafter as moneys are available therefor, the director of accounts and reports shall transfer \$1,060,656 from the state economic development initiatives fund to the state fair debt service special revenue fund.";

And the bill be passed as amended.

The Committee on **Environment** recommends **SCR 1605**, as amended by Senate Committee, be adopted.

The Committee on **Environment** recommends **SB 183** be amended on page 1, after line 17, by inserting:

"Sec. 2. K.S.A. 65-34,126 is hereby amended to read as follows: 65-34,126. (a) The commissioner of insurance shall adopt and implement a plan for applicants for insurance who are in good faith entitled to insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 CFR part 280, subpart

H, and part 281 adopted by the federal environmental protection agency. Insurers undertaking to transact the kinds of insurance specified in subsection (b) or (c) of K.S.A. 40-1102 and amendments thereto and rating organizations which file rates for such insurance shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans for the insurance specified in this section. Such plan shall provide:

(1) Insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 CFR part 280, subpart H, and part 281;

(2) for the appointment by the plan of a servicing carrier which shall be: (A) An insurance company authorized to transact business in this state; (B) an insurance company which is listed with the commissioner pursuant to K.S.A. 40-246e and amendments thereto; or (C) a risk retention group, as defined by K.S.A. 40-4101 and amendments thereto, which meets the requirements established under the federal liability risk retention act of 1986 (15 U.S.C. 3901 *et seq.*) and has registered with the commissioner pursuant to K.S.A. 40-4103 and amendments thereto;

(3) reasonable rules governing the plan, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit of the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;

(4) rates and rate modifications applicable to such risks, which rates shall be established as provided by subsection (b);

(5) the limits of liability which the insurer shall be required to assume;

(6) coverage for only underground storage tanks located within this state;

(7) coverage for at least 12 months from the date of the original application with respect to any underground storage tank which has been installed for less than 10 years, and may provide such coverage with respect to any such tank which has been installed 10 or more years, without requiring tank integrity tests, soil tests or other tests for insurability if, within six months immediately preceding application for insurance, the tank has been made to comply with all provisions of federal and state law, and all applicable rules and regulations adopted pursuant thereto, but the plan may provide for renewal or continuation of such coverage to be contingent upon satisfactory evidence that the tank or tanks to be insured continue to be in compliance with such laws and rules and regulations;

(8) exclusion from coverage of any damages for noneconomic loss and any damages resulting from intentional acts of the insured or agents of the insured;

(9) to the extent allowed by law, subrogation of the insurer to all rights of recovery from other sources for damages covered by the plan or plans;

(10) an optional deductible of the first \$2,500, \$5,000 or \$10,000 of liability per occurrence at any one location for compensation of third parties for bodily injury and property damage caused by either gradual or sudden and accidental releases from underground petroleum storage tanks, but no such deductible shall apply to reasonable and necessary attorney fees and other reasonable and necessary expenses incurred in defending a claim for such compensation;

(11) coverage only of claims for occurrences that commenced during the term of the policy and that are discovered and reported to the insurer during the policy period or within six months after the effective date of the cancellation or termination of the policy;

(12) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner;

(13) a method whereby adequate reserves are established for open claims and claims incurred but not reported based on advice from an independent actuary retained by the plan at least annually, the cost of which shall be borne by the plan;

(14) a method whereby the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year and if, for that year: (A) There is any excess of losses and expenses over premiums earned, plus amounts transferred pursuant to subsection (a)(15), an amount equal to such excess losses and expenses shall be transferred from the underground fund established by K.S.A. 65-34,114 and amendments thereto to the plan; or (B) there is any surplus of premiums earned, plus amounts transferred pursuant to subsection (a)(15), over losses, including loss reserves, and expenses sustained,

an amount equal to such surplus shall be ~~transferred to such fund from the plan~~ *refunded from the plan to the insureds in proportion to the amount each has paid into the plan*; and

(15) a method whereby, during any fiscal year, whenever the losses and expenses sustained by the plan exceed premiums earned, an amount equal to the excess of losses and expenses shall be transferred from the underground fund established by K.S.A. 65-34,114 and amendments thereto to the plan upon receipt by the secretary of health and environment of evidence, satisfactory to the secretary, of the amount of the excess losses and expenses.

(b) The commissioner of insurance shall establish rates, effective January 1 of each year, for coverage provided under the plan adopted pursuant to this section. Such rates shall be reasonable, adequate and not unfairly discriminatory. Such rates shall be based on loss and expense experience developed by risks insured by the plan and shall be in an amount deemed sufficient by the commissioner to fund anticipated claims based upon reasonably prudent actuarial principles, except that:

(1) Due consideration shall be given to the loss and expense experience developed by similar plans operating or trust funds offering third party liability coverage in other states and the voluntary market; and

(2) before January 1, 1992, the annual rate shall be not more than \$500 for each tank for which coverage is provided under the plan with selection of a \$10,000 deductible.

In establishing rates pursuant to this subsection, the commissioner shall establish, as appropriate, lower rates for tanks complying with all federal standards, including design, construction, installation, operation and release detection standards, with which such tanks are or will be required to comply by 40 C.F.R part 280 as in effect on the effective date of this act.

(c) The commissioner of insurance shall appoint a governing board for the plan. The governing board shall meet at least annually to review and prescribe operating rules of the plan. Such board shall consist of five members appointed as follows: One representing domestic or foreign insurance companies, one representing independent insurance agents, one representing underground storage tank owners and operators and two representing the general public. No member representing the general public shall be, or be affiliated with, an insurance company, independent insurance agent or underground storage tank operator. Members shall be appointed for terms of three years, except that the initial appointment shall include two members appointed for two-year terms and one member appointed for a one-year term, as designated by the commissioner.

(d) Before adoption of a plan pursuant to this section, the commissioner of insurance shall hold a hearing thereon.

(e) An insurer participating in the plan adopted by the commissioner of insurance pursuant to this section may pay a commission with respect to insurance assigned under the plan to an agent licensed for any other insurer participating in the plan or to any insurer participating in the plan.

(f) The commissioner of insurance may adopt such rules and regulations as necessary to administer the provisions of this section.

(g) The department of health and environment and the plan shall provide to each other such information as necessary to implement and administer the provisions of this section. Any such information which is confidential while in the possession of the department or plan shall remain confidential after being provided to the other pursuant to this subsection.

(h) This section shall be part of and supplemental to the Kansas storage tank act.”;

Also on page 1, by renumbering the remaining sections accordingly; in line 18, by striking “2000 Supp. 65-34,123 is” and inserting “65-34,126 and K.S.A. 2000 Supp. 65-34,123 are”;

In the title, in line 9, after the second semicolon, by inserting “providing for refund of certain surplus of premiums paid:”; in line 10, before “K.S.A.” by inserting “K.S.A. 65-34,126 and”; in line 11, by striking “section” and inserting “sections”; and the bill be passed as amended.

The Committee on **Federal and State Affairs** recommends **HB 2067** be passed.

An incorrect committee report having been submitted on **SB 101** on Wednesday, March 7, 2001 (see HJ, page 341), the following is the correct report and the bill is withdrawn

from the Calendar under the order of business, General Orders; **SB 101** is placed on the order of business, Consent Calendar.

The Committee on **Insurance** recommends **SB 101** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

The Committee on **Insurance** recommends **HB 2473** be amended on page 1, in line 34, after "(3)" by inserting: "Commissioner" means the commissioner of insurance as defined in K.S.A. 40-102 and amendments thereto.

(4)";

Also on page 1, in line 36, by striking "(4)" and inserting "(5)"; in line 39, by striking "(5)" and inserting "(6)";

On page 2, in line 7, by striking "(6)" and inserting "(7)"; in line 9, by striking "(7)" and inserting "(8)"; in line 14, by striking "(8)" and inserting "(9)"; in line 18, by striking "(9)" and inserting "(10)"; in line 22, by striking "(10)" and inserting "(11)"; in line 30, by striking "(11)" and inserting "(12)"; in line 33, by striking "(12)" and inserting "(13)"; in line 37, by striking "(13)" and inserting "(14)"; in line 42, by striking "(14)" and inserting "(15)"; also in line 42, by striking "derivative" and inserting "financial instrument"; in line 43, by striking "derivative" and inserting "financial instrument";

On page 3, in line 4, by striking "derivative" and inserting "financial instrument"; in line 6, by striking "(10)" and inserting "(11)"; in line 7, by striking "(11)" and inserting "(12)"; in line 9, by striking "(15)" and inserting "(16)"; in line 12, by striking "(16)" and inserting "(17)"; in line 15, by striking "(17)" and inserting "(18)"; in line 17, by striking "(18)" and inserting "(19)"; in line 21, by striking "(19)" and inserting "(20)"; in line 34, by striking "of insurance";

On page 4, in line 19, by striking "and"; in line 22, by striking the period and inserting: "; and

(4) the replication transaction is entered into in accordance with the requirements concerning replication transactions contained in the SVO purposes and procedures manual of the SVO entitled "Purposes and procedures manual of the securities valuation office of the national association of insurance commissioners" as published on December 31, 1999, or any later version as established in rules and regulations adopted by the commissioner.;"

Also on page 4, in line 32, by striking "of insurance";

On page 5, after line 22, by inserting the following:

"(j) The commissioner shall have the authority to adopt rules and regulations necessary to implement this section.;" and the bill be passed as amended.

The Committee on **Transportation** recommends **SB 115**, as amended by Senate Committee of the Whole, be amended on page 1, following line 16, by inserting the following:

"New Section 1. (a) Except as provided by subsection (b), any school district or nonpublic school transporting students in a vehicle designed for transporting more than 10 passengers in addition to the driver, shall transport such students in a school bus, as defined in subsection (g) of K.S.A. 72-8301, and amendments thereto, or in a bus other than a school bus designated in clauses (3) and (4) of subsection (c) of K.S.A. 72-8301, and amendments thereto.

(b) Notwithstanding the provisions of subsection (a), any school district or nonpublic school which has purchased and has placed into operation prior to July 1, 2001, any motor vehicles designed for transporting more than 10 passengers, but less than 15 passengers, and is not a school bus, may continue to operate such motor vehicles for the purpose of transporting students until July 1, 2004.

Sec. 2. K.S.A. 2000 Supp. 72-8301 is hereby amended to read as follows: 72-8301. As used in this act:

(a) "Board" or "board of education" means the board of education of any school district.

(b) "School district" means any unified school district organized and operating under the laws of this state.

(c) The words "provide or furnish transportation" in addition to their ordinary meaning shall mean and include the right of a school district to: (1) Purchase, operate and maintain school buses and other motor vehicles; (2) contract, lease or hire school buses and other motor vehicles for the transportation of pupils, students and school personnel; (3) purchase,

operate and maintain buses other than school buses for the transportation of pupils, students or school personnel to or from school-related functions or activities; (4) contract, lease or hire buses other than school buses for the transportation of pupils, students and school personnel if the buses are owned and operated by a public common carrier of passengers under a certificate of convenience and necessity granted by the state corporation commission or the interstate commerce commission and are operating within the authority granted to the public common carrier; and (5) reimburse persons who furnish transportation to pupils, students or school personnel in privately owned motor vehicles.

(d) "Student" or "pupil" means any person regularly enrolled in a school district and attending school in such school district or regularly enrolled in a school district and attending school in another school district in accordance with the provisions of an agreement entered into under authority of K.S.A. 72-8233, and amendments thereto.

(e) "Motor vehicle" means every motor vehicle, as defined in K.S.A. 8-126, and amendments thereto, which is designed for transporting ~~14~~ 10 passengers or less.

(f) "Bus" means every motor vehicle, as defined in K.S.A. 8-126, and amendments thereto, which is designed for transporting more than ~~14~~ 10 passengers in addition to the driver.

(g) "School bus" means: (1) Every bus designed primarily for the transportation of pupils, students or school personnel to or from school or to or from school-related functions or activities. This definition includes every such bus which is owned by a school district, or privately owned and contracted for, leased or hired by a school district, and operated for such transportation, and every such bus which is privately owned and operated for such transportation, but does not include within its meaning any bus designated in clauses (3) and (4) of subsection (c); and (2) every bus designed for operation as a common carrier in urban transportation. This definition includes every such bus which is owned and operated for mass public transportation by a metropolitan transit authority established under the provisions of article 28 of chapter 12 or article 31 of chapter 13 of Kansas Statutes Annotated, and is contracted for, leased or hired by a school district for the transportation of pupils, students or school personnel to or from school or to or from school-related functions or activities.

(h) "State board" means the state board of education.";

Also on page 1, in line 17, by striking "Section 1." and inserting "Sec. 3."; in line 34, by striking "Sec. 2." and inserting "Sec. 4.";

On page 2, in line 15, by striking "Sec. 3." and inserting "Sec. 5."; also in line 15, preceding "are" by inserting "and 72-8301"; in line 17, by striking "Sec. 4." and inserting "Sec. 6."; in line 18, by striking "statute book" and inserting "Kansas register";

In the title, in line 12, preceding "modification" by inserting "concerning school transportation."; in line 13, following "8-1730a" and inserting "and 72-8301"; and the bill be passed as amended.

REPORT OF STANDING COMMITTEE

Your Committee on **Calendar and Printing** recommends on requests for resolutions and certificates that

Request No. 111, by Representative Benlon, congratulating Fire Chief H.A. "Buck" Hartley on his retirement after 33 years of fire service;

Request No. 112, by Representative Benlon, congratulating Police Chief Thomas Hayselden on his retirement after 35 years of police service;

Request No. 113, by Representative Burroughs, congratulating Joshua Thomas for achieving the rank of Eagle Scout;

Request No. 114, by Representative Aday, congratulating Amy Marie Giersch for being named to the Washburn University President's honor roll;

Request No. 115, by Representative Patterson, congratulating Chris McCormick for winning the 6A State wrestling championship;

Request No. 116, by Representative Patterson, commending Jennifer Tavernaro on her participation in the Arctic Iditarod run;

Request No. 117, by Representative Patterson, commending Christopher Laconi for receiving the good citizen award from the Sagamore Chapter of the Daughters of the American Revolution;

Request No. 118, by Representative Patterson, congratulating Dr. Vern Otte for being named the Kansas State Veterinarian of the year by the Kansas Veterinary Medical Association;

Request No. 119, by Representative Hutchins, congratulating Ryan Phillips for winning the 4A State wrestling championship in the 145 pound weight class;

Request No. 120, by Representatives Flora, Gordon, Hermes, Hutchins, Kirk, Kuether, Mays, Nichols and Toelkes, congratulating the Shawnee County high school students in the top 5% of their classes;

Request No. 121, by Representative Schwartz, congratulating Ben Mall on the occasion of his 100th birthday;

Request No. 122, by Representative Patterson, commending Kathleen Murray for receiving a 2001 Prudential Spirit of Community Award;

Request No. 123, by Representative Sloan, commending Betty Jo Charlton, Jessie Branson, Sandy Praeger, John H. Vogel, Morris Kay, John Solbach and Forrest Swall for their years of service in the Kansas of Representatives and for their hard work on behalf of the people of Douglas County;

Request No. 124, by Representative Huebert, congratulating Kasper Schirer on being the Kansas winner of the American Legion National High School Oratorical Scholarship;

Request No. 125, by Representative Hermes, congratulating Police Chief F. Dean Forster for his 31 years with the police department and his being Chief of Police since February 16, 1996;

Request No. 126, by representative P. Long, congratulating Kaycee Inwood for her accomplishments and attendance at the Citizenship Pilgrimage;

be approved and the Chief Clerk of the House be directed to order the printing of said certificates and order drafting of said resolutions.

On motion of Rep. Weber, the committee report was adopted.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were thereupon introduced and read by title:

HB 2564. An act concerning firearms; relating to the liability for the discharge thereof, by Committee on Federal and State Affairs.

HB 2565. An act concerning public health and welfare; relating to the Kansas children's cabinet and the sunflower foundation; prescribing certain guidelines and conditions precedent for expenditures by the sunflower foundation, by Committee on Appropriations.

REPORT ON ENROLLED BILLS

HB 2144 reported correctly enrolled, properly signed and presented to the governor on March 9, 2001.

On motion of Rep. Weber, the House adjourned until 11:00 a.m., Monday, March 12, 2001.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

