

# Journal of the Senate

FORTY-FOURTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Monday, March 17, 2003—2:30 p.m.

The Senate was called to order by Vice President John Vratil.  
The roll was called with thirty-eight senators present.  
Senators Corbin and Donovan were excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

They say everybody's Irish  
On St. Patrick's Day.  
Everyone is wearing green,  
And there's a parade today.

What St. Patrick's famous for  
Is chasing out the snakes,  
But what was more important:  
Was turning sinners into saints.

Actually, You did it, Lord,  
But St. Patrick was Your man  
Who helped sinners get to know You,  
And built churches throughout the land.

But isn't that just like us, Lord,  
To focus on the snakes,  
While in the meantime people's lives  
Were being changed for goodness' sake!

We focus on the trivia,  
And ignore important things.  
We pacify our appetites,  
And ignore the King of kings.

Lord, help us not to spend much time  
On what happened to the snakes.  
It's like consuming cotton candy  
When we could be eating steaks.

I pray this in the Name of Christ,

AMEN

## GUESTS

Vice President Vratil and members of the Senate welcomed Senator Downey's daughter, Amy Mitchell, and grandchildren, Lauren and Conner.

## INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

**SB 261**, An act transferring the powers and duties of the information network of Kansas, Inc., to Kansas, Inc.; amending K.S.A. 74-8001 and repealing the existing section; also repealing K.S.A. 74-9303, by Committee on Ways and Means.

**SB 262**, An act transferring the powers and duties of the division of accounts and reports from the department of administration to the state treasurer; repealing K.S.A. 75-3727a and 75-3727b, by Committee on Ways and Means.

#### REFERRAL OF APPOINTMENTS

The following appointment made by the Governor and submitted to the senate for confirmation, was referred to Committee as indicated:

*By the Governor:*

*Rank of Major General in the Kansas Army National Guard:*

Brigadier General James R. Mason, effective upon the date of confirmation by the Senate and the retirement of Major General Lloyd E. Krase, on or about November 1, 2003.

(Federal and State Affairs)

#### COMMUNICATIONS FROM STATE OFFICERS

##### STATE OF THE JUDICIARY

Kay McFarland, Chief Justice, pursuant to K.S.A. 20-320, submitted the 2003 Annual Report of the Chief Justice of the Kansas Supreme Court.

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

#### MESSAGE FROM THE HOUSE

Announcing passage of **HB 2005**, **HB 2101**, **HB 2310**.

Adoption of **SCR 1604**.

Also, passage of **SB 73**, as amended.

The House accedes to the request of the Senate for a conference on **SB 4** and has appointed Representatives Neufeld, Shultz and Nichols as conferees on the part of the House.

The House accedes to the request of the Senate for a conference on **SB 175** and has appointed Representatives Neufeld, Shultz and Nichols as conferees on the part of the House.

The House announces the appointment of Representative Feuerborn to replace Representative Nichols as a conferee on **SB 4**.

#### INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

**HB 2005**, **HB 2101**, **HB 2310** were thereupon introduced and read by title.

#### REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **HB 2106**, **HB 2191**, both as amended by House Committee, be passed.

Committee on **Judiciary** recommends **HB 2016**, as amended by House Committee; **HB 2017**, as amended by House Committee of the Whole; **HB 2089** be passed.

Also **SB 197** be amended on page 1, after line 37, by inserting the following:

“(e) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent’s child or such guardian’s ward.”;

On page 2, in line 39, after the stricken material, by inserting: “This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person’s parent or legal guardian.”; in line 40, before “Any” by inserting “(f)”; in line 43, by striking “(f)” and inserting “(g)”; and the bill be passed as amended.

**SB 243** be amended on page 3, after line 40, by inserting the following:

“Sec. 2. K.S.A. 65-4150 is hereby amended to read as follows: 65-4150. As used in this act:

(a) “Controlled substance” means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) “Deliver” or “delivery” means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.

(c) “Drug paraphernalia” means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the uniform controlled substances act. “*Drug paraphernalia*” shall not include any drug product containing *ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers or any product containing the same.* “Drug paraphernalia” shall include, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.

(2) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.

(3) Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.

(5) Scales and balances used or intended for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.

(7) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana.

(8) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.

(9) Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled substances.

(10) Containers and other objects used or intended for use in storing or concealing controlled substances.

(11) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.

(12) Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

(E) roach clips (objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand);

(F) miniature cocaine spoons and cocaine vials;

(G) chamber pipes;

(H) carburetor pipes;

(I) electric pipes;

(J) air-driven pipes;

(K) chillums;

(L) bongs; and

(M) ice pipes or chillers.

(d) “Person” means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

(e) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

Sec. 3. K.S.A. 65-4159 is hereby amended to read as follows: 65-4159. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled substance or controlled substance analog.

(b) Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled substance or controlled substance analog, upon conviction, is guilty of a drug severity level 1 felony and the sentence for which shall not be subject to statutory provisions for suspended sentence, community work service, or probation.

(c) The provisions of subsection (d) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

Sec. 4. K.S.A. 65-4160 is hereby amended to read as follows: 65-4160. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1); or (d)(3) ~~or (f)(1)~~ of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b) and (c), any person who violates this subsection shall be guilty of a drug severity level 4 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(e) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(f) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

Sec. 5. K.S.A. 65-4161 is hereby amended to read as follows: 65-4161. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense or compound any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1); or (d)(3) ~~or (f)(1)~~ of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b), (c) and (d), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a), such person shall be guilty of a drug severity level 2 felony if such person is 18 or more years of age and the substances involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(f) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(g) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

Sec. 6. K.S.A. 65-7006 is hereby amended to read as follows: 65-7006. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the ~~product~~ same to manufacture a controlled substance.

(b) It shall be unlawful for any person to market, sell, distribute, advertise, or label any drug product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts ~~or of~~ isomers if the person knows or reasonably should know that the purchaser will use the ~~product~~ same to manufacture a controlled substance.

(c) It shall be unlawful for any person to market, sell, distribute, advertise or label any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(d) A violation of this section shall be a drug severity level 1 felony.”;

And by renumbering sections accordingly;

Also on page 3, in line 41, by striking “is” and inserting “, 65-4150, 65-4159, 65-4160, 65-4161 and 65-7006 are”;

On page 1, in the title, in line 9, by striking “the”; also in line 9, by striking “act”; in line 10, after “65-4111”, by inserting “, 65-4150, 65-4159, 65-4160, 65-4161 and 65-7006”; also in line 10, by striking “section” and inserting “sections”; and the bill be passed as amended.

**HB 2015**, as amended by House Committee, be amended on page 2, in line 4, after “court”, by inserting “may”; in line 5, by striking “may”; and the bill be passed as amended.

**HB 2034**, as amended by House Committee of the Whole, be amended on page 3, in line 27, by striking “for” and inserting “forth”;

On page 6, in line 26, following “exists” by inserting a comma; in line 27, by striking “gives” and inserting “Gives”; in line 29, following the semicolon by inserting “and”; in line 32, following “9” by striking the comma

On page 7, in line 29, by striking “15” and inserting “16”;

On page 8, in line 5, before “An” by inserting “(a)”;

On page 9, in line 7, following “both”, by inserting a comma; in line 8, following “both” by inserting a comma;

On page 10, in line 27, by striking “the” and inserting “The”;

On page 14, in line 7, by striking “of” and inserting “or”;

On page 18, in line 3, by striking “(f)” and inserting “(d)”; in line 18, by striking “This” and inserting “The Kansas power of attorney”; and the bill be passed as amended.

**HB 2068**, as amended by House Committee, be amended on page 2, in line 12, by striking all after the period; by striking all of lines 13 through 16; and the bill be passed as amended.

**HB 2088** be amended on page 2, in line 15, by striking “\$600” and inserting “\$500”; in line 37, by striking “\$600” and inserting “\$500”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 250, SB 251, SB 260** be passed.

**REPORT ON ENROLLED BILLS**

**SB 31** reported correctly enrolled, properly signed and presented to the Governor on March 17, 2003.

**SR 1828, SR 1829** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 17, 2003.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Tuesday, March 18, 2003.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

