

# Journal of the Senate

TWENTY-SEVENTH DAY

---

SENATE CHAMBER, TOPEKA, KANSAS  
Wednesday, February 18, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.

The roll was called with forty senators present.

President Kerr introduced as guest chaplain, Colonel Paul Vicalvi from Fort Leavenworth, Kansas, who delivered the invocation:

Our Gracious Lord,

This afternoon we want to first of all thank you, our Creator, for the gift of life that is ours. And we thank you for a beautiful Kansas afternoon.

I thank you Lord for the great State of Kansas and its citizens. I thank you for its leaders, many who are gathered here to do the work that affects all of us. I pray for each senator as they make their decisions, that you would fill them with wisdom and discernment and courage. May they be men and women of integrity and character, who lead by example as well as by word. Grant them the awareness for your presence and peace.

Today also we remember our military service members not only from this State, but from all States. There are many even today who are deployed in harms way fighting for the rights of other countrymen and women to live in freedom. Grant them safety and your constant care. And we pray for our President of this United States. May you grant him courage and wisdom to lead this great country and may we always stand together from freedom and justice for all.

Amen

President Kerr introduced Colonel Jay Simpson, Garrison Commander, Fort Riley, who led the Senate in the Pledge of Allegiance.

## INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Oleen, Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Buntin, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, 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. 1816—

A RESOLUTION observing February 18 as Armed Forces Appreciation Day.

WHEREAS, The State of Kansas has a proud tradition of military service to the nation, both in times of war and peace, having proudly given its sons and daughters into the service of the nation; and

WHEREAS, Guardsmen, reservists and active duty personnel from across Kansas are currently supporting operations in Iraq, Kuwait, Afghanistan, Kosova, Bosnia-Herzegovina and other places around the world, while their families unselfishly endure on the homefront; and

WHEREAS, Members of the armed forces fought for and provided the independence under which our country was conceived, and have continued for over 227 years to protect the freedom we enjoy; and

WHEREAS, The State of Kansas recognizes the significant impact the armed forces has on the State's history and the continued economic and social contributions the armed forces provide for Kansas; and

WHEREAS, It is important to maintain close and effective cooperation among the various military installations, state and local governments and the private sector to facilitate the enhancement and continued strengthening of these facilities; and

WHEREAS, The Governor's Military Affairs Coordinating Council has been established to facilitate statewide activities in support of the various branches of the armed forces and the military installations located in Kansas: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we express our appreciation for those currently serving in all branches of the service, the National Guard and Reserve Forces plus military retirees and veterans, and recognize their dedicated service to this state and nation by observing February 18 as Armed Forces Appreciation Day.

On emergency motion of Senator Oleen **SR 1816** was adopted unanimously.

Introduced as guests were Colonel Jay Simpson, Fort Riley; John Montgomery—GMACC Chairman, Junction City; Chaplain Colonel Paul Vicalvi, Fort Leavenworth; Colonel Stephen Gensheimer, McConnell AFB; Brigadier General Jonathan Small, Kansas National Guard; Brigadier General Ed McIlhenny, Kansas National Guard; and Command Chief Master Sergeant John Kimball, Kansas National Guard.

President Kerr acknowledged Colonel Simpson for brief remarks:

It is an honor to represent Fort Riley, the United States Army and all the armed forces in the Department of Defense...Military Appreciation Day rolls out the red carpet for all the service members here in Kansas who have taken the oath to support and defend the Constitution of the United States. A year ago I addressed you and we were preparing to go to war...A lot has happened in a year. Fort Riley is home to 11,000 soldiers and over 80% of those soldiers deployed in support of Operation Iraqi Freedom...two battalions fought in the ground combat phase and we currently have three brigade size units still in Iraq continuing to fight against terrorism.

Additionally, Fort Riley has mobilized over 7,500 citizen soldiers - National Guard and Reserve soldiers throughout the mid-west...Many from Kansas. We can't do our mission without these great Americans...we can't do it without the support of y'all, the support of employers, nor can we do it without the support of our great military families...We are truly one Army.

You might have heard tributes to our servicemen and women most recently from country singer Toby Keith...I carry a tribute that I would like to read for you...Recently Fort Riley schools had an essay contest on why you are proud to be American...

I would like to close by reading this 4th grader's short essay...

*PROUD TO BE AMERICAN*

He wakes up early every morning to go to work before the sun comes up. He exercises because he has to be in good shape for his job. He puts on a uniform called a BDU. He is a soldier. He is my Daddy. He makes me proud to be an American. He and many other soldiers love the United States so much that they will die for their country.

I am proud to be an American because we live in a country where we can go to church and worship God without being afraid. We can write or voice what we feel without getting in trouble. We can be friends without getting in trouble too. We also don't have slavery anymore. We are a free country now and it is because of soldiers like my daddy.

I am very proud to be an American. It makes me very happy when I see the American flag and it makes me proud of our soldiers helping others in Iraq to be a free country. Everyone should be proud to be an American.

Thank You again for your support and allowing me this time to speak to you.

**PROMOTION TO ADJUTANT GENERAL**

President Kerr introduced Colonel Tod Bunting, whose appointment as Kansas Adjutant General was confirmed in the Senate last week. Colonel Bunting was in the Chamber for his pinning and oath of office. Also introduced were his wife, Barbara; parents, Al and Toni Bunting; his brothers, Marc and Kyle and sister-in-law, Jeannie.

**PROMOTION ORDER**

Know Ye, that reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of Tod M. Bunting I, Kathleen Sebelius, do appoint him Major General in the National Guard of the State of Kansas to rank as such from the fifth day of January, 2004. He is therefore carefully and diligently to discharge the duty of the office to which he is appointed by doing and performing all manner of things thereunto belonging.

Assisting with the pinning were Major General Bunting's wife, Barbara; Governor Kathleen Sebelius and Command Chief Master Sergeant John Kimball, Kansas National Guard. Administering the Oath of Office was Chief Justice Kay McFarland.

**INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were introduced and read by title:

**SB 533**, An act concerning the Kansas racing and gaming commission; relating to appointment of assistant attorneys general; amending K.S.A. 74-8809 and repealing the existing section, by Committee on Ways and Means.

**SB 534**, An act concerning real estate brokers and salespersons; relating to certain commercial real estate transactions; amending K.S.A. 2003 Supp. 58-3062 and repealing the existing section, by Committee on Federal and State Affairs.

**SB 535**, An act concerning the state board of tax appeals; relating to filing fees for certain appeals; relating to certain exemptions thereof; amending K.S.A. 2003 Supp. 74-2438a and repealing the existing section, by Committee on Ways and Means.

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were referred to Committees as indicated:

Agriculture: **HB 2531**.

Assessment and Taxation: **SB 532**.

Financial Institutions & Insurance: **HB 2545**, **HB 2597**.

Judiciary: **SB 528**; **HB 2542**; **HB 2554**, **HB 2565**, **HB 2678**.

Public Health and Welfare: **SB 526**, **SB 529**, **SB 530**; **HB 2737**.

Transportation: **HB 2623**, **HB 2624**.

Ways and Means: **SB 527**, **SB 531**.

**MESSAGE FROM THE HOUSE**

Announcing passage of **Substitute HB 2143**; **HB 2477**, **HB 2525**, **HB 2581**, **HB 2603**, **HB 2616**, **HB 2633**, **HB 2685**.

**INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS**

**Substitute HB 2143**; **HB 2477**, **HB 2525**, **HB 2581**, **HB 2603**, **HB 2616**, **HB 2633**, **HB 2685** were thereupon introduced and read by title.

**FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS**

**SB 289**, **SB 337**, **SB 342**, **SB 421**; **HB 2522** were considered on final action.

**SB 289**, An act establishing the governors of Kansas hometown heritage act, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

**SB 337**, An act concerning crimes; relating to hypnotic exhibition; repealing K.S.A. 21-4007, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 2, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Clark, Schodorf.

The bill passed, as amended.

**SB 342**, An act concerning insurance; pertaining to required provisions of certain accident and health policies; amending K.S.A. 40-2202 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed, as amended.

**SB 421**, An act concerning eminent domain; relating to the filing of the appraisers' report; amending K.S.A. 26-504 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed.

#### EXPLANATION OF VOTE

I fully support an individual's right to appeal the government's taking of private property. Although this bill does not alter the conditions under which an act of eminent domain may occur, it more than doubles the length of time that an individual has to pursue an appeal of the government's actions. The act of eminent domain and the process of seizure by the government should be reserved as a tool of last resort and used only in the most dire of circumstances. The right to own private property is one of our fundamental rights and should be protected ardently/judiciously.—DAVE KERR

**HB 2522**, An act relating to crimes and punishment; concerning traffic control signal preemption devices, was considered on final action.

On roll call, the vote was: Yeas 40, Nays 0, Present and Passing 0, Absent or Not Voting 0.

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

The bill passed.

#### INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Taddiken, Corbin, Downey, Huelskamp, Journey, Lee, Morris, Oleen, Schmidt, Tyson and Umbarger introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1817—

A RESOLUTION congratulating and commending Jan Lyons.

WHEREAS, Jan Lyons of rural Manhattan has been elected as President of the National Cattlemen's Beef Association for 2004 and will be responsible for advancing the association's agenda for the forthcoming year; and

WHEREAS, Mrs. Lyons has been a beef industry leader at the national, state and local levels. At the national level, Lyons chaired the Cattlemen's Beef Board in 1996 and the Industry Consumer Marketing Group in 1997. She has served on the National Cattlemen's Beef Association's Board of Directors and Executive Committee as well as numerous other committees. At the state level, Mrs. Lyons was President of the Kansas Angus Association in 1982, and President of the Kansas Livestock Association in 1994 during their centennial year. She served on the Kansas Beef Council for 10 years and numerous other committees including chairing the Kansas Bull Test Committee and the Purebred Council. Locally Mrs. Lyons' efforts centered on supporting youth development in the beef area where she has been a 4-H beef leader and a junior Angus Advisor; and

WHEREAS, Lyons Ranch has been honored with numerous conservation and grazing management awards and in 1996 Jan Lyons was named by Successful Farming as the Outstanding Kansas Cattleman for 1996; and

WHEREAS, Jan Lyons' love for cattle and caring for the land began on the family Angus farm in Eastern Ohio. Today Lyons manages her family's Angus seedstock operation in the Flint Hills native grass region south of Manhattan. The family operation includes both daughters and sons-in-law, seven grandchildren, and Jan's husband Frank: Now, Therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend Jan Lyons upon being elected as President of the National Cattlemen's Beef Association and wish her great success in this endeavor; and

*Be it further resolved:* That the Secretary of the Senate provide three enrolled copies of this resolution to Jan Lyons, Lyons Angus Ranch, 2481 McDowell Creek Spur, Manhattan, KS. 66502-9522 and one each to the Kansas Livestock Association, 6031 SW 37th Street, Topeka, KS. 66614-5129 and the National Cattlemen's Beef Association, 9110 East Nichols Avenue #300, Centennial, CO 80112.

On emergency motion of Senator Taddiken **SR 1817** was adopted unanimously.

Guests introduced were Jan Lyons, her husband, Frank, and their daughters, Debbie Lyons and Amy Langvardt and their families.

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

SENATE RESOLUTION No. 1818—

A RESOLUTION congratulating and commending the Butler County Community College football team.

WHEREAS, The Butler County Community College football team won the 2003 National Junior College Athletic Association Football Championship with a perfect 12-0 record, and head coach, Troy Morrell, was named the NJCAA Coach of the Year and the Kansas Jayhawk Community College Conference Coach of the Year; and

WHEREAS, The team won the 2003 junior college national championship by defeating Dixie State College 14-10 in the championship game played at St. George, Utah; and

WHEREAS, The team has played in the national championship game in four of the last six years — in 1998, 1999, 2001 and 2003, and won the national championship in three of those games — in 1998, 1999 and 2003. Its overall record for the past four years is 65 wins and 7 losses: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we congratulate and commend the Butler County Community College football team, head coach Troy Morrell, the assistant coaches, and all others who have contributed to the team's success as the 2003 National Junior College Athletic Association football champion; and

*Be it further resolved:* That the Secretary of the Senate provide five enrolled copies of this resolution to Troy Morrell, Head Football Coach, Butler County Community College, 901 South Haverhill Road, El Dorado, KS 67042-3280.

On emergency motion of Senator Corbin **SR 1818** was adopted unanimously.

Members of the football team were acknowledged as guests, along with Head Football Coach, Troy Morrell, and the assistant coaches.

#### REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 524** be passed.

Committee on **Commerce** recommends **SB 480** be amended on page 4, in line 34, after “within” by inserting “a”; and the bill be passed as amended.

Committee on **Education** recommends **SB 314** be amended on page 2, in line 22, by striking “to”; in line 28, by striking “shall”; in line 35, after “determine” by inserting a comma; also in line 35, by striking “for” and inserting a comma; in line 36, by striking “, terms of office”; by striking all in lines 39 through 43 and inserting the following:

- “(11) accept any gifts, grants or donations;
- (12) acquire and dispose of real or personal property;”;

On page 3, in line 1, by striking “, whether”; in line 2, by striking all preceding “owned”; also in line 2, by striking “. Any” and inserting a semicolon; by striking all in lines 3 through 20 and inserting the following:

“(14) adopt any rules and regulations, not inconsistent with any law or any rules and regulations of the state board of regents, which are necessary for the administration and operation of the college or for the conduct of business of the governing board;”;

By renumbering the remaining subsections accordingly;

Also on page 3, by striking all in lines 28 and 29;

By renumbering the remaining subsection accordingly;

Also on page 3, in line 32, by striking the period and inserting “; and

(17) take any other action, not inconsistent with any law or any rules and regulations of the state board of regents, which is necessary or incidental to the establishment, operation and maintenance of the college.”; and the bill be passed as amended.

Also, **SB 403** be amended as recommended by the Senate Committee on Assessment and Taxation and the bill, as printed with amendments by Senate Committee, be further amended on page 2, in line 35, by striking all after “(5)”; in line 36, by striking all before “deter-”;

On page 4, in line 9, by striking “A” and inserting “Except as provided by section 1, and amendments thereto, a”;

On page 11, following line 30, by inserting:

“Sec. 10. K.S.A. 2003 Supp. 72-6431 is hereby amended to read as follows: 72-6431.

(a) The board of each district shall levy an ad valorem tax upon the taxable tangible property of the district in the school years specified in subsection (b) for the purpose of:

- (1) Financing that portion of the district’s general fund budget which is not financed from any other source provided by law;
- (2) paying a portion of the costs of operating and maintaining public schools in partial fulfillment of the constitutional obligation of the legislature to finance the educational interests of the state; and

(3) with respect to any redevelopment district established prior to July 1, 1997, pursuant to K.S.A. 12-1771, and amendments thereto, paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district.

(b) The tax required under subsection (a) shall be levied at a rate of 20 mills in the school year ~~2003-2004~~ and school year 2004-2005. *The tax required to be levied under subsection (a) shall be levied at a rate of 21 mills in the school year 2005-2006.*

(c) The proceeds from the tax levied by a district under authority of this section, except the proceeds of such tax levied for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the district, shall be deposited in the general fund of the district.

(d) On June 15 of each year, the amount, if any, by which a district’s local effort exceeds the amount of the district’s state financial aid, as determined by the state board, shall be remitted to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the same in the state treasury to the credit of the state school district finance fund.

(e) No district shall proceed under K.S.A. 79-1964, 79-1964a or 79-1964b, and amendments thereto.”;

By renumbering the remaining sections accordingly;

On page 21, in line 26, by striking all before “79-201y” and inserting “72-6431, 72-6431b, 72-6431c.”;

In the title, in line 13, before “79-32,110” by inserting “72-6431.”; in line 16, before “79-201y” by inserting “, 72-6431c.”; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **HB 2606** be passed.

Committee on **Judiciary** recommends **SB 355** be amended on page 1, in line 14, by striking “this act” and inserting “the Kansas criminal code”; in line 22, by striking “crime” and inserting “murder pursuant to K.S.A. 21-3439, and amendments thereto.”; in line 24, by striking “of this act”; in line 42, by striking “first degree” and inserting “capital”;

On page 2, in line 26, by striking “of this”; in line 27, by striking “act”; after line 27 by inserting the following:

“New Sec. 5. Sections 1 through 4, and amendments thereto, shall be a part of and supplemental to the Kansas criminal code.”;

And by renumbering the remaining sections accordingly;

On page 3, in line 22, by striking “K.S.A. 21-4623” and inserting “section 3.”; by striking all in lines 24 through 33 and inserting the following:

“Sec. 7. K.S.A. 21-4624 is hereby amended to read as follows: 21-4624. (a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant’s attorney not later than five days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced as otherwise provided by law, and no sentence of death shall be imposed hereunder.

(b) Except as provided in K.S.A. 21-4622 and ~~21-4623~~ section 3, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403 and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of imprisonment as provided by law and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a sentence of death hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed hereunder. Whenever the court enters a judgment modifying the sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.”;

And by renumbering the remaining sections accordingly;

Also on page 3, in line 34, before “and” by inserting “, 21-4624”;

On page 1, in the title, in line 10, after “K.S.A.” by inserting “21-4624 and”; also in line 10, by striking “section” and inserting “sections”; and the bill be passed as amended.

Also, **SB 422** be amended on page 1, in line 21, after “(b)” by inserting “Except as provided in K.S.A. 22-3728, and amendments thereto, a defendant who is sentenced to imprisonment for life without the possibility of parole shall spend the remainder of the defendant’s natural life incarcerated and in the custody of the secretary of corrections.”; by striking all in lines 33 through 37;

And by renumbering the sections accordingly;

On page 12, in line 7, by striking “21-4633 and”;

On page 1, in the title, in line 11, by striking “21-4633 and”; and the bill be passed as amended.

**SB 423** be amended on page 2, in line 40, by striking “(g)” and inserting “(f)”;

Committee on **Public Health and Welfare** recommends **SB 426** be passed.

Committee on **Transportation** recommends **SB 383, SB 385** be passed.

Also, **SB 384** be amended on page 1, in line 40, by striking “65” and inserting “70”;

On page 2, in line 6, by striking “65” and inserting “70”; and the bill be passed as amended.

**SB 446** be amended on page 2, in line 17, by striking all following “signs” where it appears for the first time; in line 18, by striking “in the nighttime by warning lights”; also in line 18, by striking “and lights”; in line 25, by striking the comma and inserting “or”; also in line 25, by striking “and lights”; in line 26, by striking the comma and inserting “or”; in line 27, by striking “or warning lights”; following line 34, by inserting the following:

“Sec. 4. K.S.A. 68-2107 is hereby amended to read as follows: 68-2107. Any person ~~or the officers of any municipality, commission or district~~ failing, neglecting or refusing to comply with the provisions of this act, and for which a specific penalty is not provided in this act, shall be deemed guilty of a misdemeanor and upon conviction ~~thereof~~ shall be fined not less than ~~ten dollars (\$10)~~ \$10 nor more than ~~one hundred dollars (\$100)~~ \$100, or imprisoned for not less than ~~ten (10)~~ 10 days nor more than ~~ninety (90)~~ 90 days, or by both such fine and imprisonment.”;

By renumbering sections accordingly;

In the title, in line 11, by striking “and 68-2103” and inserting “, 68-2103 and 68-2107”; also in line 11, by striking all following “sections”; in line 12, by striking all preceding the period; and the bill be passed as amended.

**SB 447** be amended on page 1, in line 18, by striking “clerk” and inserting “board”; and the bill be passed as amended.

**SB 448** be amended on page 1, in line 15, by striking "68-560, 68-561,;" in line 16, by striking "68-572,;" also in line 16, by striking "68-1109,;"

In the title, in line 9, by striking "68-560, 68-"; in line 10, by striking "561, 68-572,;" also in line 10, by striking "68-1109,;" and the bill be passed as amended.

**SB 449** be amended on page 3, by striking all in lines 37 through 43;

On page 4, by striking all in lines 1 through 12;

By renumbering sections accordingly;

Also on page 4, in line 20, following "all" by inserting "qualified"; in line 37, following "board" by inserting "or the board's designee"; in line 41, following "commissioners" by inserting "or a record kept for that purpose by the county clerk";

On page 5, in line 4, preceding "except" by inserting "or it may let the work privately by submitting the contract, with a statement of the reasons for rejecting the bids at the public letting, to the secretary of transportation for approval,;"

On page 6, in line 30, by striking "68-1111,;"

In the title, in line 10, by striking "68-1111,;" and the bill be passed as amended.

Committee on **Utilities** recommends **SB 382** be amended on page 1, following line 31, by inserting the following:

"(c) The provisions of this section shall expire on July 1, 2006.;" and the bill be passed as amended.

#### REPORT ON ENGROSSED BILLS

**SB 289, SB 337, SB 342** reported correctly engrossed February 18, 2004.

#### 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 Salmans in the chair.

On motion of Senator Salmans the following report was adopted:

Recommended **SB 363, SB 379, SB 399** be passed.

**SB 364, SB 393, SB 463** be amended by adoption of the committee amendments, and the bills be passed as amended.

**SB 329** be amended by adoption of the committee amendments.

Senator Adkins moved to amend the bill, as amended by Senate Committee, on page 2, following line 35, by inserting the following:

"Sec. 4. K.S.A. 8-2503 is hereby amended to read as follows: 8-2503. (a) Except as provided in K.S.A. 8-1344 and 8-1345, and amendments thereto, and in subsection (b), each front seat occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208 shall have a safety belt properly fastened about such person's body at all times when the vehicle is in motion.

(b) This section does not apply to:

(1) An occupant of a passenger car who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt system;

(2) carriers of United States mail while actually engaged in delivery and collection of mail along their specified routes;

(3) newspaper delivery persons while actually engaged in delivery of newspapers along their specified routes; or

(4) an occupant of a passenger car required to be protected by a safety restraining system under the child passenger safety act.

(c) The secretary of transportation shall initiate an educational program designed to encourage compliance with the safety belt usage provisions of this act.

(d) The secretary shall evaluate the effectiveness of this act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits under 23 U.S.C. 402.

~~(e) Law enforcement officers shall not stop drivers for violations of this act in the absence of another violation of law. A citation for violation of this act shall not be issued without citing the violation that initially caused the officer to effect the enforcement stop.;"~~

By renumbering sections accordingly;

Also on page 2, in line 36, by striking “and 8-1345” and inserting “, 8-1345 and 8-2503”; In the title, by striking all in lines 10 and 11 and inserting:  
AN ACT relating to motor vehicles; concerning the child passenger safety act and safety belts; amending K.S.A. 8-1343a, 8-1344, 8-1345 and 8-2503 and repealing the existing sections.”

The motion failed and the amendment was rejected.

Upon the showing of five hands, a roll call vote was requested on the motion to recommend **SB 329** favorably for passage.

On roll call, the vote was: Yeas 27, Nays 8, Present and Passing 5, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Jordan, Kerr, Lee, Morris, Oleen, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Nays: Buntten, Huelskamp, Jackson, Journey, Lyon, O'Connor, Pugh, Tyson.

Present and Passing: Betts, Clark, Hensley, Steineger, Wagle.

The motion carried and the Committee recommended **SB 329** be passed as amended.

**SB 141** be amended by adoption of the committee amendments, be further amended by motion of Senator Jackson, as amended by Senate Committee, on page 35, in line 30, by striking “2002” and inserting “2003”;

On page 37, in line 15, by striking “state board of pharmacy, Kansas”; by striking all in line 16; in line 17, by striking all before “Kansas”; in line 20, by striking all after the colon; by striking all in lines 21, 22 and 23 and inserting “Emergency”; in line 27, by striking “State board of healing arts,”; in line 28, by striking all after the comma where it appears for the first time; by striking all in line 29; in line 30, by striking all before “state”; in line 31, by striking all after “parks”; in line 32, by striking “sions”; in line 37, by striking “board of accountancy,”;

On page 41, in line 24, by striking “(h)” and inserting “(i)”;

On page 49, in line 2, by striking “2002” and inserting “2003”, and **SB 141** be passed as further amended.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Thursday, February 19, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

