

Journal of the House

THIRTY-EIGHTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Friday, March 5, 2004, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 124 members present.
Rep. Pottorff was excused on legislative business.

Prayer by the Rev. Neil Weatherhogg, pastor, First Presbyterian Church, Topeka:

O God, who created all things bright and beautiful and who causes the rain to fall gently upon the earth, you call us to follow you on our journey through life. The provisions you give for our journey have always been simple: something to eat and drink, a path to follow, and a star to aim for. What you ask of us also bespeaks simplicity: trust in you, trust in each other. By your Spirit inculcate in each of us this day that two-fold trust. Enable us to put away thoughts of deceit, words of accusation and obscurant designs that serve only to undercut our trust in you and in one another.

As these legislators wrestle with complex and delicate issues facing the State of Kansas, remind them of those foundational values of truth and justice you have given us in every age through prophets, priests and philosophers. We pray also for those who work behind the scenes rather than in front of the microphones, that their efforts may be recognized and appreciated by all so that none may labor here in vain.

Reassure those who serve in our armed forces of our support and yours. Bless those friends and relatives of this gathered assembly who may be suffering from pain or illness or grief. Renew our strength each day to seek your will and to lean upon your mercy that this day's journey may be both productive and pleasant, as we seek to promote the general welfare of the people of Kansas. In your holy name, O God, we offer our prayer. Amen.

The Pledge of Allegiance was led by Rep. Grant.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

HB 2919, An act concerning appropriation of water for beneficial use; amending K.S.A. 82a-734 and repealing the existing section, by Committee on Appropriations.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to committee as indicated:

Transportation: **HB 2918**.

MESSAGE FROM THE SENATE

Announcing passage of **Sub. SB 275; SB 408, SB 523**.

INTRODUCTION OF SENATE BILLS AND CONCURRENT RESOLUTIONS

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

Sub. SB 275; SB 408, SB 523.

CONSENT CALENDAR

No objection was made to **SB 352** appearing on the Consent Calendar for the first day.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HCR 5033, A PROPOSITION to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, concerning marriage.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the House of Representatives and two-thirds of the members elected (or appointed) and qualified to the Senate concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 15 of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

“§ 16. **Marriage.** (a) The marriage contract is to be considered in law as a civil contract. Marriage shall be constituted by one man and one woman only and the rights, benefits, privileges and incidents of marriage shall inure only to the parties to such a marriage. All other marriages are declared to be contrary to the public policy of this state and are void.

“(b) No relationship other than a marriage between one man and one woman shall be recognized by the state as being entitled to the rights, benefits, privileges and incidents of marriage.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“Explanatory statement. There is currently no constitutional provision regarding the marriage relationship.

“A vote for this proposition would provide in the constitution that marriage is a civil contract between a man and a woman and that all other marriages are void, and that no relationship other than a marriage between one man and one woman shall be recognized by the state as being entitled to the rights, benefits, privileges and incidents of marriage.

“A vote against this proposition will not amend the Kansas constitution in the manner described above.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in November in the year 2004 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election, was considered on final action.

On roll call, the vote was: Yeas 88; Nays 36; Present but not voting; 0; Absent or not voting: 1.

Yeas: Aurand, Barbieri-Lightner, Bethell, Boyer, Brunk, Burgess, Burroughs, Campbell, Carter, Cox, Crow, Dahl, DeCastro, Decker, Edmonds, Faber, Feuerborn, Freeborn, Gatewood, Gilbert, Goering, Goico, Gordon, Grant, Hayzlett, Henderson, Henry, Holland, Holmes, Horst, Howell, Huebert, Huff, Humerickhouse, Hutchins, Huy, D. Johnson, E. Johnson, Kassebaum, Kauffman, Krehbiel, Landwehr, Lane, Larkin, Light, Loganbill, M. Long, Long-Mast, Mason, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, J. Miller, Jim Morrison, Judy Morrison, Myers, Neighbor, Neufeld, Newton, Novascone, O’Neal, Osborne, Ostmeyer, Patterson, Pauls, Phelps, Powell, Powers, Ruff, Schwab, Schwartz, Shultz, Siegfried, Svaty, Swenson, Tafanelli, Thimesch, Thull, Toelkes, Vickrey, Ward, Wilk, D. Williams, J. Williams, Yoder.

Nays: Ballard, Ballou, Beggs, Carlin, Compton, Craft, Davis, Dillmore, Dreher, Faust-Goudeau, Flaharty, Flora, Hill, Huntington, Jack, Kirk, Klein, Kuether, Loyd, Minor, O'Malley, Owens, Reardon, Rehorn, Reitz, Sawyer, Scoggins-Waite, B. Sharp, S. Sharp, Showalter, Shriver, Sloan, Storm, Wilson, Winn, Yonally.

Present but not voting: None.

Absent or not voting: Pottorff.

A two-thirds majority of the members elected to the House having voted in the affirmative, the resolution was adopted, as amended.

EXPLANATIONS OF VOTE

MR. SPEAKER: "Give me your tired, your poor, your huddled masses, yearning to breathe free..." is the inscription at the base of the Statue of Liberty.

Thomas Jefferson began with these words, "All men are created equal and are endowed by their creator with certain inalienable rights, that among them are life, liberty and the pursuit of happiness."

I ask you to vote to protect our freedoms and liberties. We do not want a constitution that excludes anyone, it is a document "of the people, by the people and for the people" and "*the people*" is everyone, not just an exclusive few. Summon the courage to vote NO today and preserve the constitutional integrity that has served us so well throughout our Kansas history. I vote no on **HCR 5033**.—THOMAS C. OWENS

MR. SPEAKER: By and large, Americans want to protect marriage, but they also want to protect individual rights. Our NO vote on **HCR 5033** is a vote for individual rights.—BARBARA BALLARD, SUE STORM

MR. SPEAKER: I vote NO on **HCR 5033**. The sanctity of marriage is determined by the faith and behavior of the persons who marry, not by state law. Kansas law since 1867 says marriage is a man and a woman. Nobody is trying to change this. This proposed amendment is divisive and distracts us from the important business at hand.—GERALDINE FLAHARTY

MR. SPEAKER: Jesus taught us to "Love our neighbors as ourselves." My husband and I have tried to pass this along to our children and grandchildren.

Our U.S. Constitution declares "We are endowed by our Creator with certain inalienable rights...among these are Life, Liberty and the Pursuit of Happiness."

Our Salute to the Flag of the United State of America resounds with "freedom and justice for all."

How can we cast a vote against these cherished and time-tested traditions? I vote against this discriminatory resolution, **HCR 5033**.—SYDNEY CARLIN

MR. SPEAKER: Kansas currently prohibits same sex marriage and I support that principle. This amendment however would exclude a class of people from many civil liberties that have nothing to do with marriage. Issues of wills, powers of attorney, and contracts will be adversely affected. Not just in law, but within our sacred Constitution.

Kansas statutes have adequately addressed this issue defining marriage as a "civil contract between two parties who are of opposite sex." The law was clear before this vote, and the law remains clear after this vote: marriage in Kansas is to be restricted to a man and a woman. I vote no on **HCR 5033**.—NILE DILLMORE

MR. SPEAKER: There are legislators who, because of conviction, vote yes on **HCR 5033**. I have no qualms with those legislators.

There are others who vote yes, not with conviction, but with fear—fear of the ballot box. I vote NO on **HCR 5033** and remember the words of a former president:

"The courage of life is often a less dramatic spectacle than the courage of the final moment. But it is no less a magnificent mixture of triumph and tragedy. A man does what he must in spite of the personal consequences; in spite of obstacles and dangers and pressures—AND THAT is the basis for all morality."—ED O'MALLEY

MR. SPEAKER: I wish to share a portion of an E-Mail that I received from a teacher in my District.

Hi Vern,

I would like to urge you to please vote for the defense of marriage bill. Kids are in trouble these days—come by St. George Elementary any time and any teacher can share stories

with you. Please vote to keep marriage between a man and a woman . . . the kids that have a mom and dad start out with a great advantage - please protect that. Thanks for listening.

I vote yes on **HCR 5033**.—VERLYN OSBORNE

MR. SPEAKER: The fourteenth amendment to our Constitution guarantees equal protection under the law. We have a long, tragic history of abridging this basic right.

We were wrong when we passed laws that allowed for slavery to exist; we were wrong when we wrote laws to allow for segregation, or to ban inter-racial marriages. We were wrong when we wrote laws to ban Jewish people from housing or jobs. We were wrong with we interned Japanese Americans and systematically mistreated Native Americans. We were wrong when we denied women the right to vote.

We are wrong today. I vote No on **HCR 5033**.—NANCY KIRK

MR. SPEAKER: I support Kansas' current prohibition of same sex marriage. Consequently I opposed Rep. Owens' amendment which could have weakened this statutory prohibition.

I do not, however, support **HCR 5033**. Amending the Kansas Constitution should be attempted only when all statutory remedies are exhausted.

Same sex marriage is currently banned in two separate statues. Arguments for also inserting this prohibition into the Constitution are not compelling.

In 1975, I first pledged to uphold the Kansas Constitution. I've renewed this pledge every two years since. For *me*, this solemn pledge prohibits me from unnecessarily tampering with this sacred document. I vote No on **HCR 5033**.—BILL REARDON, TOM SAWYER

MR. SPEAKER: It has been acknowledged that our creator gave us our inalienable rights. He also gave us the model for marriage. He gave us the model for loving. That we should uphold marriage as it has been historically defined as between one man and one woman is important.

Before court cases set precedent for another definition of marriage, I believe we must act. This is our opportunity. It is fully understood that there are many non-marital relationships that exist and will continue to exist. I vote yes on **HCR 5033**.—JOANN FREEBORN

MR. SPEAKER: Kansas has two laws prohibiting same-sex marriage that remain unchallenged. Any future judicial argument would take years, and likely end in a Kansas Supreme Court ruling to uphold these laws.

This issue will eventually be resolved under the Equal Protection Clause of the United States Constitution, which trumps any amendment Kansas might approve.

Therefore, without reason, we rekindle hostilities and bias with this divisive issue.

Some support the intent of this resolution because of religious convictions; others may believe it will enrich their political portfolio.

While I support our current law, I cannot support this resolution. I vote no on **HCR 5033**.—ANNIE KUETHER, RICK REHORN

MR. SPEAKER: I vote no on **HCR 5033** because it is not necessary. A constitutional amendment is a very serious undertaking. I do believe in the right for all Kansans to vote; however, many do not know the facts concerning this issue. In 1992 the Kansas Supreme Court issued an opinion that same sex marriage is not legal, upholding our 1867 law. **HCR 5033** could put our present law at risk. The very thing we are trying to protect may be jeopardized.—BONNIE SHARP

MR. SPEAKER: I vote no on **HCR 5033** because it is not necessary. A constitutional amendment is a very serious undertaking. In 1992 the Kansas Supreme Court issued an opinion that same sex marriage is not legal, upholding our 1867 law. **HCR 5033** could put our present law at risk. The very thing we are trying to protect may be jeopardized.—VAUGHN FLORA

MR. SPEAKER: I vote yes on **HCR 5033**. I support and honor the traditional definition of marriage. This amendment affirms the current state statute that recognizes marriage as being between one man and one woman. Most people in my district have expressed a similar view of this most fundamental institution.—BOB GRANT, MARGARET LONG

MR. SPEAKER: I believe marriage should be between one man and one woman. I do not support same-sex marriage or agree with a homosexual lifestyle. However, it is not my place to judge another person's actions or beliefs by placing such an exclusion in the Kansas Constitution.

This constitutional amendment is a fearful reactionary response to the political battles of other states. Our state law and court decisions have upheld Kansas' definition of marriage as a union between one man and one woman. I do not believe an amendment to the state constitution is necessary to protect the sacred institution of marriage in Kansas.

I vote no on **HCR 5033**.—JOHN BALLOU

MR. SPEAKER: The Kansas Constitution is to protect Kansas families. Voters should have the right to decide. Forty years ago our divorce laws were modified, marriages became easier to dissolve and we are seeing the fallout. Single-parent homes under the poverty level are the number one indicator of at-risk children.

Traditional marriage is the foundation of society. Companionship and sexual pleasure aren't the highest purpose for marriage. Rearing healthy, productive, contributing citizens is. If the central purpose of government is to promote the general welfare, the state must promote what is best for society's health, security and long term viability. I vote yes on **HCR 5033**.—KATHE DECKER

MR. SPEAKER: I vote no on **HCR 5033**. Whether or not homosexuals have marriage rights under the constitution is a question that can only be resolved under the Equal Protection Clause of the U.S. Constitution. Federal action is required to settle the question. I would wait until the question is clarified and take whatever state action is appropriate at that time.—TOM KLEIN

MR. SPEAKER: I vote no on **HCR 5033**, the so called defense of marriage act. Same sex marriage is already illegal in Kansas. **HCR 5033** is simply an attempt to politicize this issue which will in the end motivate conservative voters to make their way to the polls in November. Democrats become the great losers in that one sided discourse. Furthermore, **HCR 5033** creates a second class of citizens; a group of people I have no right to judge. This has been allowed to happen too many times in our history, but not with my vote.—R.J. WILSON

PROTEST

By the authority of the right preserved in Art. 2, §10, of the Kansas Constitution, I protest the need to consider **HCR 5033**.

HCR 5033 seems to me to be another one of those measures where as legislators we try to demonstrate a certain posture to our constituents without knowing or understanding whether what we are doing is either necessary or correct. Sometimes we wind up doing the wrong thing, and I fear **HCR 5033** may fit into that category.

I cannot support **HCR 5033** for three reasons:

FIRST — IT IS NOT NECESSARY.

Current Kansas law, K.S.A. 23-101, defines the nature of marriage relation as one which exists "between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void." That has been our law dating from 1867.

It has been said this resolution is being offered for fear the Kansas courts will declare our law defining marriage unconstitutional, which was the outcome of Massachusetts' marriage law. Vermont already in 1999 ruled gay couples were entitled to the same benefits of marriage as heterosexual couples, and that has not changed Kansas law. Furthermore, the Kansas Supreme Court has already decided the issue, and decided in favor of marriage between two parties who are of opposite sex.

In re Estate of Gardiner, 273 Kan. 191, was decided in 2002. In considering K.S.A. 23-101, our current law, the Court expressly held that same-sex couples may not lawfully marry in Kansas.

[T]he legislature clearly viewed "opposite sex" in the narrow traditional sense. The legislature has declared that the public policy of this state is to recognize only the

traditional marriage between “two parties who are of the opposite sex,” and all other marriages are against public policy and void. We cannot ignore what the legislature has declared to be the public policy of this state. Our responsibility is to interpret K.S.A. 23-101 and not to rewrite it. That is for the legislature to do if it so desires. If the legislature wishes to change public policy, it is free to do so; we are not. To conclude that [the parties are] of the opposite sex . . . would require that we rewrite K.S.A. 23-101. 273 Kan., at 215.

HCR 5033 would create a definition of a recognized marriage at variance with what is set forth in K.S.A. 23-101. Doing so means the Court would have a new law to construe and apply. I see absolutely no need to put at risk a law which has been upheld and applied the way we want it applied. To do so creates a risk.

If our traditional, statutory definition of marriage, which I fully endorse and support, is to be held unconstitutional by the United States Supreme Court as being in violation of the Equal Protection Clause of the Bill of Rights to the United States Constitution, that will occur whether we continue to rely on our judicially upheld statutes, or an amendment to our state constitution.

SECOND — IT IS THE WRONG FIX

What may be a concern, as a result of the Massachusetts decision, is the question of whether Kansas will at some point be required, under the doctrine of “full faith and credit,” to recognize a same-sex marriage legalized in Massachusetts. **HCR 5033** does not address that issue, even though some say it is intended to do just that.

Federal law, in what is referred to as the “defense of marriage” act (DOMA), provides that a state need not recognize another state’s permitted same-sex marriage.

Current law addresses the validity of marriages contracted outside of Kansas. K.S.A. 23-115 provides that “[a]ll marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state. It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman.” (Emphasis added.) Like our statute defining marriage, this law has been on the books since 1867, and was noted and cited with approval by the *Gardiner* Court.

If we are at risk under the Massachusetts decision, the risk is in not amending K.S.A. 23-115(a) to clarify that “all marriages [between two parties who are of opposite sex] contracted without this state. . . shall be valid . . . in this state.” But that is *not* what **HCR 5033** does.

THIRD — IT PUTS DEFINED MARRIAGE AT RISK

What if the legislature places **HCR 5033** before the voters, and what if the voters say “no,” whether by 100,000 votes, or by one? Does that mean the voters do not want the proposition in our Constitution, or does that mean the voters do not want to prohibit same-sex marriage? If the latter, and you can be certain that those who favor such legislation will assert that is exactly what the voters intend by a negative vote on any constitutional amendment, we place our traditional, currently valid, Kansas law at risk.

Putting at risk our traditional, time honored definition of marriage as one which exists between two parties who are of opposite sex, is something I am not willing to do. We don’t have to, we shouldn’t, and I won’t. I must vote no on **HCR 5033**.—WARD LOYD

PROTEST

Pursuant to Article 2, Section 10 of the Kansas Constitution, I submit the following written protest against **HCR 5033** for inclusion in the House Journal:

The greatest joy in my life is the companionship of a committed family relationship.

I believe all people should have the opportunity to experience this joy, if they choose, including my friends and family members who are gay. Their happiness does not threaten me, my marriage or my children.

I believe that marriage is a solemn relationship of two people of both civil and religious significance. Government should concern itself with the civil benefits and not impose itself in an individual’s religious beliefs.

I believe that the state should provide equal protection to all citizens in the enjoyment of the civil benefits of marriage. I believe this amendment would deny equal protection.

I have spent much of my career, both as an attorney and in the military, fighting against discrimination of all types. After a great deal of thought and soul-searching, I believe the debate over this amendment is an extension of that fight.

I believe that a relationship between two adults based on love and commitment is the foundation of our society, and I believe it is beneficial to our society to encourage people to commit themselves to each other, not create barriers to such commitment.

While I respect the opinions of the proponents of this amendment, my conscience dictates that I vote no on **HCR 5033**.—JEFF JACK

REPORTS OF STANDING COMMITTEES

Committee on **Appropriations** recommends **SB 323** be passed.

Committee on **Insurance** recommends **SB 340** be amended on page 1, in line 14, preceding “K.S.A.” by inserting “From and after July 1, 2004.”;

On page 2, by striking all in lines 26 through 28 and inserting the following:

“Sec. 2. K.S.A. 40-2118 is hereby amended to read as follows: 40-2118. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) “Administering carrier” means the insurer or third-party administrator designated in K.S.A. 40-2120, and amendments thereto.

(b) “Association” means the Kansas health insurance association established in K.S.A. 40-2119, and amendments thereto.

(c) “Board” means the board of directors of the association.

(d) “Church plan” means a plan as defined under section 3(33) of the Employee Retirement Income Security Act of 1974.

(e) “Commissioner” means the commissioner of insurance.

(f) “Creditable coverage” means with respect to an individual, coverage of the individual under any of the following:

- (1) A group health plan;
- (2) health insurance coverage;
- (3) part A or Part B of Title XVIII of the Social Security Act;
- (4) title XIX of the Social Security Act, other than coverage consisting solely of benefit under Section 1928;
- (5) chapter 55 of Title 10, United States Code;
- (6) a medical care program of the Indian Health Service or of a tribal organization;
- (7) a state health benefit risk pool;
- (8) a health plan offered under Chapter 89 of Title 5, United States Code;
- (9) a public health plan as defined under regulations promulgated by the secretary of health and human services; and
- (10) a health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(d)).

(g) “Dependent” means a resident spouse or resident unmarried child under the age of 19 years, a child who is a student under the age of 23 years and who is financially dependent upon the parent, or a child of any age who is disabled and dependent upon the parent.

(h) ~~“Federally defined eligible individual” means an individual:~~

~~(1) For whom, as of the date the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and whose most recent prior coverage was under a group health plan, government plan or church plan;~~

~~(2) who is not eligible for coverage under a group health plan, Part A or B of Title XVIII of the Social Security Act, or a state plan under Title XIX of the Social Security Act, or any successor program, and who does not have any other health insurance coverage;~~

~~(3) with respect to whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud, and~~

~~(4) who had been offered the option of continuation coverage under COBRA or under a similar program, who elected such continuation coverage, and who has exhausted such continuation coverage.~~

~~(i) “Excess loss” means the total dollar amount by which claims expense incurred for any issuer of a medicare supplement policy or certificate delivered or issued for delivery to~~

persons in this state eligible for medicare by reason of disability and who are under age 65 exceeds 65% of the premium earned by such issuer during a calendar year.

(i) *“Federally defined eligible individual” means an individual:*

(1) *For whom, as of the date the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is 18 or more months and whose most recent prior coverage was under a group health plan, government plan or church plan;*

(2) *who is not eligible for coverage under a group health plan, Part A or B of Title XVII of the Social Security Act, or a state plan under Title XIX of the Social Security Act, or any successor program, and who does not have any other health insurance coverage;*

(3) *with respect to whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud; and*

(4) *who had been offered the option of continuation coverage under COBRA or under a similar program, who elected such continuation coverage, and who has exhausted such continuation coverage.*

(j) *“Federally defined eligible individuals for FTAA” means an individual who is:*

(1) *Legally domiciled in this state; and*

(2) *eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986.*

(k) *“FTAA” means federal trade adjustment assistance under the federal trade adjustment assistance reform act of 2002, public law 107-210.*

(l) *“Governmental plan” means a plan as defined under section 3(32) of the Employee Retirement Income Security Act of 1974 and any plan maintained for its employees by the government of the United States or by any agency or instrumentality of such government.*

(m) *“Group health plan” means an employee benefit plan as defined by section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides any hospital, surgical or medical expense benefits to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement or otherwise.*

(n) *“Health insurance” means any hospital or medical expense policy, health, hospital or medical service corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by an employer or any certificate issued under any such policies, contracts or plans. “Health insurance” does not include policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.*

(o) *“Health maintenance organization” means any organization granted a certificate of authority under the provisions of the health maintenance organization act.*

(p) *“Insurance arrangement” means any plan, program, contract or any other arrangement under which one or more employers, unions or other organizations provide to their employees or members, either directly or indirectly through a group-funded pool, trust or third-party administrator, health care services or benefits other than through an insurer.*

(q) *“Insurer” means any insurance company, fraternal benefit society, health maintenance organization and nonprofit hospital and medical service corporation authorized to transact health insurance business in this state.*

(r) *“Medicaid” means the medical assistance program operated by the state under title XIX of the federal social security act.*

(s) *“Medicare” means coverage under both parts A and B of title XVIII of the federal social security act, 42 USC 1395.*

(t) *“Medicare supplement policy” means a group or individual policy of accident and sickness insurance or a subscriber contract of hospitals and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal social security act (42 USC 1395 et seq.) or an issued policy under a demonstration project specified in 42 USC 1395ss(g)(1), which is advertised,*

marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare.

~~(s)~~ (u) "Member" means all insurers and insurance arrangements participating in the association.

~~(t)~~ (v) "Plan" means the Kansas uninsurable health insurance plan created pursuant to this act.

~~(w)~~ (w) "Plan of operation" means the plan to create and operate the Kansas uninsurable health insurance plan, including articles, bylaws and operating rules, adopted by the board pursuant to K.S.A. 40-2119, and amendments thereto.

Sec. 3. K.S.A. 40-2122 is hereby amended to read as follows: 40-2122. (a) The following individuals shall be eligible for plan coverage provided they meet the criteria set forth in subsection (b):

(1) Any person who has been a resident of this state for at least six months;

(2) any person who is a legal domiciliary of this state who previously was covered under the high risk pool of another state, provided they apply for coverage under the plan within 63 days of losing such other coverage for reasons other than fraud or nonpayment of premiums; ~~or~~

(3) any federally defined eligible individual who is a legal domiciliary of this state; *or*

(4) *any federally defined eligible individual for FTAA.*

(b) Those individuals who are eligible for plan coverage under subsection (a) must provide evidence satisfactory to the administering carrier that such person meets one of the following criteria:

(1) Such person has had health insurance coverage involuntarily terminated for any reason other than nonpayment of premium;

(2) such person has applied for health insurance and been rejected by two carriers because of health conditions;

(3) such person has applied for health insurance and has been quoted a premium rate which is in excess of the plan rate;

(4) such person has been accepted for health insurance subject to a permanent exclusion of a preexisting disease or medical condition; ~~or~~

(5) such person is a federally defined eligible individual; *or*

(6) *such person is a federally defined eligible individual for FTAA.*

(c) Each resident dependent of a person who is eligible for plan coverage shall also be eligible for plan coverage.

(d) The following persons shall not be eligible for coverage under the plan:

(1) Any person who is eligible for medicare or is eligible for medicaid benefits;

(2) any person who has had coverage under the plan terminated less than 12 months prior to the date of the current application, except that this provision shall not apply with respect to an applicant who is a federally defined eligible individual;

(3) any person who has received accumulated benefits from the plan equal to or in excess of the lifetime maximum benefits under the plan prescribed by K.S.A. 40-2124 and amendments thereto;

(4) any person having access to accident and health insurance through an employer-sponsored group or self-insured plan, *including coverage under the consolidated omnibus budget reconciliation act (COBRA), except that the requirement for exhaustion of any available COBRA or state continuation is waived whenever such person:*

(A) *Is eligible for the credit for health care costs under section 35 of the internal revenue code of 1986; and*

(B) *has three months of prior creditable coverage as described in subsection (c) of K.S.A. 40-2124, and amendments thereto; or*

(5) any person who is eligible for any other public or private program that provides or indemnifies for health services.

(e) Any person who ceases to meet the eligibility requirements of this section may be terminated at the end of a policy period.

(f) All plan members, insurers and insurance arrangements shall notify in writing persons denied health insurance coverage, for any reason, of the availability of coverage through the Kansas health insurance association.

Sec. 4. K.S.A. 40-2124 is hereby amended to read as follows: 40-2124. (a) Coverage under the plan shall be subject to both deductible and coinsurance provisions set by the board. On and after January 1, 1998, the plan shall offer to current participants and new enrollees no fewer than four choices of deductible and copayment options. Coverage shall contain a coinsurance provision for each service covered by the plan, and such copayment requirement shall not be subject to a stop-loss provision. Such coverage may provide for a percentage or dollar amount of coinsurance reduction at specific thresholds of copayment expenditures by the insured.

(b) Coverage under the plan shall be subject to a maximum lifetime benefit of \$1,000,000 per covered individual.

(c) On and after May 1, 1994, coverage under the plan shall exclude charges or expenses incurred during the first 90 days following the effective date of coverage as to any condition: (1) Which manifested itself during the six-month period immediately prior to the application for coverage in such manner as would cause an ordinarily prudent person to seek diagnosis, care or treatment; or (2) for which medical advice, care or treatment was recommended or received in the six-month period immediately prior to the application for coverage. In succeeding years of operation of the plan, coverage of preexisting conditions may be excluded as determined by the board, except that no such exclusion shall exceed 180 calendar days, and no exclusion shall be applied to a federally defined eligible individual provided that application for coverage is made not later than 63 days following the applicant's most recent prior creditable coverage. *For any individual who is eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986, the preexisting conditions limitation will not apply whenever such individual has maintained creditable health insurance coverage for an aggregate period of three months, not counting any period prior to a 63 day break in coverage, as of the date on which such individual seeks to enroll in coverage provided by this act.*

(d) (1) Benefits otherwise payable under plan coverage shall be reduced by all amounts paid or payable through any other health insurance, or insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The association shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this section.

Sec. 5. K.S.A. 40-2118, 40-2122 and 40-2124 are hereby repealed.

Sec. 6. From and after July 1, 2004, K.S.A. 2003 Supp. 40-2c01 is hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.;

In the title, in line 10, following the semicolon, by inserting "relating to the Kansas uninsurable health insurance plan.;" also in line 10, following "amending" by inserting "K.S.A. 40-2118, 40-2122 and 40-2124 and"; and the bill be passed as amended.

Committee on **Local Government** recommends **SB 292** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

REPORT OF STANDING COMMITTEE

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

Request No. 78, by Representative Long-Mast, commending Laura Gehring on being named a National Merit finalist;

Request No. 79, by Representatives Yonally and Morrison, in memory of Keith R. Landis;

Request No. 80, by Representative Vickrey, congratulating Elisabeth A. Xenos and Shelly M. Blann on being named to the Washburn University President's Honor Roll;

MARCH 5, 2004

1195

Request No. 81, by Representative Schwartz, congratulating Don and Bonnie Chapman on their 50th wedding anniversary; 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. Aurand, the committee report was adopted.

REPORT ON ENGROSSED RESOLUTIONS

HCR 5033 reported correctly engrossed March 4, 2004.

On motion of Rep. Aurand, the House adjourned until 10:30 a.m., Monday, March 8, 2004.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

