

Journal of the Senate

THIRTY-FOURTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, February 28, 2003—9:30 a.m.

The Senate was called to order by Vice President John Vratil.

The roll was called with thirty-nine senators present.

Senator Jordan was excused.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Most of us come here with a dream . . . a vision of what we would like to do . . . the difference we would like to make. But after being here a while and experiencing set backs and disappointments and disillusionment the dream begins to fade.

My prayer, O God, is that all worthy dreams will stay alive in spite of the obstacles.

When we've been around a while,
Been disappointed several times;
When we've watched our efforts fail,
And feel we're past our prime.

When almost all we do
Seems to be in vain,
And it seems to take forever
Our objectives to attain.

When it seems like all our hopes
Are waving us good-bye;
Don't let us give up, Lord,
And let our dreams all die.

It's not easy to keep going,
Hard to just survive;
But help us to determine, Lord,
To keep our dreams alive.

It's easier to just mark time
When success has been delayed;
But remind us, Lord, we'll be so glad
We didn't allow our dreams to fade.

I pray this in Christ's Name,

AMEN

PRESENTATION OF PETITIONS

The following petitions were presented, read and filed:

SP 4, by Senator Lana Oleen: A petition supporting **SB 161** and asking that people who use public services help support them as a matter of fairness to all taxpayers, signed by Evelyn M. Frey, Newton, Kansas, and 17 others from the Newton, Kansas area.

SP 5, by Senator Lana Oleen: A petition supporting **SB 161** and asking that people who use public services help support them as a matter of fairness to all taxpayers, signed by Susan Reedy, Wichita, Kansas, and 31 others from the Wichita, Newton area.

SP 6, by Senators David Kerr and Lana Oleen: A petition requesting that a minimum thirty-three percent (33%) of the \$1.6 Billion Tobacco dollars awarded to the state of Kansas in a lawsuit settlement be transferred into an Elderly Trust Fund account to be administered by the Secretary of the Department on Aging for In-Home Care and Prescription Drugs for the indigent elderly, signed by Bea Bacon and 1827 other registered voters in Kansas.

SP 7, by Senators David Kerr and Lana Oleen: A petition requesting that a minimum thirty-three percent (33%) of the \$1.6 Billion Tobacco dollars awarded to the state of Kansas in a lawsuit settlement be transferred into an Elderly Trust Fund account to be administered by the Secretary of the Department on Aging for In-Home Care and Prescription Drugs for the indigent elderly, signed by Deloris DelRosso and 108 other registered voters in Kansas from the Manhattan and Ogden area.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **Sub HB 2036**.

Commerce: **Sub SB 2064; HB 2208, HB 2332**.

Education: **Sub HB 2145**.

Elections and Local Government: **HB 2214, HB 2288**.

Natural Resources: **HB 2027, HB 2078**.

Federal and State Affairs: **SB 249**.

Financial Institutions & Insurance: **HB 2071**.

Judiciary: **SB 248; HB 2015, HB 2016, HB 2035, HB 2057, HB 2088, HB 2132, HB 2138, HB 2308, HB 2312, HB 2314, HB 2375**.

Public Health and Welfare: **HB 2161, HB 2169, HB 2171**.

Transportation: **HB 2160**.

Ways and Means: **HB 2121; Sub HB 2173; HB 2315**.

CHANGE OF REFERENCE

The Vice President withdrew **SB 94** from the Committee on Ways and Means, and referred the bill to the calendar under the heading of General Orders.

The Vice President withdrew **Sub SB 125** from the Committee on Ways and Means, and rereferred the bill to the Committee on Natural Resources.

REFERRAL OF APPOINTMENTS

The following appointments made by the Governor and submitted to the senate for confirmation, were referred to Committees as indicated:

Department on Aging, Secretary

Pamela Johnson-Betts, effective upon the date of confirmation by the Senate, to serve at the pleasure of the Governor.

(Public Health and Welfare)

Kansas Human Rights Commission, Member

Beth M. Bradrick, Ph.D., effective upon the date of confirmation by the Senate, to serve for a four-year term.

(Federal and State Affairs)

MESSAGE FROM THE GOVERNOR

February 26, 2003

Message to the Senate of the State of Kansas:

Enclosed herewith is Executive Directive No. 03-338 for your information.

Sincerely,

KATHLEEN SEBELIUS
Governor

The Vice President announced Executive Directive No. 03-338, Authorizing Expenditure of Federal Funds, is on file in the office of the Secretary of the Senate and available for review at anytime.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

SB 103, An act concerning elections; relating to recalls; amending K.S.A. 25-4302, 25-4307, 25-4308, 25-4311, 25-4315, 25-4322, 25-4325, 25-4329 and 60-1205 and K.S.A. 2002 Supp. 25-4306 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Buhler, Huelskamp, Taddiken.

Absent or Not Voting: Jordan.

The bill passed, as amended.

SB 151, An act concerning county and district hospitals; amending K.S.A. 19-4601, 19-4608, 80-2501 and 80-2518 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Schmidt.

Absent or Not Voting: Jordan.

The bill passed, as amended.

Sub SB 153, An act concerning telecommunications; relating to enhanced wireless 911 service; public safety grant fund; amending K.S.A. 12-5301 and 12-5302 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 26, Nays 12, Present and Passing 1, Absent or Not Voting 1.

Yeas: Adkins, Barnett, Brownlee, Brungardt, Buhler, Bunten, Clark, Donovan, Downey, Gilstrap, Goodwin, Jackson, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Allen, Barone, Corbin, Emler, Feleciano, Haley, Harrington, Hensley, Huelskamp, Pugh, Steineger, Wagle.

Present and Passing: Gooch.

Absent or Not Voting: Jordan.

The substitute bill passed.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I reluctantly vote no on **Sub for SB 153**.

While I understand the public safety aspects of this bill, I am not convinced of the necessity for levying a monthly tax of 75-cents on each wireless phone customer. We do not

know what the actual costs are for implementing wireless enhanced 911. We are just estimating that 75-cents is the correct number to cover the costs.

Other states including Nebraska, Oklahoma, Arkansas and Iowa have levied a 50-cent surcharge on wireless phone bills to reimburse both the local units of government and the wireless carriers for their costs. I believe my constituents would question my judgment if I voted to assess a monthly 75-cent tax on their cellular phone bills, when states similar to Kansas are implementing the same system with a 50-cent tax.

In addition, while the bill does have a number of safeguards to insure the money is spent correctly, I believe there should be even more oversight and control of the disbursement of the money through a statewide fund with an administrator who has expertise in such technical matters as are involved with enhanced 911.

For these reasons, I vote NO.—BARBARA P. ALLEN

Senator Barone requests the record to show he concurs with the “Explanation of Vote” offered by Senator Allen on **Sub for SB 153**.

MR. VICE PRESIDENT: I vote yes on **Sub for SB 153**. Several groups have been willing to set aside some of their long held positions to compromise for the safety concerns of Kansans who utilize cell phones. Providing enhanced 911 is costly but the price tag is not known for the local governments or the wireless carriers. The sunset in this bill, the many audits and potential moratorium or fee reduction in 2006 provide the needed safeguards that the consumers’ dollars will be utilized appropriately. Lastly, the grant fund is an excellent way to provide this service in our remote areas which would have difficulty affording this service.—KARIN BROWNLEE

MR. VICE PRESIDENT: I rise reluctantly to advise the chair that I vote no on **Sub SB 153**. All Kansans are entitled to enjoy wireless enhanced 9-1-1 service. In that regard I support the bill. The current economic status of affairs, however, cause me great concern about placing an additional \$9 million tax burden on wireless users. Supposedly, this tax is necessary to provide equity between landline users and wireless users. In the vast majority of cases those users are one and the same persons.

Mr. Vice President, I support appropriate funding of wireless enhanced 9-1-1, but I cannot support the imposition of \$9 million in new taxes required by **Sub SB 153**. I vote no.—JAY SCOTT EMLER.

Senator Feleciano requests the record to show he concurs with the “Explanation of Vote” offered by Senator Emler on **Sub SB 153**.

SB 155, An act concerning solid hazardous waste; relating to waste tires; amending K.S.A. 65-3424, 65-3424a, 65-3424b, 65-3424g, 65-3424k and 65-3426 and repealing the existing sections; also repealing K.S.A. 65-3424m, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Morris, O’Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Jordan.

The bill passed, as amended.

SB 191, An act concerning motor vehicles; relating to fuel purchases for state motor vehicles, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Morris, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: O’Connor.

Absent or Not Voting: Jordan.

The bill passed, as amended.

Sub SB 204, An act concerning the residential childhood lead poisoning prevention act; amending K.S.A. 65-1, 214 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Jordan.

The substitute bill passed.

SB 205, An act enacting the Kansas commemorative coin design concept act, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Steineger.

Absent or Not Voting: Jordan.

The bill passed, as amended.

SB 225, An act relating to physical therapy; providing for licensure of physical therapists; amending K.S.A. 7-121b, 40-2,111, 60-513d, 60-2609, 65-1501, 65-1902, 65-2891, 65-2901, 65-2903, 65-2904, 65-2905, 65-2906, 65-2909, 65-2910, 65-2911, 65-2912, 65-2913, 65-2914, 65-2916, 65-2918, 65-2919, 65-4915, 65-4921, 65-5418 and 65-5912 and K.S.A. 2002 Supp. 17-2707, 21-3721 and 40-3401 and repealing the existing sections; also repealing K.S.A. 65-2902, 65-2907, 65-2908 and 65-2915, was considered on final action.

On roll call, the vote was: Yeas 27, Nays 12, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Corbin, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Jackson, Kerr, O'Connor, Oleen, Salmans, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Barone, Clark, Donovan, Feleciano, Hensley, Huelskamp, Lee, Lyon, Morris, Pugh, Schmidt, Tyson.

Absent or Not Voting: Jordan.

The bill passed, as amended.

SB 235, An act concerning tax increment financing and sales tax revenue bonds; relating to redevelopment of certain property located throughout the state; amending K.S.A. 12-1770a and 12-1774 and K.S.A. 2002 Supp. 79-3620 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 33, Nays 5, Present and Passing 1, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Harrington, Hensley, Jackson, Kerr, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Haley, Huelskamp, Lyon, Pugh, Tyson.

Present and Passing: Lee.

Absent or Not Voting: Jordan.

The bill passed, as amended.

SB 240, An act repealing K.S.A. 48-323; concerning the adjutant general; relating to insurance coverage for armories, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington,

Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Jordan.

The bill passed.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Buntten and Jackson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1822—

A RESOLUTION congratulating and commending the Washburn Rural High School boys soccer team and Coach Lionel Suarez for winning the 2002 Class 6A State Soccer Championship.

WHEREAS, The Washburn Rural High School boys soccer team won the 2002 Kansas State High School Activities Association Class 6A State Soccer Championship with a thrilling 2-1 overtime victory over Aquinas High School; and

WHEREAS, The Washburn Rural High School "Junior Blues" soccer team finished the season with a record of 20 wins, 0 losses and 1 tie; and

WHEREAS, The Washburn Rural High School boys soccer team won the 2002 Centennial League Championship by defeating Hayden 3-1, making the Junior Blues league champions for the last eight consecutive years, and allowing only 12 goals scored on them during the 2002 season; and

WHEREAS, In tournament matches the team won the regional championship by defeating Topeka High School 5-0. They progressed through the state tournament by defeating Blue Valley North High School 2-0 in the quarterfinals, Wichita Northwest High School 4-1 in the semifinals and won their first state championship with their 2-1 victory over Aquinas High School; and

WHEREAS, The Washburn Rural High School boys soccer team ended the 2002 season ranked third in the midwest region and 22nd in the country by the National Soccer Coaches Association of America; and

WHEREAS, The team members were Jeff Milberger, Tom Lobell, Eric Purcell, Kyle Sommer, Sean Dawson, Brady Nikkel, Daniel Kirksey, Chip George, Kris Powell, Cole Copeland, Drew Murray, Patrick Olsen, Andrew Forrest, T.J. Weiser, Colby Weddle, Justin Kruger, Matt Wilson, Tanner Sneed, Kyle Golden, Eric Marshall, Ryan Morris, Seth Livingston, Adam Sokolowski and Barry Nelson; the coaches were head coach, Lionel Suarez, and assistant coaches Brian Hensyel, Louis DiLeonardo, and Dave Chooncharoen; and the managers were Trina Kiss, Stacy Kiss, Elizabeth Regier and Jennifer Lollar; and

WHEREAS, The members of this outstanding soccer team have received statewide recognition for their fine sportsmanship and athletic abilities; and

WHEREAS, The success of this team was due to its excellent teamwork, strong competitive spirit and determination to win. The team also had the enthusiastic support of the school's administrators, the faculty, the students, the players' parents and many area citizens: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Washburn Rural High School boys soccer team and Coach Suarez be congratulated and commended for winning the 2002 Kansas State High School Activities Association Class 6A State Soccer Championship; and

Be it further resolved: That the Secretary of the Senate be directed to send five enrolled copies of this resolution to Mr. William Edwards, Principal, Washburn Rural High School, 5900 SW 61st Street, Topeka, KS 66610.

On emergency motion of Senator Buntten **SR 1822** was adopted unanimously.

Senator Buntten introduced and congratulated the Washburn Rural High School boys soccer state champions and welcomed them, along with Coach Lionel Suarez and the team managers.

Senator Haley introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1823—

A RESOLUTION recognizing the Quindaro Townsite and urging its designation by the National Park Service as a National Heritage Area.

WHEREAS, The Quindaro Townsite represents a uniquely important historical and archeological site in the state of Kansas. Recognized as a national historic site in May of 2002, as well as a Kansas historic site in February of 2002, Quindaro represents a rare combination of Native-American, European-American and African-American culture. The Quindaro site is located on the right side of the Missouri river trench in the northern portion of Kansas City, Kansas, approximately five miles upstream from the conjunction of the Missouri and Kansas rivers. Settled between 1857 and 1862 by European-Americans and Wyandot Indians, the townsite operated as a free-state river port to provide safe passage into Kansas for free-state settlers; and

WHEREAS, The advent of economic depression, drought and the civil war caused Quindaro to be legally and culturally abandoned in 1862. However, following the civil war and emancipation many Africans who were enslaved fled Missouri and were drawn toward Quindaro because of its antislavery history. By 1865 Quindaro's citizens established Quindaro's first school which later became known as Freeman's University. In 1880 the school was taken over by the African Methodist Episcopal Church which changed its name to Western University. The school adopted the educational model of Booker T. Washington's Tuskegee Institute which focused on vocational and industrial training. Due to the school's success and growth it became affiliated with the Frederick Douglass hospital in 1915. During the early 1920's 400-500 students a year attended the school; and

WHEREAS, In 1924 a severe fire destroyed most of the school's dormitories. Furthermore, due to inadequate resources, disputes over administrative issues and accounting problems, the African Methodist Episcopal Church could not replace the facilities and student enrollment dropped. On June 30, 1943, Western University closed. However, the Frederick Douglass hospital remained open and continued to serve the African-American community until it closed in 1978, an ironic victim of desegregation. The closing of the hospital brought an end to more than 120 years of Quindaro's existence; and

WHEREAS, The history of Quindaro serves as a significant educational and cultural time piece in Kansas history. Founded as a port to further the interests of the antislavery movement, Quindaro's rich history reflects the values of all Kansans: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we recognize the important historical significance of the Quindaro Townsite and urge the National Park Service to designate the Quindaro Townsite as a National Heritage Area; and

Be it further resolved: That the Secretary of the Senate be directed to send an enrolled copy of this resolution to Senator Haley; Marvin Robinson, 950 Quindaro Blvd., Kansas City, KS 66104; Betty Roberts, 535 Westvale, Kansas City, KS 66102 and to each member of the Kansas congressional delegation.

On emergency motion of Senator Haley **SR 1823** was adopted unanimously.

Senators Hensley and Oleen, Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Gooch, Goodwin, Haley, Harrington, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil and Wagle introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1824—

A RESOLUTION congratulating and commending Senator Paul Feleciano, Jr.

WHEREAS, Senator Paul Feleciano has been selected to serve as President of the National Hispanic Caucus of State Legislators; such selection being made by the organization's executive committee to complete the remaining 1½ years of the term of John Martinez, who was killed in an automobile accident. Senator Feleciano was one of the founders of the organization and served as its first president. Senator Feleciano is a veteran Kansas legislator having served two terms in the House of Representatives, from 1973 to 1976, and having been a member of the Senate since 1977, and is the longest serving current member of the legislature; and

WHEREAS, The National Hispanic Caucus of State Legislators was founded in 1989 to organize elected Hispanic state legislators who advocate on behalf of Hispanic communities throughout the United States. The organization is comprised of approximately 300 elected Hispanic legislators from all states, commonwealths and territories of the United States; and

WHEREAS, The organization serves as a catalyst for joint action on issues of common concern to all segments of the Hispanic community, a forum for information exchanged and member networking, an institute for leadership training, a liaison with sister United States Hispanic organizations, a promoter of public and private partnerships with business and labor and a partner with Hispanic state or provincial legislators and their associations representing Central and South America; and

WHEREAS, The organization also advocates for the appointment of Hispanics to positions of influence in all levels and branches of government and for the hiring and promotion of Hispanics to positions of influence in the private sector; and

WHEREAS, The second National Summit of Hispanic Legislators is planned during the spring of 2003 in Washington, D.C. It is anticipated that 75 state legislators will attend plus other participants: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend Senator Feleciano upon his selection as President of the National Hispanic Caucus of State Legislators and wish him success in this position; and

Be it further resolved: That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to Senator Haley and Senator Feleciano.

On emergency motion of Senator Hensley **SR 1824** was adopted unanimously.

Senators paid tribute and congratulated Senator Feleciano on being selected to serve as President of the National Hispanic Caucus of State Legislators.

Senator Feleciano's wife, Arlene, was a guest.

REPORT ON ENGROSSED BILLS

SB 22, SB 51, SB 65, SB 66, SB 67; Sub SB 83; SB 134 reported correctly engrossed February 28, 2003.

REPORT ON ENROLLED BILLS

SB 16, SB 52 reported correctly enrolled, properly signed and presented to the Governor on February 28, 2003.

COMMITTEE OF THE WHOLE

On motion of Senator Oleen, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Wagle in the chair.

On motion of Senator Wagle the following report was adopted:

Recommended **Sub for SB 144**, as amended by adoption of the committee report recommending a substitute bill, and amended by Senator Teichman in Committee of the Whole, Thursday, February 27, 2003, be passed as amended.

Senator Feleciano moved to amend the bill as amended by Senate Committee of the Whole, on page 2, in line 31, following "(a)" by inserting "(1)"; following line 33, by inserting the following:

"(2) In addition to the factors in paragraph (1), use an insurance score for issuing any new policy of personal insurance based upon the applicant being:

- (A) A victim of identity theft;
- (B) on fraud alert status;
- (C) divorced or in the process of being divorced; or
- (D) affected by the bad credit of a former spouse.";

On page 3, in line 12, by striking "paragraphs (2) and (3)" and inserting "paragraph (2)"; in line 17, by striking all following "(2)"; by striking all in lines 18 through 32; in line 33, by striking "(3)";

On page 4, following line 15, by inserting:

“(i) No provision of this section shall be construed to authorize the use of credit information or an insurance score derived therefrom for the purpose of renewal of any policy of personal insurance.”;

On page 5, following line 16, by inserting:

“Sec. 8. (a) If the use of credit information results in an adverse action to an applicant or insured, the insurer must comply with the notice requirements of the fair credit reporting act, 15 U.S.C. § 1681m(a). Such requirements currently include providing the applicant or insured of:

(1) The identity, telephone number, and address of any consumer reporting agency from which a credit report was obtained.

(2) Notice of the applicant or insured’s right to receive a free credit report from the consumer reporting agency for a period of 60 days if such report resulted in an adverse action; and

(3) Notice of the applicant or insured’s right to lodge a dispute with the consumer reporting agency and have any erroneous information corrected in accordance with the federal fair credit reporting act.

(b) Any insurer who intends to take an action subject to the provisions of this section shall send, on or before 30 days prior to the proposed effective date of such action, written notice by first-class mail of such insurer’s intended action to the applicant or insured at the last known address of such applicant or insured. The notice shall be in triplicate and shall state the following in clear and specific terms:

(1) The proposed action to be taken, including but not limited to, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which the increase is applicable, or the type of coverage reduced and the extent of the reduction;

(2) the proposed effective date of such action;

(3) the insurer’s actual reasons for proposing to take such action. The statement of reasons must be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer’s decision without making further inquiry. Generalized terms such as “personal habits,” “living conditions,” “poor morale,” or “violation or accident record” will not suffice to meet the requirements of this paragraph;

(4) the right of the insured to replace the insurance through an assigned risk plan;

(5) the right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice. The commissioner’s current address must be obvious on the notice;

(6) that, if the insured files a protest and pays any lawful premium due or becoming due prior to a determination of the protest, then the current insurance coverage will not lapse until the commissioner makes a decision;

(7) the commissioner may award reasonable counsel fees to the insured for services rendered to the insured in connection with any such hearing if the commissioner finds that the proposed action of the insurer is unjustified.

(c) Insurers who rely on credit information provided by non-affiliated entities shall advise the non-affiliated entities of the requirements of this act, obtain reasonable written assurance from the non-affiliated entities that the entity is providing credit information in a manner so that insurers comply with this act, and file those written assurances with the commissioner. These filings are subject to the open records act, K.S.A. 45-215, et seq. and amendments thereto.

Sec. 9. Each insurer using new or updated credit information in insurance underwriting or rating shall provide an obvious, simple, and clear notice to each applicant or insured specifically advising such applicant or insured such applicant’s or insured’s credit information will be used for underwriting or rating or both. Where an insurer uses a third party representative to disclose to the applicant or insured that credit information will be used for underwriting or rating, or both, such insurer shall provide the third party representative with the same obvious, simple, and clear disclosure notice that credit information will be used for underwriting or rating, or both. Such insurer shall use reasonable means to verify that the third party representative provided the notice to the applicant or insured. Upon

request by an applicant or insured, insurers or third party representatives shall provide an explanation of significant characteristics of credit information that impact such applicant's or insured's insurance score. This explanation must be in specific terms. General terms, such as "personal habits," "living conditions," "poor morale," or "violations or accident record" will not suffice to meet the requirements of this provision. This information may be included in the disclosure notice form. Each insurer shall be responsible to develop the required disclosure notice form and obtain its approval from the commissioner.

Sec. 10. (a) If an applicant or insured disputes the insurer's underwriting or rating decision, the applicant or insured shall have the right to appeal the insurer's decision in a hearing before the commissioner pursuant to K.S.A. 77-501 *et seq.* Accordingly:

(1) An applicant or insured shall have the right to protest the proposed action of the insurer by signing two copies of the notice and sending them to the commissioner within 10 days after receipt of the notice. The commissioner shall, upon receipt of a protest, notify the insurer of the filing of the protest.

(2) A protest duly filed shall stay the insurer's proposed action pending the commissioner's final determination of the protest. The insurer shall keep in full force and effect the same coverage and premium in effect on the day the notice or proposed change was sent until the commissioner makes a final determination, if any lawful premium due or becoming due prior to the determination is paid.

(3) If the commissioner finds from the notice and other evidence that the protest is with or without merit, the commissioner may grant or dismiss the protest without a hearing and must, in that event, promptly notify the insurer and the applicant or insured in writing of this action. If the commissioner dismisses the protest without a hearing, the insurer's proposed action becomes effective on its effective date or 15 days after the commissioner gives the applicant or insured written notice of the action, whichever is later. If the notice does not comply with Kansas law, the commissioner shall disallow the action. In all other cases, the commissioner shall hold a hearing on the protest within 30 days after receipt of the protest and shall give written notice of the time and place of the hearing to the insurer and applicant or insured at least 10 days prior to the scheduled date of the hearing. The insurer shall have the burden of proving its proposed action to be justified and may do so by relying upon the reasons set forth in its notice to the applicant or insured.

(4) If the commissioner finds the proposed action to be justified, the commissioner shall dismiss the protest and allow the proposed action to take place on its proposed effective date or 20 days after the date that the commissioner's determination is announced, whichever is later.

(5) If the commissioner finds the proposed action to be unjustified, the commissioner shall disallow the action and may, in addition, order the insurer to pay such reasonable counsel fees incurred by the applicant or insured for representation at the hearing as the commissioner deems appropriate. The commissioner may delegate the duties and powers conferred in this section as allowed by law.

(6) The applicant or insured may seek judicial review of any final determination by the commissioner in the district court, pursuant to the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 *et seq.*

(7) This section shall not apply to any insurance policy or coverage which has been in effect less than 60 days at the time the insurer mails or delivers the notice of cancellation, non-renewal, or reclassification. This section does apply to renewal policies in effect less than 60 days at the time the insurer mails or delivers the notice of cancellation, non-renewal, or reclassification.

(b) In the event that an insurer uses disputed credit history to determine whether to provide coverage or at what rate to provide coverage, paragraphs (1) and (2) shall apply if and only if the consumer resolves the credit dispute under the process set forth in the federal fair credit reporting act, 15 U.S.C. 1681 *et seq.*, as that act exists on the effective date of this act, and notifies the insurer in writing that the dispute has been resolved:

(1) If an insurer uses disputed credit history to underwrite or rate personal insurance and places a consumer with an affiliate that charges higher premiums or offers less favorable policy terms:

(A) That insurer shall reissue or re-rate the policy retroactive to the effective date of the current policy term; and

(B) the policy, as reissued or re-rated, shall provide the premiums and policy terms for which the consumer would have been eligible had the insurer used accurate credit history in determining to provide coverage or at what rate to provide coverage.

(2) If an insurer charges higher premiums due to disputed credit history, the insurer shall re-rate the policy retroactive to the effective date of the current policy term. Pursuant to that re-rate, the insurer shall charge the consumer the same premiums that the consumer would have paid had the insurer used accurate credit history in determining to provide coverage or at what rate to provide coverage.”;

By renumbering sections accordingly;

Also on page 5, following line 28, by inserting:

“(c) Each insurer that uses insurance scores shall provide to the insurance commissioner all underwriting criteria, rating models, factors or other guidelines for determining insurance scores showing how such insurer uses credit information to determine the insurance score of an applicant or insured. As part of the required filing for any underwriting criteria, rating models, factors or other guidelines, the insurer shall include statistical validation supporting the use of such underwriting criteria, rating model, factor or other guidelines to determine an insurance score from an applicant’s or insured’s credit information. No such underwriting criteria, rating model, factor or other guideline for determining insurance scores shall be used until approved by the commissioner.”;

On page 6, in line 41, by striking all following “commissioner”; by striking all in line 42 and inserting “may:

(a) Deny, suspend, revoke or refuse to renew any license or other authority to operate in this state;

(b) impose a civil penalty in accordance with K.S.A. 40-2,115, and amendments thereto; or

(c) seek injunctive relief in any court of competent jurisdiction.

Except for seeking injunctive relief, no action shall be taken under this section without notice and an opportunity for a hearing under the Kansas administrative procedures act.

Sec. 16. The applicant, insured or attorney general may bring suit to enforce this act in a manner consistent with K.S.A. 50-634, and amendments thereto. Noncompliance with this may result in the imposition of equitable and legal relief allowed by law, including without limitation, any of the following: Damages, civil penalties, fines, license suspension, license revocation, or appropriate injunctive relief. The relief in this section shall be cumulative to other relief allowed by law.

Sec. 17. The commissioner shall report to the president and the minority leader of the senate and the speaker and the minority leader of the house of representatives, and the proponent of this bill by January 25, 2004, on issues related to the use of credit history in personal insurance underwriting and rating and the implementation of this act. The report shall include a:

(a) Review of how this act has been implemented and how this act has impacted consumers; and

(b) review and analysis of insurance scoring, which shall include specific facts and data including, but is not limited to:

(1) The relevance of credit history on insurance risk of loss;

(2) which types of consumers, based on demographic factors, benefit from the use of credit history in personal insurance rating and underwriting;

(3) which types of consumers, based on demographic factors, are harmed by the use of credit history in personal insurance rating and underwriting;

(4) the extent to which the use of credit history affects rates charged to the consumer;

(5) whether insurance scoring results in discrimination against a protected class of people or the poor; and

(6) such other issues as the commissioner may require.”;

By renumbering sections accordingly

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 13, Nays 26, Present and Passing 0, Absent or Not Voting 1.

Yeas: Barone, Clark, Downey, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Hensley, Huelskamp, Lee, Salmans, Steineger.

Nays: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Corbin, Donovan, Emler, Harrington, Jackson, Kerr, Lyon, Morris, O'Connor, Oleen, Pugh, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Jordan.

The motion failed and the amendment was rejected.

The Committee recommended **Sub for SB 144** be passed as amended.

SB 161, SB 192 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 123, SB 230 be passed over and retain a place on the calendar.

ORIGINAL MOTION

Having voted on the prevailing side, Senator Schmidt moved the Senate reconsider its adverse action on **SB 101**, in Final Action Thursday, February 27, 2003.

The motion carried and **SB 101** was returned to Emergency Final Action.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **SB 101; Sub SB 144; SB 161, SB 192** were advanced to Final Action and roll call.

SB 101, An act concerning elections; relating to the presidential primary; relating to the date when certain primary elections are held; amending K.S.A. 12-1254, 25-203, 25-306b, 25-1115, 25-1220, 25-2102, 25-2502, 25-3205, 25-3901, 25-3904, 25-3904a, 25-3905, 25-4501 and 25-4505 and K.S.A. 2002 Supp. 25-205, 25-302a, 25-1122 and 25-4005 and repealing the existing sections.

On roll call, the vote was: Yeas 21, Nays 18, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brungardt, Buhler, Bunten, Corbin, Downey, Emler, Goodwin, Jackson, Kerr, Morris, Oleen, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Nays: Barone, Brownlee, Clark, Donovan, Feleciano, Gilstrap, Gooch, Haley, Harrington, Hensley, Huelskamp, Lee, Lyon, O'Connor, Pugh, Steineger, Tyson, Wagle.

Absent or Not Voting: Jordan.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I vote no on **SB 101**. When the primary election ends, a whole new ball game begins in the election cycle. To shorten the time frame between the primary and the general disadvantages the candidates and the voters. The candidates need the current time frame to adequately express their views so the voters are well informed to fulfill their voting responsibility.—KARIN BROWNLEE

Senator O'Connor requests the record to show she concurs with the "Explanation of Vote" offered by Senator Brownlee on **SB 101**.

MR. VICE PRESIDENT: I support conducting the presidential preference primary so Kansans have a full voice in selecting the president of the United States. Therefore, yesterday I voted no on **SB 101**. I now have been assured that if **SB 101** passes, we will have another opportunity this year to vote on legislation authorizing the presidential preference primary. Therefore, I am today willing to vote to advance **SB 101** through the legislative process only so its other provisions might be considered by the House of Representatives.—DEREK SCHMIDT

Sub SB 144, An act concerning insurance; relating to the use of credit scores in issuing certain policies.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Jordan.

The substitute bill passed, as amended.

SB 161, An act concerning property taxation; eliminating exemption for certain housing for elderly persons; amending K.S.A. 2002 Supp. 79-201 and 79-201b and repealing the existing sections.

On roll call, the vote was: Yeas 27, Nays 12, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Gooch, Goodwin, Harrington, Huelskamp, Jackson, Kerr, Lyon, O'Connor, Oleen, Salmans, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Feleciano, Gilstrap, Haley, Hensley, Lee, Morris, Pugh, Schmidt, Schodorf, Steineger, Taddiken.

Absent or Not Voting: Jordan.

The bill passed, as amended.

SB 192, An act concerning sales taxation; enacting the streamlined sales and use tax agreement conformity act; local sales tax transportation development district act; amending K.S.A. 12-189a, 12-191, 12-198, 75-5151, 79-3607, 79-3608 and 79-3651 and K.S.A. 2002 Supp. 12-194, 25-432, 79-3602, 79-3603, 79-3606, 79-3650 and 79-3703 and repealing the existing sections; also repealing K.S.A. 12-191a, 12-17,130, 12-17,131, 12-17,132, 12-17,133, 12-17,134, 12-17,135, 12-17,136, 12-17,137, 12-17,138 and 12-17,139.

On roll call, the vote was: Yeas 34, Nays 5, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Gooch, Goodwin, Haley, Harrington, Hensley, Jackson, Kerr, Lee, Morris, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Huelskamp, Lyon, O'Connor, Pugh, Tyson.

Absent or Not Voting: Jordan.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. VICE PRESIDENT: I vote yes on **SB 192**. This vote is with the understanding and assurance from the Senate Assessment and Taxation Chairman that an anticipated minimum gross sales threshold of \$5 million will be adopted before the January 1, 2006 effective date of this act. Without this assurance, this act places an undue compliance burden on beginning small retail businesses in our state.—STAN CLARK

Senators Harrington and Tyson request the record to show they concur with the "Explanation of Vote" offered by Senator Clark on **SB 192**.

MESSAGE FROM THE HOUSE

Announcing passage of **Substitute HB 2039; HB 2122, HB 2125, HB 2133, HB 2154, HB 2196, HB 2204, HB 2205, HB 2212, HB 2221, HB 2231, HB 2233, HB 2234, HB 2247, HB 2254, HB 2271, HB 2289, HB 2293; Substitute HB 2294; HB 2297, HB 2352, HB 2353, HB 2374, HB 2391.**

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

Substitute HB 2039; HB 2122, HB 2125, HB 2133, HB 2154, HB 2196, HB 2204, HB 2205, HB 2212, HB 2221, HB 2231, HB 2233, HB 2234, HB 2247, HB 2254, HB 2271, HB 2289, HB 2293; Substitute HB 2294; HB 2297, HB 2352, HB 2353, HB 2374, HB 2391 were thereupon introduced and read by title.

CHANGE OF REFERENCE

The Vice President withdrew **SB 123** from the calendar under the heading of General Orders, and referred the bill to the Committee on Ways and Means.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Tuesday, March 4, 2003.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

