

# Journal of the Senate

FORTY-SECOND DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Thursday, March 11, 2004—2:30 p.m.

The Senate was called to order by President Dave Kerr.  
The roll was called with thirty-eight senators present.  
Senators Corbin and Jordan were excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

I once had a professor who told his class, "It's not the big things that put you on the rack; you can sit on a mountain, but not on a tack."

It really is amazing  
What makes us act the fool;  
Ink stains and bad hair days  
Cause us to lose our cool.

Someone cutting in front of us  
As we hurry on to work;  
We're proud of our composure  
When we just call him "jerk".

How many times have we heard it said  
The words that make us frown?  
"Please come back tomorrow,  
Today our computer's down."

Traffic lights are my downfall,  
Many's the time I've said,  
"Somehow that traffic light must know  
'Here comes Fred, let's turn red!'"

Little things happen in the State House  
Which drive us to frustration:  
Someone takes our parking place  
And our office's new location.

I think that Your advice, O God,  
Is to put things in perspective:  
Think of those being persecuted  
Should be quite effective.

Or think of things which have not happened  
Which could be so much worse  
We could be on a reality show  
Or occupy a hearse.

There's an old hymn which goes like this:

"Count your blessings,  
Name them one by one,  
And it will surprise you  
What the Lord has done."

Help us, Lord, to put our problems in perspective. I pray in Jesus' Name, AMEN

#### **GUESTS**

Senator Lyon rose on a point of personal privilege to introduce Andrew Wallace and Luke Finley, high school juniors, who were visiting in the Capital today as Senator Lyon's Job Shadows.

#### **INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was introduced and read by title:

**SB 560.** An act concerning the interstate water litigation fund; providing for a river master; amending K.S.A. 82a-1802 and repealing the existing section, by Committee on Ways and Means.

#### **REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was referred to Committee as indicated:

Judiciary: **HB 2487.**

#### **MESSAGE FROM THE HOUSE**

Announcing passage of **Substitute HB 2420; HB 2568, HB 2569, HB 2673, HB 2706, HB 2886.**

#### **INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS**

**Substitute HB 2420; HB 2568, HB 2569, HB 2673, HB 2706, HB 2886** were there-upon introduced and read by title.

#### **FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS**

**SB 432.** An act concerning law enforcement officers; relating to the records thereof; termination of employment; amending K.S.A. 74-5611a and K.S.A. 2003 Supp. 21-4619 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 34, Nays 4, Present and Passing 0, Absent or Not Voting 2.

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

Nays: Buhler, Clark, Haley, Pugh.

Absent or Not Voting: Corbin, Jordan.

The bill passed, as amended.

**SB 487.** An act concerning mineral severance tax; relating to disposition of revenue; creating the gas valuation depletion trust fund and providing for distribution of moneys therefrom; amending K.S.A. 2003 Supp. 79-4227 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 29, Nays 8, Present and Passing 1, Absent or Not Voting 2.

Yeas: Adkins, Allen, Barnett, Brownlee, Brungardt, Buhler, Bunten, Donovan, Downey, Emler, Goodwin, Hensley, Huelskamp, Jackson, Journey, Kerr, Lee, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Barone, Betts, Gilstrap, Haley, Helgerson, Lyon, Pugh, Steineger.

Present and Passing: Clark.

Absent or Not Voting: Corbin, Jordan.

The bill passed.

**SB 527**, An act concerning the Kansas water office; establishing the water supply storage assurance fund; establishing the local water project match fund, was considered on final action.

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

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

Absent or Not Voting: Corbin, Jordan.

The bill passed.

**SB 529**, An act concerning physical therapy; amending K.S.A. 2003 Supp. 65-2901 and 65-2912 and repealing the existing sections, was considered on final action.

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

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

Absent or Not Voting: Corbin, Jordan.

The bill passed, as amended.

**SB 542**, An act concerning insurance; relating to insured's social security numbers; amending K.S.A. 2003 Supp. 40-4623 and repealing the existing section, was considered on final action.

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

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

Absent or Not Voting: Corbin, Jordan.

The bill passed, as amended.

#### REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 32** be amended on page 2, by striking all in lines 3 through 8 and inserting:

“(e) If a racetrack facility closes or discontinues conducting races and there are undistributed breakage proceeds from parimutuel wagering conducted by the organization licensee on live greyhound races, the licensee shall distribute such proceeds to charitable organizations who apply to the organizational licensee. Such proceeds shall be distributed in accordance with the licensee's charitable distribution guidelines. Within 30 days of such distribution, the licensee shall file a report with the commission disclosing the amounts of the distributions, the names of the distributees and the date on which the distributions were made.”; and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **HCR 5027** be adopted and, because the committee is of the opinion that the concurrent resolution is of a noncontroversial nature, be placed on the consent calendar.

Also, **SB 546** be amended on page 2, in line 8, by striking “shall mean” and inserting “means”; following line 24, by inserting:

“Policyholder includes any certificateholder whose certificate is in force on the proposed effective date of the assumption, if the certificateholder has the right to keep the certificate in force without change in benefit following termination of the group policy.

The right to keep the certificate in force shall not include the right to elect individual coverage under the consolidated omnibus budget reconciliation act (“COBRA”) section 601 et seq., of the employee retirement income security act of 1974, as amended, 29 U.S.C. 1161 et seq.”; and the bill be passed as amended.

Committee on **Judiciary** recommends **HB 2612** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Also, **HB 2312**, as amended by House Committee, be amended on page 2, in line 2, by striking all after "finding"; in line 3, by striking all before the semicolon; in line 8, by striking all after "finding"; in line 9, by striking all before the semicolon; and the bill be passed as amended.

**HB 2555** be amended on page 1, in line 14, by striking "or trust"; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **HB 2737**, as amended by House Committee, be amended on page 2, after line 14, by inserting the following:

"(d) An individual who is registered under the athletic trainers registration act on June 30, 2004, shall be deemed to be licensed under the athletic trainers licensure act, and such individual shall not be required to file an original application for licensure under the athletic trainers licensure act.";

On page 3, in line 8, by striking "was" and inserting "were";

On page 4, in line 5, before "fee" by inserting "renewal";

On page 5, in line 8, after "Application" by inserting "and license fee";

On page 7, after line 20, by inserting the following:

"Sec. 12. K.S.A. 2003 Supp. 65-2913 is hereby amended to read as follows: 65-2913. (a) It shall be unlawful for any person who is not licensed under this act as a physical therapist or whose license has been suspended or revoked in any manner to represent oneself as a physical therapist or to use in connection with such person's name the words physical therapist, physiotherapist or licensed physical therapist or use the abbreviations P.T., Ph. T., M.P.T., D.P.T. or L.P.T., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist. A violation of this subsection shall constitute a class B nonperson misdemeanor.

(b) Any person who, in any manner, represents oneself as a physical therapist assistant, or who uses in connection with such person's name the words or letters physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist assistant, without a valid existing certificate as a physical therapist assistant issued to such person pursuant to the provisions of this act, shall be guilty of a class B nonperson misdemeanor.

(c) Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and practicing their profession. The provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto shall not apply to the following individuals so long as they do not hold themselves out in a manner prohibited under subsection (a) or (b) of this section:

- (1) Persons rendering assistance in the case of an emergency;
- (2) members of any church practicing their religious tenets;
- (3) persons whose services are performed pursuant to the delegation of and under the supervision of a physical therapist who is licensed under this act;
- (4) health care providers in the United States armed forces, public health services, federal facilities and coast guard or other military service when acting in the line of duty in this state;
- (5) licensees under the healing arts act, and practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensee under subsection (g) of K.S.A. 65-2872 and amendments thereto;
- (6) dentists practicing their professions, when licensed and practicing in accordance with the provisions of law;
- (7) nurses practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed nurse under subsection (m) of K.S.A. 65-1124 and amendments thereto;

(8) health care providers who have been formally trained and are practicing in accordance with their training or have received specific training in one or more functions included in this act pursuant to established educational protocols or both;

(9) students while in actual attendance in an accredited health care educational program and under the supervision of a qualified instructor;

(10) self-care by a patient or gratuitous care by a friend or family member;

(11) optometrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(12) podiatrists practicing their profession when licensed and practicing in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(13) occupational therapists practicing their profession when licensed and practicing in accordance with the occupational therapy practice act and occupational therapy assistants practicing their profession when licensed and practicing in accordance with the occupational therapy practice act;

(14) respiratory therapists practicing their profession when licensed and practicing in accordance with the respiratory therapy practice act;

(15) physician assistants practicing their profession when licensed and practicing in accordance with the physician assistant licensure act;

(16) persons practicing corrective therapy in accordance with their training in corrective therapy;

(17) athletic trainers practicing their profession when ~~registered~~ *licensed* and practicing in accordance with the athletic trainers ~~registration~~ *licensure* act;

(18) persons who massage for the purpose of relaxation, muscle conditioning or figure improvement, so long as no drugs are used and such persons do not hold themselves out to be physicians or healers;

(19) barbers practicing their profession when licensed and practicing in accordance with the provisions of article 18 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(20) cosmetologists practicing their profession when licensed and practicing in accordance with the provisions of article 19 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(21) attendants practicing their profession when certified and practicing in accordance with the provisions of article 61 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(22) naturopathic doctors practicing their profession when registered and practicing in accordance with the naturopathic doctor registration act.

(d) Any patient monitoring, assessment or other procedures designed to evaluate the effectiveness of prescribed physical therapy must be performed by or pursuant to the delegation of a licensed physical therapist or other health care provider.

(e) Nothing in this act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon physical therapists to engage in any activity not conferred by this act.

Sec. 13. K.S.A. 2003 Supp. 65-5418 is hereby amended to read as follows: 65-5418. (a) Nothing in the occupational therapy practice act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and licensed, registered, credentialed or certified by appropriate agencies of the state of Kansas.

(b) The practice of occupational therapy shall not be construed to include the following:

(1) Persons rendering assistance in the case of an emergency;

(2) members of any church practicing their religious tenets;

(3) persons whose services are performed pursuant to the delegation of and under the supervision of an occupational therapist who is licensed under this act;

(4) any person employed as an occupational therapist or occupational therapy assistant by the government of the United States or any agency thereof, if such person practices

occupational therapy solely under the direction or control of the organization by which such person is employed;

(5) licensees under the healing arts act when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to a delegation authorized under subsection (g) of K.S.A. 65-2872 and amendments thereto;

(6) dentists practicing their professions, when licensed and practicing in accordance with the provisions of law;

(7) nurses practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed nurse under subsection (m) of K.S.A. 65-1124 and amendments thereto;

(8) health care providers who have been formally trained and are practicing in accordance with the training or have received specific training in one or more functions included in the occupational therapy practice act pursuant to established educational protocols, or both;

(9) any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if the person is designated by the title which clearly indicates such person's status as a student or trainee;

(10) any person fulfilling the supervised fieldwork experience requirements as part of the experience necessary to meet the requirement of the occupational therapy practice act;

(11) self-care by a patient or gratuitous care by a friend or family member who does not represent or hold oneself out to the public to be an occupational therapist or an occupational therapy assistant;

(12) optometrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(13) podiatrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(14) physical therapists practicing their profession when licensed and practicing in accordance with K.S.A. 65-2901 *et seq.* and amendments thereto;

(15) physician assistants practicing their profession when licensed and practicing in accordance with the physician assistant licensure act;

(16) athletic trainers practicing their profession when ~~registered~~ *licensed* and practicing in accordance with the athletic trainers ~~registration~~ *licensure* act;

(17) manufacturers of prosthetic devices;

(18) any person performing occupational therapy services, if these services are performed for no more than 45 days in a calendar year in association with an occupational therapist licensed under the occupational therapy practice act so long as (A) the person is registered or licensed under the laws of another state which has licensure requirements at least as stringent as the licensure requirements of this act, or (B) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) established by the national board for certification in occupational therapy (NBCOT).

(c) Any patient monitoring, assessment or other procedures designed to evaluate the effectiveness of prescribed occupational therapy must be performed by or pursuant to the delegation of a licensed occupational therapist or other health care provider.

(d) Education related therapy services provided by an occupational therapist to school systems or consultation regarding prevention, ergonomics and wellness within the occupational therapy scope of practice shall not require a referral, supervision, order or direction of a physician, a licensed podiatrist, a licensed dentist or a licensed optometrist. However, when in the course of providing such services an occupational therapist reasonably believes that an individual may have an underlying injury, illness, disease, disorder or impairment, the occupational therapist shall refer the individual to a physician, a licensed podiatrist, a licensed dentist or a licensed optometrist, as appropriate.

(e) Nothing in the occupational therapy practice act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon occupational therapists to engage in any activity not conferred by the occupational therapy practice act.

(f) This section shall be part of and supplemental to the occupational therapy practice act.

(g) The provisions of this section shall take effect on and after April 1, 2003.”;

And by renumbering sections accordingly;

Also on page 7, in line 23, after “2891” by inserting “, 65-2913 and 65-5418”;

On page 1, in the title, in line 13, after “65-2891” by inserting “, 65-2913 and 65-5418”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 551** be amended on page 1, in line 29, after “ordinance” by inserting “or proceedings on an alleged violation of an ordinance traffic infraction”; and the bill be passed as amended.

#### **REPORT ON ENGROSSED BILLS**

SB 432, SB 529, SB 542 reported correctly engrossed March 10, 2004.

#### **REPORT ON ENROLLED BILLS**

**SR 1826** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 11, 2004.

#### **CORRECTION AND APPROVAL OF THE JOURNAL**

Correct the Journal of the Senate on Friday, February 27, 2004, on page 1290 under the heading of Final Action on Bills and Concurrent Resolutions, to show the corrected title on **SB 430** to read as follows: An act concerning adult care homes; relating to results of a survey or inspection reports; relating to continuing education for staff of adult care homes; amending K.S.A. 39-935 and K.S.A. 2003 Supp. 39-936 and repealing the existing sections.

On motion of Senator Oleen the Senate adjourned until 10:00 a.m., Friday, March 12, 2004.

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

PAT SAVILLE, *Secretary of the Senate.*

