

Journal of the House

FORTY-SECOND DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, March 13, 2003, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.

The roll was called with 123 members present.

Reps. Neighbor and Yonally were excused on excused absence by the Speaker.

Present later: Rep. Neighbor.

Prayer by guest chaplain, the Rev. Leon Hendrix, pastor, Church of the Nazarene, Independence, and guest of Rep. F. Miller:

Our Father in Heaven,

How comforting to know that You are ever present. We come into Your presence first to thank You for past blessings and for the promises You have given us for the present. You, Lord, have been our Dwelling Place throughout all generations.

We thank You for our land and the liberties we so enjoy, and for these, our leaders, who work long and hard to help make our state a safe and better place to live.

We recognize that we are in need of Your help and that we are dependant upon You. We pray for the world at large.

Lord, hold our troops in Your loving hands. Protect them, as they protect us. Bless them and their families for the selfless acts they perform for us in our time of need.

We pray for these elected leaders of our state and ask for Your wisdom and guidance that comes from above for all the difficult decisions they are called on to make.

Grant them Your courage, grace and tender mercies as they do what is right. May they be reminded and encouraged of the great hymn: *"Oh God, our help in ages past, our hope for years to come. Be Thou, our Guide while life shall last, and our eternal home."*

In the name of our Lord we pray. Amen.

The Pledge of Allegiance was led by Rep. Ostmeyer.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Agriculture: **HCR 5019**.

Appropriations: **HB 2440**.

Federal and State Affairs: **HB 2439; HR 6013**.

Taxation: **HB 2438; HCR 5018**.

CONSENT CALENDAR

No objection was made to **SB 26, SB 133** appearing on the Consent Calendar for the first day.

No objection was made to **SB 118; SCR 1604** appearing on the Consent Calendar for the second day.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2176, An act concerning abortion clinics; providing for regulation, licensing and standards for the operation thereof; providing penalties for violations and authorizing injunctive actions, was considered on final action.

On roll call, the vote was: Yeas 84; Nays 39; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Ballou, Barbieri-Lightner, Bethell, Brunk, Burgess, Burroughs, Campbell, Carter, Craft, Dahl, DeCastro, Decker, Edmonds, Faber, Feuerborn, Freeborn, Gatewood, Goering, Goico, Grant, Hayzlett, Henry, Holmes, Horst, Howell, Huebert, Humerickhouse, Hutchins, Huy, Jack, E. Johnson, Kauffman, Landwehr, Larkin, Light, M. Long, P. Long, Loyd, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Nichols, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Pauls, Phelps, Pottorff, Powell, Powers, Reardon, Ruff, Schwab, Schwartz, S. Sharp, Shriver, Shultz, Siegfried, Svaty, Swenson, Tafanelli, Thimesch, Toelkes, Vickrey, Wilk, D. Williams, J. Williams, Wilson, Yoder.

Nays: Ballard, Beggs, Betts, Boyer, Carlin, Compton, Cox, Crow, Davis, Dillmore, Dreher, Flaharty, Flora, Gilbert, Gordon, Henderson, Hill, Holland, Huff, Huntington, D. Johnson, Kassebaum, Kirk, Klein, Krehbiel, Kuether, Loganbill, Minor, Peterson, Rehorn, Reitz, Sawyer, B. Sharp, Showalter, Sloan, Storm, Thull, Ward, Winn.

Present but not voting: None.

Absent or not voting: Neighbor, Yonally.

The bill passed, as amended.

EXPLANATIONS OF VOTE

MR. SPEAKER: I vote NO on **HB 2176**. As state legislators, we are elected to uphold our state and federal laws. We are not physicians. The American College of Obstetricians and Gynecologists establish meticulous standards for their field. In 2002, guidelines for office-based surgery and special procedures were adopted by the KMS and the Board of Healing Arts. These guidelines, written by physicians, are superior to **HB 2176**.

With a financial shortfall, continuing to grow daily, we need to be focusing our attention on our constitutional charge of appropriating state funds, not on micromanaging professionals in their fields of expertise.—LANA GORDON, TERRIE HUNTINGTON, MARY COMPTON, BONNIE SHARP, SYDNEY CARLIN

MR. SPEAKER: I vote YES on **HB 2176**. Although I have concerns that other areas of medical practice may also need further safety regulations, I support this legislation to require strict safety standards for abortion clinics.—ED O'MALLEY, JR.

MR. SPEAKER: I vote yes on **HB 2176** because I believe that it is appropriate that the state ensure certain established standards be followed in medical procedures which place a patient at risk of death. **HB 2176** does, however, have a glaring omission because it targets only those locations where abortion procedures are performed. Omitted are locations where those medical procedures that have equal or higher risk levels than a first trimester abortion are performed. Protecting all citizens regardless of gender or age should be our legislative focus.—DEENA HORST

On motion of Rep. Aurand, the House went into Committee of the Whole, with Rep. Dahl in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Dahl, Committee of the Whole report, as follows, was adopted:

Recommended that committee report to **HB 2101** be adopted; and the bill be passed as amended.

Committee report to **HB 2005** be adopted; also, roll call was demanded on motion of Rep. Larkin to amend in line 31, by striking "2002" and inserting "2004"; in line 33, by striking all after "to"; in line 34, by striking all before "20%";

On roll call, the vote was: Yeas 46; Nays 75; Present but not voting: 0; Absent or not voting: 4.

Yeas: Ballard, Betts, Carlin, Craft, Crow, Davis, Dillmore, Feuerborn, Flaharty, Flora, Gatewood, Gilbert, Grant, Henderson, Henry, Holland, Huy, Kirk, Klein, Kuether, Larkin, Loganbill, M. Long, P. Long, McKinney, Minor, Myers, Nichols, Pauls, Peterson, Phelps, Pottorff, Reardon, Rehorn, Ruff, Sawyer, B. Sharp, Showalter, Storm, Svaty, Thimesch, Thull, Toelkes, Vickrey, Ward, Winn.

Nays: Aurand, Ballou, Barbieri-Lightner, Beggs, Bethell, Boyer, Brunk, Burgess, Campbell, Carter, Compton, Cox, Dahl, DeCastro, Decker, Dreher, Edmonds, Faber, Freeborn, Goering, Goico, Gordon, Hayzlett, Hill, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Huntington, Hutchins, Jack, D. Johnson, E. Johnson, Kassebaum, Kauffman, Krehbiel, Light, Loyd, Mason, Mays, McCreary, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Judy Morrison, Neufeld, Newton, Novascone, O'Malley, O'Neal, Osborne, Ostmeyer, Owens, Patterson, Powell, Powers, Reitz, Schwab, Schwartz, S. Sharp, Shriver, Shultz, Siegfried, Sloan, Swenson, Tafanelli, Wilk, D. Williams, J. Williams, Wilson, Yoder.

Present but not voting: None.

Absent or not voting: Burroughs, Landwehr, Neighbor, Yonally.

The motion of Rep. Larkin did not prevail, and **HB 2005** be passed as amended.

Committee report to **SB 73** be adopted; and the bill be passed as amended.

Committee report to **HB 2310** be adopted; and the bill be passed as amended.

REPORTS OF STANDING COMMITTEES

The Committee on **Appropriations** recommends **SB 43** be amended on page 1, following line 38, by inserting the following:

"Sec. 2. K.S.A. 2002 Supp. 32-1001 is hereby amended to read as follows: 32-1001.

(a) It is unlawful for any person to:

(1) Participate or engage in any activity for which such person is required to have obtained a license, permit, stamp or other issue of the department under the wildlife and parks laws of this state or under rules and regulations of the secretary unless such person has obtained a currently valid such license, permit, stamp or other issue issued to such person;

(2) fail to carry in such person's possession a currently valid license, permit, stamp or other issue of the department, issued to such person, while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the wildlife and parks laws of this state or under rules and regulations of the secretary;

(3) refuse to allow examination of any license, permit, stamp or other issue of the department while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the wildlife and parks laws of this state or under rules and regulations of the secretary, upon demand by any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary;

(4) while participating or engaging in fishing or hunting: (A) Fail to carry in such person's possession a card or other evidence which such person is required to carry pursuant to K.S.A. 32-980 and amendments thereto; or (B) refuse to allow inspection of such card or other evidence upon demand of any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary; or

(5) make any false representation to secure any license, permit, stamp or other issue of the department, or duplicate thereof, or to make any alteration in any such license, permit, stamp or other issue.

(b) No person charged with violating subsection (a)(1) for failure to obtain a vehicle or camping permit for use of any state park, or any portion thereof or facility therein, or any other area or facility for which a vehicle or camping permit is required pursuant to rules and regulations of the secretary shall be convicted thereof unless such person refuses to purchase such permit after receiving a permit violation notice, which notice shall require the procurement of: (1) The proper daily permit or permits and payment, within 24 hours, of a late payment fee of \$15; or (2) an annual vehicle or camping permit, as the case may be, if such permit has been established by rule and regulation and adopted by the secretary.

~~The provisions of this subsection (b)(2) shall expire on December 31, 2003.~~

(c) (1) In any prosecution charging a violation of subsection (a)(1) for failure to obtain a permit required by K.S.A. 32-901 and amendments thereto, proof that the particular vehicle described in the complaint was in violation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the time when and place where the violation occurred.

(2) Proof of a written lease of, or rental agreement for, a particular vehicle described in the complaint, on the date and at the time of the violation, which lease or rental agreement includes the name and address of the person to whom the vehicle was leased or rented at the time of the violation, shall rebut the prima facie evidence that the registered owner was the person who parked or placed the vehicle at the time when and place where the violation occurred.

(d) No person who is a resident of this state and charged with violating subsection (a)(1) or (a)(2) shall be convicted thereof if such person produces in court or the office of the arresting officer the appropriate license, permit, stamp or other issue of the department, lawfully issued to such person and valid at the time of such person's arrest.”;

And by renumbering the remaining sections accordingly;

Also on page 1, in line 39, by striking “is” and inserting “and K.S.A. 2002 Supp. 32-1001 are”;

Also on page 1, in the title, in line 10, following “fees;” by inserting “certain permit purchases after recovering permit violation notices;”; also in line 10, following “32-989” by inserting “and K.S.A 2002 Supp. 32-1001”; in line 11, by striking “section” and inserting “sections”; and the bill be passed as amended.

The Committee on **Appropriations** recommends **SB 115** be amended on page 1, in line 25, by striking all after “thereof”; by striking all in lines 26 through 31; in line 32, by striking all before “No”;

On page 3, following line 6, by inserting the following:

“New Sec. 2. (a) The executive director of the state board of tax appeals shall charge and collect a filing fee, established by rules and regulations adopted by the state board of tax appeals, for any appeal in any proceeding under the tax protest, tax grievance or tax exemption statutes or in any other original proceeding for such board to recover all or part of the costs of processing such actions incurred by the state board of tax appeals. No filing fee shall be imposed on applications by taxpayers for refunds of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, or for appeals from decisions rendered pursuant to K.S.A. 79-1448, and amendments thereto, with regard to single-family residential property. Not-for-profit organizations shall not be charged a filing fee exceeding \$10 for any appeal if the valuation of the property that is the subject of the controversy does not exceed \$100,000.

(b) There is hereby created in the state treasury the BOTA filing fee fund.

(c) The executive director of the board of tax appeals shall remit to the state treasurer at least monthly all tax appeal filing fees received by the state board of tax appeals. Upon receipt of any such remittance, the state treasurer shall deposit the amount in the state treasury to the credit of the BOTA filing fee fund.

(d) All expenditures from the BOTA filing fee 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 executive director of the state board of tax appeals or a person or persons designated by such executive director.”;

And by renumbering the remaining sections accordingly;

On page 1, in the title, in line 11, following “thereof;” by inserting “authorizing certain filing fees; establishing the BOTA filing fee fund;” and the bill be passed as amended.

The Committee on **Ethics and Elections** recommends **SB 95** be amended on page 2, following line 40, by inserting the following:

“Sec. 3. K.S.A. 25-4501 is hereby amended to read as follows: 25-4501. (a) Subject to the provisions of this section, there shall be held a presidential preference primary election in the year ~~2004~~ 2008, and every fourth year thereafter.

(b) On or before November 3, ~~2003~~ 1, 2007, and on or before November 1 every fourth year thereafter, the secretary of state shall certify to the governor, to the chief clerk of the house of representatives and to the secretary of the senate a common date in the next succeeding year on which at least five other states will hold a presidential preference primary election, a delegate or mass convention or a caucus of qualified voters at which delegates to a national convention are selected. On or before each such date, if the secretary of state determines that there is no common date on which at least five states are conducting such a selection process in the next succeeding year, the secretary of state shall certify to the governor, the chief clerk of the house of representatives and the secretary of the senate on a date, which shall be on or before the first Tuesday in April of the next following year, on which the presidential preference primary election shall be held.

(c) The date certified by the secretary of state pursuant to subsection (b) shall be the date on which the presidential preference primary election authorized by subsection (a) shall be held in the state of Kansas.

Sec. 2. K.S.A. 25-4505 is hereby amended to read as follows: 25-4505. The county board of canvassers of each county shall meet at the office of the county election officer unless another place is agreed upon and announced as provided in K.S.A. 25-3105, *and amendments thereto*, at any time between 8:00 and 10:00 o'clock a.m. on the Friday following the day a presidential preference primary election is held and canvass the vote of such preference primary. *The county election officer may move the canvass to the Monday next following the election if notice of such change is published prior to the canvass in a newspaper of general circulation within the county.* Upon completion of such canvass, the county election officer of each county shall prepare an abstract of the vote of the presidential preference primary election in his or her county as such vote is determined by the county board of canvassers and shall promptly transmit the same to the secretary of state no later than the tenth day after the day of the election. Each county election officer shall also post a copy of such abstract in a public place in the courthouse of his or her county.

Every such transmittal shall be made by first class mail or by a messenger. If the secretary of state fails to receive the abstract of the canvass from any county within ~~fourteen (14)~~ 14 days next after the election, he or she shall dispatch a special messenger to obtain a copy of the same, and the county election officer shall immediately, on demand of such messenger, make out and deliver to such messenger the copy required. Thereupon, the messenger shall deliver such copy to the secretary of state, and the secretary of state shall be reimbursed for the expenses of such messenger by such county.”;

By renumbering sections accordingly;

Also on page 2, in line 41, by striking “25-116, 25-117 and 25-304” and inserting “25-304, 25-4501, 25-4505”;

In the title, in line 9, following the last semicolon, by inserting “relating to the presidential primary;”; in line 10, following “25-304” by inserting “, 25-4501, 25-4505”; in line 11, by striking “; also repealing K.S.A. 25-116 and 25-117”; and the bill be passed as amended.

The Committee on **Health and Human Services** recommends **SB 199** be amended on page 1, in line 21, by striking everything after “thereto”; in line 22, by striking all before the colon; and the bill be passed as amended.

The Committee on **Tourism and Parks** recommends **SB 134** be amended on page 1, in line 33, by striking “, winter sports,”; also in line 33, preceding “viewing” by inserting “and winter sports,”; in line 34, by striking “, or scientific sites”; in line 35, preceding “equine” by inserting “or scientific sites; and”; by striking all in lines 39 through 42 and inserting “, except that recreational farming activities shall not include operation of agricultural equipment by a person who is a member of the public on the land for recreational purposes.”;

On page 2, in line 11, by striking all following “(h)” and inserting ““Agricultural equipment” includes, but is”; and the bill be passed as amended.

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 2441, An act concerning public health; relating to the licensing of child care facilities; amending K.S.A. 65-501 and repealing the existing section, by Committee on Appropriations.

HB 2442, An act concerning taxation; requiring periodic review of taxation laws and policies by the legislature, by Committee on Taxation.

CHANGE OF REFERENCE

Speaker pro tem Ballou announced the withdrawal of **HCR 5019** from Committee on Agriculture and referral to Committee on Environment.

REPORT ON ENGROSSED BILLS

HB 2176 reported correctly engrossed March 12, 2003.

READING AND CORRECTION OF THE JOURNAL

In the Journal, on page 287, under Reports of Standing Committees, the final paragraph should read as follows: "The Committee on **Transportation** recommends **SB 130** be passed."

On motion of Rep. Aurand, the House adjourned until 10:30 a.m., Friday, March 14, 2003.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

