

Journal of the Senate

THIRTY-FOURTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, February 27, 2004—8:30 a.m.

The Senate was called to order by President Dave Kerr.
The roll was called with forty senators present.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Halfway through our ninety day journey we have some long days during which tension increases and sometimes angry words are exchanged.

Your apostle Paul wrote "In your anger do not sin. Do not let the sun go down while you are still angry." (Ephesians 4:26)

Paul did not say
That anger is a sin.
He said control your anger
With sturdy discipline.

Christ Himself got angry
When bullies who were strong
Took advantage of the weak
Whose suffering they prolonged.

If we see the powerful
Trample on the small,
We don't have a conscience
If we're not angry at them all.

Anger's a blessing like a fire
Fulfilling its proper role,
But it becomes destructive
When we've lost control.

Give us, Lord, the strength
To keep our voices down,
Getting rid of our anger
Before the sun goes down!

I pray in the Name of Jesus,

AMEN

PRESENTATION OF PETITIONS

The following petitions were presented, read and filed:

SP 7, by Senator Susan Wagle: A petition not to raise taxes during the 2004 Legislature Session, by Charles McConnell, Rose Hill, Kansas and 2,218 Kansas residents.

SP 8, by Senator Tim Huelskamp: A petition supporting the removal of an obscene statue at Washburn University promoting bigotry against Catholics, signed by Janice Hornung, Spearville, Kansas, and nine other Kansas residents.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and concurrent resolution were introduced and read by title:

SB 548. An act concerning the membership of the health care data governing board; amending K.S.A. 65-6803 and repealing the existing section, by Committee on Ways and Means.

SENATE CONCURRENT RESOLUTION No. 1619—

By Senators Huelskamp, Brownlee, Bunten, Clark, Donovan, Gilstrap, Jackson, Jordan, Journey, Lyon, O'Connor, Pugh, Salmans, Taddiken, Tyson, Umbarger and Wagle

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 Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives 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.** Only marriage between a man and a woman shall be valid or recognized in Kansas. The uniting of two persons of the same sex in a civil union, domestic partnership or other similar same-sex relationship shall not be valid or recognized in Kansas.”

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 only between one man and one woman, and that the uniting of two persons of the same sex in a civil union, domestic partnership or other similar same-sex relationship is not valid or recognized in Kansas.

“A vote against this proposition would leave to the legislature by statute the determination of whether the state will recognize same-sex relationships.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives, 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 a special election hereby called to be held on August 3, 2004, pursuant to section 1 of article 14 of the constitution of the state of Kansas, 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 earlier special election.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Agriculture: **Sub HB 2593; HB 2622.**

Commerce: **Sub HB 2435, Sub HB 2647; HB 2719.**

Education: **SCR 1618; HB 2795.**

Elections and Local Government: **HB 2605.**

Federal and State Affairs: **HB 2767.**

Financial Institutions & Insurance: **SB 546.**

Judiciary: **SB 547; SCR 1617; HB 2602, HB 2759; Sub HB 2777; HB 2790, HB 2869.**

Public Health and Welfare: **HB 2306, HB 2657, HB 2658; Sub HB 2698; HB 2717, HB 2718, HB 2770, HB 2820.**

Transportation: **HB 2235, HB 2695, HB 2833, HB 2871.**

Utilities: **HB 2756, HB 2772.**

CHANGE OF REFERENCE

The President withdrew **SB 308**, **SB 369** from the Committee on Ways and Means, and rereferred the bills to the Committee on Assessment and Taxation.

The President withdrew **SB 395**, **SB 504** from the Committee on Ways and Means, and rereferred the bills to the Committee on Commerce.

The President withdrew **HB 2306** from the Committee on Public Health and Welfare, and referred the bill to the Committee on Judiciary.

COMMUNICATIONS FROM STATE OFFICERS

STATE OF KANSAS
State Records Board

The State Records Board submitted its Annual Report for fiscal year 2003.

The 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.

FINAL ACTION ON CONSENT CALENDAR

SB 343 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

SB 343, An act relating to hospitals; repealing K.S.A. 2003 Supp. 65-441a.

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.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 303, An act concerning the family postsecondary savings program; relating to accounts therein; relating to income tax exemptions; amending K.S.A. 2003 Supp. 75-646 and 79-32,117 and repealing the existing sections, 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 304, An act concerning school districts; relating to the powers and duties of the state board of education and local boards of education, 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 310, An act relating to public utilities; concerning the subsidization of nonregulated affiliates, was considered on final action.

On roll call, the vote was: Yeas 34, Nays 6, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Barone, Betts, Downey, Lee, Lyon, Wagle.

The bill passed, as amended.

SB 321, An act concerning municipal court judges; relating to contempt powers; amending K.S.A. 12-4106 and K.S.A. 2003 Supp. 22-3609 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, 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, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Journey.

The bill passed, as amended.

Sub SB 335, An act concerning liquefied petroleum gas; relating to the regulation thereof, 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 substitute bill passed.

SB 354, An act concerning municipal court procedure; relating to pre-trial authority; amending K.S.A. 12-4203, 12-4209 and 12-4213 and repealing the existing sections, 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 367, An act concerning the state children's health insurance program; amending K.S.A. 38-2004 and K.S.A. 2003 Supp. 38-2001 and repealing the existing sections, 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 372, An act concerning sales taxation; relating to isolated or occasional sales of motor vehicles; computation of tax; amending K.S.A. 2003 Supp. 79-3603 and repealing the existing section; also repealing K.S.A. 2003 Supp. 79-3603c, was considered on final action.

On roll call, the vote was: Yeas 25, Nays 15, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Barone, Betts, Brownlee, Haley, Hensley, Huelkamp, Jackson, Journey, Lyon, O'Connor, Pugh, Schmidt, Steineger, Tyson, Wagle.

The bill passed.

SB 388, An act relating to the capitol area security patrol; concerning authority thereof; amending K.S.A. 2003 Supp. 75-4503 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 24, Nays 16, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Betts, Brungardt, Buhler, Bunten, Donovan, Downey, Emler, Goodwin, Hensley, Jackson, Jordan, Journey, Kerr, Morris, O'Connor, Oleen, Schmidt, Schodorf, Teichman, Vratil, Wagle.

Nays: Barone, Brownlee, Clark, Corbin, Gilstrap, Haley, Helgerson, Huelskamp, Lee, Lyon, Pugh, Salmans, Steineger, Taddiken, Tyson, Umbarger.

The bill passed, as amended.

SB 390, An act concerning taxation; relating to amount of refunds of homestead property tax; amending K.S.A. 79-4508 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 392, An act relating to the committee on surety bonds and insurance; authorizing competitive negotiation for certain contracts; amending K.S.A. 75-4105 and 75-4109 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, 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, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Schmidt.

The bill passed, as amended.

SB 394, An act concerning the department of commerce; relating to IMPACT; amending K.S.A. 2003 Supp. 74-50,103, 74-50,104, 74-50,107 and 74-50,108 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, 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, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Pugh.

The bill passed, as amended.

SB 411, An act concerning taxation on marijuana and controlled substances; relating to tax assessments; appeals, procedure; amending K.S.A. 79-5205 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 1, 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, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Pugh.

The bill passed.

SB 413, An act concerning sales taxation; relating to exemptions; identification numbers and certificates; amending K.S.A. 2003 Supp. 79-3651 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 35, Nays 5, 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, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle.

Nays: Clark, Salmans, Schmidt, Taddiken, Tyson.

The bill passed.

SB 420, An act concerning civil procedure; relating to costs; amending K.S.A. 60-2002 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 11, Nays 29, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Barnett, Brungardt, Bunten, Donovan, Goodwin, Kerr, Lyon, Morris, Schmidt, Vratil.

Nays: Adkins, Barone, Betts, Brownlee, Buhler, Clark, Corbin, Downey, Emler, Gilstrap, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Lee, O'Connor, Oleen, Pugh, Salmans, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Wagle.

A constitutional majority having failed to vote in favor of the bill, **SB 420** did not pass.

SB 425, An act concerning dentistry; relating to the administering of sedation and an-aesthetics; requiring dentists actively practicing to maintain a policy of professional liability insurance; amending K.S.A. 65-1444 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 437, An act concerning civil procedure; relating to small claims; amending K.S.A. 61-2706 and K.S.A. 2003 Supp. 61-2703 and repealing the existing sections; also repealing K.S.A. 2003 Supp. 61-2713, 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: 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, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Adkins, Pugh.

The bill passed, as amended.

SB 441, An act concerning workers compensation; relating to the date of accident; amending K.S.A. 2003 Supp. 44-508 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 26, Nays 14, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Corbin, Donovan, Emler, Helgerson, Huelskamp, Jackson, Jordan, Kerr, Lyon, Morris, O'Connor, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Betts, Clark, Downey, Gilstrap, Goodwin, Haley, Hensley, Journey, Lee, Oleen, Pugh, Salmans, Steineger.

The bill passed, as amended.

SB 452, An act concerning the regulation of psychologists; relating to unlicensed assistants in psychology; amending K.S.A. 2003 Supp. 74-5344 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 453, An act concerning the regulation of child care facilities; relating to exemptions therefrom; amending K.S.A. 65-501 and 72-8236 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 36, Nays 4, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Gilstrap, Haley, Huelskamp, Lyon.

The bill passed, as amended.

SB 460, An act concerning drivers' licenses and other identification cards; relating to taxpayer identification numbers; amending K.S.A. 2003 Supp. 8-240 and 8-1324 and repealing the existing sections, 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.

SB 461, An act concerning eminent domain; relating to acquisition of land for certain purposes by a port authority or county; amending K.S.A. 12-3408 and K.S.A. 2003 Supp. 12-3402, 12-3406 and 19-101a and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 1, 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.

Present and Passing: Wagle.

The bill passed, as amended.

SB 466, An act concerning driver's licenses; relating to medical information reported to the division; amending K.S.A. 8-255c and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 34, Nays 6, 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, Jackson, Jordan, Kerr, Lee, Morris, O'Connor, Oleen, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Clark, Huelskamp, Journey, Lyon, Pugh, Salmans.

The bill passed, as amended.

SB 469, An act concerning crimes, punishment and criminal procedure; relating to offender registration; requiring investigation and report of findings regarding investigation into the circumstances of inmate deaths in department of corrections facilities and jails; amending K.S.A. 2003 Supp. 22-4909 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 479, An act concerning elections; relating to conformity with the help America vote act of 2002; amending K.S.A. 25-216, 25-414, 25-1122d, 25-1123, 25-1216, 25-1223, 25-2507 and 25-2806 and K.S.A. 2003 Supp. 25-409, 25-1122, 25-2309, 25-2706, 25-2908, 25-3002 and 25-3008 and repealing the existing sections, 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, Schodorf, Steineger, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Clark, Taddiken.

The bill passed.

SB 480, An act concerning income taxation; relating to tax credits for investment in qualifying businesses; powers and duties of the Kansas technology enterprise corporation; repealing K.S.A. 74-8224, 74-8227, 74-8228 and 74-8229 and K.S.A. 2003 Supp. 74-8221, 74-8222, 74-8223, 74-8225 and 74-8226, 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 483, An act concerning the employment security laws; relating to disqualification from receipt of benefits; amending K.S.A. 2003 Supp. 44-706 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.

Sub SB 496, An act concerning criminal hunting; relating to revocation of licenses; amending K.S.A. 21-3728 and 32-1013 and repealing the existing sections, 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 substitute bill passed.

SB 511, An act concerning infants; relating to rule and regulation authority for the newborn infant hearing screening program; amending K.S.A. 65-1, 157a 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 520, An act concerning the Kansas downtown redevelopment act; relating to tax benefits for improvements made to real property, 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, Huel-skamp, 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 521, An act concerning property taxation; relating to exemptions; business aircraft; certain housing for elderly persons; amending K.S.A. 79-201k and K.S.A. 2003 Supp. 79-201b and repealing the existing sections, 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, Huel-skamp, 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.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senators Haley, Gilstrap and Steineger introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1821—

A RESOLUTION recognizing MANA de Kansas City.

WHEREAS, Over its 22 years of existence, MANA de Kansas City has been a training ground in the development of civic leaders for the greater Kansas City area. MANA members have dedicated thousands of hours for the success of numerous organizations with shared interests; and

WHEREAS, MANA's numerous involvements include Las Hermanitas, Hispanic Productions, Inc., Task Force 500, Los Americanos, League of United Latin American Citizens, The Greater Kansas City Hispanic Heritage Committee, Fiesta Hispana, Hispanic Empowerment for Community Health & Opportunities (HECHO), The U.S. Hispanic Leadership Institute's Grassroots Leadership Development Program, the U.S. Hispanic Leadership Institute's National Board of Directors and Latina Women's Summit; and

WHEREAS, This past December, MANA celebrated its 15th Annual Christmas Party. Residents of Posada del Sol were treated to a catered dinner with gifts, singing, dancing, holiday cheer and special guests; and

WHEREAS, MANA's Community Service Awards (CSA), a major annual fundraiser for 20 years, recognized over 40 women for their volunteerism. MANA still gives special recognition to women through its recent partnership with the Greater Kansas City Chamber of Commerce: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we join the State of Kansas' Advisory Committee on Hispanic Affairs in proudly recognizing MANA de Kansas City during Hispanic Day on the Hill; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to Elias Garcia, Executive Director of the Kansas Advisory Committee on Hispanic Affairs, 401 SW Topeka Blvd., Topeka, KS 66603-3182; MANA de Kansas City, 2100 Metropolitan, Kansas City, KS 66106; and two copies to Senator David Haley (Kansas City).

On emergency motion of Senator Haley **SR 1821** was adopted unanimously.

REPORT ON ENROLLED BILLS

SB 324 reported correctly enrolled, properly signed and presented to the Governor on February 27, 2004.

SR 1820 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 27, 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 Brownlee in the chair.

On motion of Senator Brownlee the following report was adopted:

Recommended the committee report on **SB 500** recommending a **Sub SB 500** be adopted, and the substitute bill be passed.

SB 430, SB 509 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 299 be amended by adoption of the committee amendments, be further amended by motion of Senator Journey on page 2, line 4 by striking the word "not" and **SB 299** be passed as further amended.

The following amendments offered by Senator Haley to **SB 299** were rejected:

as amended by Senate Committee, on page 1, in line 37, after the period by inserting "A surety or agent of a surety forcibly entering a residence shall insure the residence is secured before leaving the scene of the apprehension.";

On page 2, in line 4, by striking "recovery" and inserting "or"; also in line 4, after "agent" by inserting "of a surety"

as amended by Senate Committee, on page 1, in line 37, after the period by inserting "No surety or agent of a surety shall wear, carry or display any uniform, badge, shield or other insignia or emblems that purport to indicate that such person is an employee, officer or agent of any state, any political subdivision of any state or the United States.";

On page 2, in line 4, by striking "recovery" and inserting "or"; also in line 4, after "agent" by inserting "of a surety"

On page 1, line 38, by striking lines 38 through 43

On page one (1) and on page two (2) by striking lines one (1) through three (3) and the word "weapon" on page two (2) in line four (4) and renumbering accordingly.

as amended by Senate Committee, on page 1, in line 42, by striking "involving moral turpitude, dishonesty," and inserting "of";

On page 2, in line 4, by striking "recovery" and inserting "or"; also in line 4, after "agent" by inserting "of a surety".

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

On roll call, the vote was: Yeas 2, Nays 37, Present and Passing 0, Absent or Not Voting 1.

Yeas: Haley, Pugh.

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

Absent or Not Voting: Goodwin.

The motion failed and the amendment was rejected.

EXPLANATION OF VOTE

I vote "AYE" to allow felons previously convicted of crimes of moral turpitude or dishonesty or even some violent felonies to hold a job as a bounty hunter (also known as "surety recovery agent").

If we believe in rehabilitation, why prohibit felons who have served their time from any legal employment to lawfully provide for themselves and/or their families?

Further, Kansas allows rehabilitated felons to hold positions as teachers, doctors, real estate agents, even charitable solicitors and a slew of other positions; why would the legislature prohibit these men or women from apprehending absconding offenders.....? Sunday school teachers, they need not be.—DAVID HALEY

as amended by Senate Committee, on page 2, after line 9, by inserting the following:

"Sec. 5. K.S.A. 2003 Supp. 21-4716 is hereby amended to read as follows: 21-4716. (a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If

the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c) (1) Subject to the provisions of ~~subsection (b)(3)~~ *subparagraph (3)*, the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of ~~subsection (b)(3)~~ *subparagraph (3)*, the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit any person felony regardless of whether the defendant knew the age of the individual under 16 years of age.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

(ii) "Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) "Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

(H) *The defendant, at the time of the commission of the crime, was in a position of authority over the victim. As used in this section, "position of authority" shall include, but not be limited to, a uniformed or properly identified state, county or city law enforcement officer.*

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(~~c~~) (d) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;

(2) the presentence report;

(3) written briefs and oral arguments of either the state or counsel for the defendant; and

(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

Sec. 6. K.S.A. 2003 Supp. 21-4716 is hereby repealed."

And by renumbering the remaining section accordingly;

On page 1, in the title, in line 10, after "concerning" by inserting "crimes, punishment and criminal procedure; relating to sentencing; relating to"; also in line 10, before the period by inserting "; amending K.S.A. 2003 Supp. 21-4716 and repealing the existing section"

A ruling of the chair was requested as to the germaneness of the amendment to **SB 299**.

The chair ruled the amendment was not germane to the bill.

The Committee recommended **SB 299** as amended by adoption of the committee amendments, and further amended by Senator Journey be passed as further amended.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **SB 299**, **SB 430**; **Sub SB 500**; **SB 509** were advanced to Final Action and roll call.

SB 299, An act concerning surety agents.

On roll call, the vote was: Yeas 35, Nays 5, 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, Jackson, Jordan, Journey, Kerr, Lee, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steiner, Taddiken, Teichman, Umbarger, Vratil, Wagle.

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

The bill passed, as amended.

SB 430, An act concerning adult care homes; relating to results of a survey or inspection reports; amending K.S.A. 39-935 and repealing the existing section.

On roll call, the vote was: Yeas 37, Nays 3, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Betts, Hensley, Salmans.

The bill passed, as amended.

Sub SB 500, An act relating to motor vehicles; concerning salvage vehicles; amending K.S.A. 8-197 and repealing the existing section.

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, Huel-skamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

The substitute bill passed.

SB 509, An act concerning debt management services; enacting the Kansas credit services organization act; amending K.S.A. 21-4402 and K.S.A. 2003 Supp. 75-1308 and repealing the existing sections; also repealing K.S.A. 50-1101, 50-1102, 50-1103, 50-1104, 50-1105, 50-1106, 50-1107, 50-1108, 50-1109, 50-1110, 50-1111, 50-1112, 50-1113, 50-1114 and 50-1115.

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, Huel-skamp, 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.

On motion of Senator Oleen the Senate adjourned until 2:30 p.m., Tuesday, March 2, 2004.

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

PAT SAVILLE, *Secretary of the Senate*.

