

Journal of the Senate

FIFTY-SECOND DAY

SENATE CHAMBER, TOPEKA, KANSAS
Thursday, March 25, 2004—9:30 a.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, Representative (Rev) Joshua Svaty, who delivered the invocation:

Almighty God -

As we gather today, help us to recognize that we serve in a temporal body, and true mercy and grace can only come from you. At the same time, open our eyes to see the need around us, both with the people of Kansas, and with our friends and colleagues here today. Quicken our hearts toward your service, and the service of others. Almighty God, we are indeed thankful that you are a providential God, showing us even today what is good - that we act justly, love mercy, and walk humbly before you. With that in mind, we offer you this day's work, grateful for your faithfulness so revealed in Christ Jesus. In His name we pray. Amen

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following resolution was introduced and read by title:

SENATE CONCURRENT RESOLUTION No. 1623—

By Senators Kerr, Oleen and Hensley

A CONCURRENT RESOLUTION relating to the 2004 regular session of the legislature; extending such session beyond 90 calendar days; and providing for adjournment thereof.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two-thirds of the members elected to the House of Representatives concurring therein: That the 2004 regular session of the legislature shall be extended beyond 90 calendar days; and

Be it further resolved: That the legislature shall adjourn at the close of business of the daily session convened on March 26, 2004, and shall reconvene at 10:00 a.m. on March 31, 2004; and

Be it further resolved: That the legislature shall adjourn at the close of business of the daily session convened on April 2, 2004, or at the close of business of the daily session convened on April 3, 2004, and shall reconvene at 10:00 a.m. on April 28, 2004; and

Be it further resolved: That the legislature may adjourn and reconvene at any time during the period on and after April 28, 2004, to May 27, 2004, but the legislature shall reconvene at 10:00 a.m. on May 27, 2004, at which time the legislature shall continue in session and shall adjourn *sine die* at the close of business on May 27, 2004; and

Be it further resolved: That the secretary of the senate and the chief clerk of the house of representatives and employees specified by the director of legislative administrative services for such purpose shall attend their duties each day during periods of adjournment, Sundays excepted, for the purpose of receiving messages from the governor and conducting such other business as may be required; and

Be it further resolved: That members of the legislature shall not receive the per diem compensation and subsistence allowances provided for in subsections (a) and (b) of K.S.A. 46-137a for any day within a period in which both houses of the legislature are adjourned for more than two days, Sundays excepted; and

Be it further resolved: That members of the legislature attending a legislative meeting of whatever nature when authorized pursuant to law, or by the Legislative Coordinating Council or by the President of the Senate or the Speaker of the House of Representatives and members of a conference committee attending a meeting of the conference committee authorized by the President of the Senate and the Speaker of the House of Representatives during any period of adjournment for which members are not authorized compensation and allowances pursuant to K.S.A. 46-137a shall receive compensation and travel expenses or allowances as provided by K.S.A. 75-3212 except that the mileage allowance shall be limited during any such period of adjournment to one full trip by the usual route in going to and returning from an authorized meeting.

On emergency motion of Senator Oleen, **SCR 1623** was adopted unanimously by voice vote.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill and resolution were referred to Committees as indicated:

Committee of the Whole: **SR 1834**.

Ways and Means: **HB 2749**.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SB 561, An act concerning deer; relating to a landowner deer management program; amending K.S.A. 2003 Supp. 32-968 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.

SR 1829, A resolution encouraging the State Corporation Commission, the Kansas Department of Revenue and State Geological Survey to continue to develop a streamlined reporting process for the Kansas oil and gas producers, 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 resolution was adopted, as amended.

Sub HB 2143, An act concerning license plates for motor vehicles; relating to the regulation of distinctive license plates; authorizing certain distinctive license plates; amending K.S.A. 8-161, 8-177a, 8-177c, 8-1,139, 8-1,140, 8-1,141, 8-1,142, 8-1,145 and 8-1,146 and repealing the existing sections; also repealing K.S.A. 8-1,149, was considered on final action.

On roll call, the vote was: Yeas 32, Nays 8, Present and Passing 0, Absent or Not Voting 0.

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

Nays: Corbin, Emler, Journey, Kerr, Lee, Lyon, Pugh, Teichman.

The substitute bill passed, as amended.

MR. PRESIDENT: I vote "NO" on **HB 2143**. The idea of a "Helping Schools" license plate is nothing but a gimmick by the legislature to make us feel good about assisting our schools. We are doing nothing to really address the true needs of our schools by this proposal. The few dollars that this proposal will generate will do nothing to help at-risk students, bilingual students, or school district compensate the employees, including helping them get adequate, affordable health insurance.

Legislators may think that they can use this vote on their campaign brochures to claim being pro-education. I believe the voters of Kansas can recognize a gimmick when they see one. I can only hope the time will come in this session when we get serious about the needs of Kansas' schools and school children.

I vote "NO".—JANIS LEE

S Sub for HB 2352, An act concerning municipal court; relating to pre-trial authority and contempt powers; amending K.S.A. 12-4106, 12-4203, 12-4209 and 12-4213 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, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Journey.

The substitute bill passed.

S Sub for HB 2375, An act amending the employment security law; relating to failure to pass a pre-employment drug screen and misconduct; 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 substitute bill passed.

S Sub for HB 2404, An act concerning drivers' licenses and other identification cards; relating to taxpayer identification numbers; relating to medical information reported to the division; amending K.S.A. 8-255c and 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 38, Nays 2, 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, Jackson, Jordan, Journey, Kerr, Lee, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Huelskamp, Lyon.

The substitute bill passed.

Sub HB 2435, An act concerning the governor's office; renaming the advisory committee on Hispanic affairs as the Hispanic and Latino American affairs commission and placing such commission within the governor's office; providing for the advisory commission on African-American affairs to be within the governor's office; amending K.S.A. 74-6501, 74-6501a, 74-6502, 74-6503, 74-6504, 74-6505, 74-6506, 74-6507, 74-6508, 74-6509, 74-9901, 74-9904 and 74-9906 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, Helgerson, Hensley, Huelskamp,

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

Present and Passing: Haley.

The substitute bill passed.

EXPLANATION OF VOTE

MR. PRESIDENT: During the creation of the Kansas African American Advisory Commission ("KAAAC"), as a new representative to the Kansas House, I distinctly remember the grave concern that I, and former Representative Jonathan (Joe) Wells, and former Senators U. L. (Rip) Gooch and Sherman (Road-Block) Jones held for the placing of this new commission under the auspices of the Governor; then Bill Graves. Although my leadership today in the Senate, specifically Senators Oleen and Hensley assure me that KAAAC and KACHA's autonomies will not be eroded by **Sub HB 2435**, I cannot in good faith comfortably support this transfer of direct authority even under Governor Kathleen Sebelius whom I respect; as I did respect Governor Graves.—DAVID HALEY

HB 2487, An act concerning the juvenile justice authority; relating to the abolishment thereof; repealing K.S.A. 2003 Supp. 75-7032, 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.

HB 2528, An act concerning fire protection; authorizing payment for acquisition, installation or maintenance of fire hydrants by fire districts and townships; relating to fire and explosion investigations; amending K.S.A. 31-137 and K.S.A. 2003 Supp. 12-3915, 19-3601a, 19-3612e, 19-3616, 19-3620, 80-1501, 80-1514a, 80-1904, 80-1913, 80-1917 and 80-1921 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.

HB 2530, An act concerning the cooperative marketing act; relating to removal of officers by board of directors; amending K.S.A. 17-1612 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.

HB 2554, An act concerning powers of attorney; amending K.S.A. 2003 Supp. 58-654, 58-655, 58-657 and 58-662 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, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Jackson,

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

Nays: Huelskamp, Pugh.

The bill passed, as amended.

HB 2557, An act concerning state parks; amending K.S.A. 2003 Supp. 32-837 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, Goodwin, Haley, Helgerson, Hensley, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Clark, Gilstrap, Huelskamp, O'Connor, Taddiken.

The bill passed, as amended.

S Sub for Sub HB 2593, An act concerning agriculture; relating to animal identification program; duty of care of livestock; Kansas animal health board, membership; amending K.S.A. 74-4001 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 substitute bill passed, as amended.

HB 2600, An act relating to the sale or disposition of property by counties; amending K.S.A. 19-211 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.

HB 2603, An act concerning crimes, punishment and criminal procedure; amending K.S.A. 2003 Supp. 21-4711 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.

HB 2604, An act concerning watercraft, relating to dealers; requiring licensing; providing for dealer certificates of number; amending K.S.A. 32-1102 and 32-1112 and K.S.A. 2003 Supp. 32-1172 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, as amended.

HB 2606, An act concerning elections; pertaining to the electronic filing of election abstracts; amending K.S.A. 25-3202 and K.S.A. 2003 Supp. 16-1611 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, as amended.

HB 2615, An act concerning municipalities; relating to the abatement of nuisances; amending K.S.A. 2003 Supp. 12-1617e 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, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Oleen.

The bill passed.

HB 2624, An act concerning motor vehicles; relating to the regulation of traffic; concerning the state vanpool program; relating to school zones; amending K.S.A. 8-1343a, 8-1344, 8-1345, 8-1560c, 8-1560d, 8-2118, 75-46a02, 75-46a03, 75-46a04, 75-46a06 and 75-46a09 and K.S.A. 2003 Supp. 8-1558 and 75-46a05 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 31, Nays 9, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Corbin, Donovan, Downey, Emler, Goodwin, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Kerr, Morris, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Betts, Clark, Gilstrap, Haley, Lee, Lyon, O'Connor, Pugh, Wagle.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote "NO" on **HB 2624**. While I support the underlying bill, I am not in favor of the change in policy regarding the increase from 70 to 75 miles per hour maximum on separated multilane highway. The current "buffer" of 10 miles per hour is being changed to 5 miles per hour. My fear is that highway drivers will still believe that there is a 10 MPM buffer and those drivers will be driving 84 miles per hour on our highways. This can only cause more traffic accidents resulting in more traffic deaths.

Safety should be our number one goal, not attracting more truck traffic along I-70 to further congest our highways.

I vote "NO" on **HB 2624**.—JANIS LEE

Sub HB 2635, An act amending the uniform consumer credit code; relating to additional charges; amending K.S.A. 2003 Supp. 16a-2-501 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 substitute bill passed.

HB 2641, An act concerning drainage districts; pertaining to the definition of taxpayer in certain drainage districts; amending K.S.A. 24-414 and 24-459 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, as amended.

HB 2652, An act concerning oil and gas; concerning unitization; amending K.S.A. 55-1302 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.

HB 2653, An act concerning wildlife and parks; relating to commercialization of wildlife; amending K.S.A. 2003 Supp. 32-1005 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.

HB 2693, An act concerning crimes and punishment; relating to mistreatment of a dependent adult; amending K.S.A. 21-3437 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.

HB 2712, An act concerning certain municipalities; relating to the powers and duties thereof; amending K.S.A. 19-3610 and K.S.A. 2003 Supp. 31-150 and 80-104 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, as amended.

S Sub for Sub HB 2713, An act concerning certain sports; relating to the regulation thereof; establishing an athletic commission; relating to the powers and duties thereof; amending K.S.A. 21-1801 and K.S.A. 2003 Supp. 79-3606 and repealing the existing sections;

also repealing K.S.A. 12-5101, 12-5102, 12-5103, 12-5104, 12-5105, 12-5106, 12-5107, 12-5108, 12-5109, 12-5110, 12-5111, 12-5112, 12-5113, 12-5114, 12-5115, 12-5116, 12-5117, 12-5118, 12-5119, 12-5120, 12-5121, 12-5122, 12-5123, 12-5124, 12-5125 and 12-5126, was considered on final action.

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

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

Nays: Brownlee, Pugh, Salmans.

The substitute bill passed.

HB 2717, An act concerning mortuary arts; relating to licensure of crematory operators; amending K.S.A. 65-1762 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.

HB 2718, An act concerning mortuary arts; relating to funeral and cemetery merchandise agreements; amending K.S.A. 2003 Supp. 16-303 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.

HB 2746, An act concerning motor vehicles; relating to export certificate of titles; amending K.S.A. 2003 Supp. 8-135 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.

HB 2758, An act concerning the Kansas open records act; exempting certain records therefrom; amending K.S.A. 2003 Supp. 45-221 and repealing the existing section, 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, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Journey, Pugh.

The bill passed, as amended.

HB 2774, An act concerning townships; relating to townships having fire districts; relating to annexation of township territory by cities; amending K.S.A. 12-520, 80-1540, 80-1541 and 80-1542 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 24, Nays 14, Present and Passing 2, Absent or Not Voting 0.

Yeas: Betts, Clark, Downey, Emler, Goodwin, Haley, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Lee, Lyon, Morris, O'Connor, Pugh, Salmans, Schmidt, Schodorf, Taddiken, Tyson, Umbarger, Wagle.

Nays: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Buhler, Bunten, Corbin, Donovan, Oleen, Steineger, Teichman, Vratil.

Present and Passing: Gilstrap, Kerr.

The bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote NO on **HB 2774**, as amended. This bill will make the State of Kansas the decision maker for unilateral annexation cases. The bill creates a three person Annexation Review Board to decide annexation issues. One person appointed by the Mayor of the city seeking to annex, one of the affected landowners, and a hearing officer from the Office of Administrative hearings within the Dept. of Administration. The Mayor will likely support the city's desire to annex, and the landowner will object to the annexation, thus leaving the annexation decision in the hands of the hearing officers.

Governor Sebelius vetoed similar legislation from the 2003 session because of its selective application to the city of Topeka. "I believe that all cities and counties in the State of Kansas should follow the same rules, especially when it comes to issues of annexation. Due to the fact that **HB 2212** would only be applicable to one county, it is likely to be found unconstitutional." **HB 2774** is no different, except that it applies to two counties instead of one. It only applies to townships located in Shawnee and Sedgwick counties. If this legislation is good public policy, it should apply to all cities and counties in Kansas, not just to Shawnee and Sedgwick counties. Piecemeal annexation policy is bad public policy. I vote NO.—BARBARA P. ALLEN

Senators Buhler and Vratil request the record to show they concur with the "Explanation of Vote" offered by Senator Allen on **HB 2774**.

MR. PRESIDENT: I vote aye on **HB 2774** because the unilateral annexation of landowners against their will with no recourse to an elected official is unconscionable. Forty-eight other states have legislation protecting the right of their citizens and Kansas citizens deserve to be treated as equals under government jurisdiction.—DAVID JACKSON

HB 2793, An act concerning drainage districts; relating to the powers and duties of the governing body thereof; amending K.S.A. 2003 Supp. 24-639 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.

HB 2833, An act concerning the Kansas department of transportation; relating to roads and highways; designation of certain parts of certain roads and highways; amending K.S.A. 68-1010 and repealing the existing section, 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, Clark, Corbin, Donovan, Downey, Emler, Gilstrap, Goodwin, Helgerson, Hensley, Huelskamp, Jackson, Jordan, Journey, Kerr, Lyon, Morris, O'Connor, Oleen, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Nays: Haley, Lee.

The bill passed, as amended.

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 Schmidt in the chair.

On motion of Senator Schmidt the following report was adopted:

Recommended **SB 536** be amended by adoption of the committee amendments, and the bill be passed as amended.

HCR 5033 be amended by motion of Senator Oleen as amended by House Committee of the Whole, on page 1, in line 23, by striking "(a)"; in line 24, by striking all after "contract"; by striking all in lines 25 through 32 and inserting "between one man and one woman only. All other marriages are declared to be contrary to the public policy of this state and are void." "; in line 39, by striking all after "void"; by striking all in lines 40 and 41; in line 42, by striking all before the period;

On page 2, in line 1, by striking "will"; by striking all in lines 2 and 3 and inserting "would allow the legislature to continue to determine by statute the nature of the marriage relationship." ", and **HCR 5033** be adopted as amended.

The following motions and amendments by Senator Adkins were rejected:

Senator Adkins, citing Rule 51 and Rule 35, moved to strike the resolving clause.

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

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

Yeas: Adkins, Allen, Downey, Goodwin, Oleen, Steineger.

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

A two-thirds constitutional majority not having voted in favor of the resolution **HCR 5033** was not adopted.

Senator Huelskamp moved, citing Rule 41, to waive the number of roll calls; his objection being the rule applied to bills only, not resolutions.

The Chair ruled the number of roll calls applies to both bills and resolutions.

The motion was denied.

Senator Adkins moved to return **HCR 5033** to the Committee on Judiciary, citing Rule 26.

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

On roll call, the vote was: Yeas 7, Nays 33, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Downey, Goodwin, Haley, Helgerson, Steineger.

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

The motion failed and the resolution remains on General Orders.

EXPLANATION OF VOTE

MR. CHAIRMAN - I vote "Aye" to return **HCR 5033** to the Senate Judiciary Committee: I consider this issue to be the most divisive social matter to come before the 2004 Legislature.

A total of one hour to allow *both* proponents *and* opponents to bring all testimony especially where others have desired, and been denied, the opportunity to speak subverts the committee process. These conferees deserve at least one committee hearing a piece as other issues (such as gambling; and concealed carry; and even fluoridation of larger water supplies) before other committees have received. Further, all Judiciary committee members were not present to vote for or against committee action(s). It would be consistent with committee policy as established by the committee chair to hold hearings comfortable to a

full review of either opinion *and* to insure all committee members were present for the so crucial, and controversial, votes as this issue presents.—DAVID HALEY

Senator Wagle challenged the ruling of the chair on the number of roll calls that could be taken.

Citing Roberts Rules of Order, the Chair ruled the motion to appeal had come too late.

Senator Adkins moved to amend the bill as amended by House Committee of the Whole, on page 1, in line 23, by striking all after “16.”; by striking all in lines 24 through 32 and inserting “No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not belong to all citizens.”; in line 36, by striking “the marriage relationship.” and inserting “privileges and immunities.”; by striking all in lines 38 through 42 and inserting “No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not belong to all citizens.”;

Also on page 1, in the title, in line 13, by striking “marriage.” and inserting “privileges and immunities.”

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

On roll call, the vote was: Yeas 9, Nays 31, Present and Passing 0, Absent or Not Voting 0.

Yeas: Adkins, Allen, Brungardt, Downey, Goodwin, Helgerson, Schodorf, Steineger, Vratil.

Nays: Barnett, Barone, Betts, Brownlee, Buhler, Bunten, Clark, Corbin, Donovan, Emler, Gilstrap, Haley, Hensley, Huelskamp, Jackson, Jordan, Journey, Kerr, Lee, Lyon, Morris, O’Connor, Oleen, Pugh, Salmans, Schmidt, Taddiken, Teichman, Tyson, Umbarger, Wagle.

The motion failed and the amendment was rejected.

EXPLANATION OF VOTE

MR. CHAIRMAN, the purpose of this amendment is to ensure equal protection of the law. I certainly favor that purpose, but I vote “no” because I do not believe I fully understand its full implications after only a brief debate on the Senate floor.—DEREK SCHMIDT

Senator Adkins moved to amend the bill as amended by House Committee of the Whole, on page 1, in line 23, by striking all after “16.”; by striking all in lines 24 through 32 and inserting “It is illegal to be homosexual and to engage in sexual acts with a person of the same sex.”; in line 36, by striking “the marriage relationship.” and inserting “homosexuality.”; by striking all in lines 38 through 42 and inserting “it is illegal to be homosexual and to engage in sexual acts with a person of the same sex.”;

Also on page 1, in the title, in line 13, by striking “marriage.” and inserting “homosexuality.”

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

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

Nays: 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 motion failed and the amendment was rejected.

Senator Wagle challenged the ruling of the Chair, concerning the limited number of roll calls allowed.

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

On roll call, the vote was: Yeas 24, Nays 15, Present and Passing 1, Absent or Not Voting 0.

Yeas: Adkins, Allen, Barone, Betts, Brungardt, Buhler, Bunten, Corbin, Downey, Emler, Goodwin, Haley, Helgerson, Hensley, Jackson, Kerr, Lee, Morris, Oleen, Schmidt, Schodorf, Steineger, Teichman, Vratil.

Nays: Brownlee, Clark, Donovan, Gilstrap, Huelskamp, Jordan, Journey, Lyon, O’Connor, Pugh, Salmans, Taddiken, Tyson, Umbarger, Wagle.

Present and Passing: Barnett.

The ruling of the Chair was sustained.

EXPLANATION OF VOTE

MR. CHAIRMAN: A no vote here would allow that all votes made on this Constitutional Amendment, to define marriage, may be recorded.

I consider this a defining vote on this issue. It should be noted here, in this journal on this vote, those that wish to have their many remaining votes on gay marriages recorded for all to see and those who do not.—ROBERT TYSON

MR. CHAIRMAN: A ‘No’ vote on this ruling of the chair is a vote to allow our constituents at home to fully know our position and our votes on this very important topic. That being the definition of “marriage” in the State of Kansas.—SUSAN WAGLE

Senator Adkins moved to amend the bill as amended by House Committee of the Whole, on page 1, by striking all in lines 12 through 43;

On page 2, by striking all in lines 1 through 3 and inserting the following:

“A PROPOSITION to amend sections 5 and 6 of article 3 of the constitution of the state of Kansas, relating to nonpartisan election of supreme court justices and district judges.

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

“Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 5 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

§ 5. Selection of justices of the supreme court. (a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided shall be filled by an election.

(b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him, the chief justice of the supreme court shall make the appointment from such nominees.

—(c) Each justice of the supreme court appointed elected pursuant to provisions of subsection (a) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his the term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

“Shall _____

(Here insert name of justice.)

(Here insert the title of the court.)

be retained in office.²²² If a majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office, otherwise he shall, unless. Unless removed for cause, the justice shall remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term he shall, unless by law he the justice is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section the justice may be reelected.

(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any

justice of the supreme court is hereby established, and shall be known as the "supreme court nominating commission." Said commission shall be organized as hereinafter provided:

~~—(c) The supreme court nominating commission shall be composed as follows. One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district, and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.~~

~~—(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.~~

~~—(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.~~

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

"Explanatory statement. The purpose of this amendment is to provide for the election of the justices of the supreme court. It removes the provision relating to the appointment and retention of the justices of the supreme court.

"A vote for this proposition would eliminate the appointment and retention of the justices of the supreme court and provide for the election of all the justices of the supreme court.

"A vote against this proposition would continue in effect the current law which provides for the selection of the justices of the supreme court by appointment and retention."

Section 3. 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: Section 6 of article 3 of the constitution of the state of Kansas is hereby amended to read as follows:

"§ 6. District courts. (a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts ~~unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted in an election.~~ Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, ~~or as may be provided by such nonpartisan method of selection.~~

(b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.

(c) The legislature shall provide for clerks of the district courts.

(d) Provision may be made by law for judges pro tem of the district court.

(e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.

(f) The supreme court may assign a district judge to serve temporarily on the supreme court."

Sec. 4. The following statement shall be printed on the ballot with the amendment as a whole: *"Explanatory statement.* The purpose of this amendment is to provide for the nonpartisan election of all district judges. It removes the provision relating to selection of district judges by appointment and retention.

"A vote for this proposition would eliminate the selection of district judges by appointment and retention and provide for the nonpartisan election of all district judges.

“A vote against this proposition would continue in effect the current law which provides for the election of district judges, except where a nonpartisan selection of district judges by appointment and retention has been adopted.”;

On page 2, by renumbering Sec. 3 as Sec. 5

A ruling of the chair was requested as to the germaneness of the amendment to the **HCR 5033**.

The Chair ruled the amendment was not germane to the resolution.

Senator Adkins moved to amend the bill as amended by House Committee of the Whole, on page 1, after line 32, by inserting the following:

“(c) The marriage contract shall be in effect as long as both parties are living. The state of Kansas shall not recognize divorce or any type of legal separation between the parties of the marriage. The only dissolution of marriage the state of Kansas recognizes is when one party to the contract is deceased.”; in line 42, after the period by inserting “Further, the state would not recognize divorce or any legal separation of the parties. The only dissolution of marriage is when one of the parties is deceased.”

Senator Journey citing Rule 68, moved to suspend the rules and advance **HCR 5033** to Final Action.

The Chair ruled the motion was not in order.

Senator Journey challenged the ruling of the Chair; on a voice vote the Chair was sustained.

SB 538 be amended by adoption of the committee amendments, be further amended by motion of Senator Barnett as amended by Senate Committee, on page 58, following line 40, by inserting the following:

“Fetal alcohol syndrome diagnostic and prevention network pilot program grant fund \$99,000”;

On page 61, following line 21, by inserting the following:

“(m) On July 1, 2004, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$99,000 from the children’s initiatives fund to the fetal alcohol syndrome diagnostic and prevention network pilot program grant fund.”;

On page 79, in line 26, by subtracting \$33,000 from the dollar amount in line 26 and by adjusting the dollar amount in line 26 accordingly;

On page 80, in line 12, by subtracting \$33,000 from the dollar amount in line 12 and by adjusting the dollar amount in line 12 accordingly;

On page 89, in line 9, by subtracting \$33,000 from the dollar amount in line 9 and by adjusting the dollar amount in line 9 accordingly

Senator Barnett further amended the **SB 538** as amended by Senate Committee, on page 58, following line 40, by inserting the following:

“Tobacco use prevention and control program fund \$500,000

Provided, That expenditures from this fund may be made for the establishment of a comprehensive state-wide tobacco use prevention and control program: *Provided further*, That the comprehensive state-wide tobacco use prevention and control program shall support tobacco use prevention and control activities including but not limited to: (1) Community programs to prevent and reduce tobacco use through local involvement and partnerships; (2) school-based programs to prevent and reduce tobacco use; (3) tobacco cessation programs for youth and adults; (4) special projects to reduce the disparities in smoking prevalence among various populations; (5) restriction of youth access to tobacco products; (6) surveillance of smoking rates; and (7) any other activities determined by the secretary to be necessary to implement the program: *And provided further*, That programs shall be selected by the secretary through an application process that takes into account whether a program utilizes methods recognized as effective in reducing smoking and tobacco use and eligible applicants include, but are not limited to, a health care provider, a school, a college or university, a local public health department, a public health organization, a health care provider organization, association or society where a professional educational organization: *And provided further*, That, as part of the comprehensive state-wide tobacco use prevention and control program, expenditures shall be made to evaluate the effectiveness of the efforts by state and local governments to reduce the use of tobacco products among minors and adults with the principal measurements of effectiveness

including negative attitudes toward tobacco use and reduction of tobacco use among the general population and among target populations prone to tobacco use: *And provided further*, That expenditures shall be made as part of this program to diminish tobacco use among minors and adults and, to the extent practicable to ensure that the following is achieved: (1) The secretary shall conduct as part of this program an independent evaluation of the statewide tobacco use prevention and control program to accomplish the maximum prevention and reduction of use among adults and minors possible through the most efficient allocation of state tobacco education and cessation resources; (2) the secretary's evaluation shall be provided to the governor, the president of the senate and the speaker of the house of representatives on or before July 1, 2005; (3) the comprehensive evaluation design shall be guided by the following: (A) Sound evaluation principles, including elements of controlled experimental methods, to the extent feasible; (B) an evaluation of the comparative effectiveness of individual program designs, which shall be used in funding decisions and program modifications; and (C) an evaluation of other programs identified by state agencies, local lead agencies and federal agencies: *And provided further*, That as part of this program expenditures shall be made from the tobacco use prevention and control program fund for submission to the governor and the legislature of a tobacco control report that describes the extent of the use of tobacco products by minors in the state and documents the progress state and local governments have made in reducing tobacco use among minors: *And provided further*, That the secretary shall submit the tobacco control report on or before July 1, 2005, and to the extent practicable, the report shall include the following information on a county by county basis: (1) The number of licensed and registered tobacco retailers and vendors; (2) the names and addresses of retailers and vendors who have paid fines or have been otherwise penalized due to enforcement actions; (3) the number of complaints filed against licensed and registered tobacco retailers; (4) the number of fires caused or believed to be caused by tobacco products and deaths and injuries resulting therefrom; (5) the number and type of compliance checks conducted; (6) the number of licensed and registered tobacco retailers and vendors; (7) the names and addresses of retailers and vendors who have paid fines or have been otherwise penalized due to enforcement actions; (8) the number of complaints filed against licensed and registered tobacco retailers; (9) the number of fires caused or believed to be caused by tobacco products and deaths and injuries resulting therefrom; (10) the number and type of compliance checks conducted; (11) a survey of attitudes and behaviors regarding tobacco use among minors, and the initial survey shall be deemed to constitute the baseline survey; (12) the number of tobacco users and estimated trends in tobacco use among minors; (13) annual tobacco sales; (14) tax revenue collected from sale of tobacco products; (15) the number of licensed tobacco retail outlets; (16) the number of cigarette vending machines; and (17) the names of entities that have paid fines due to enforcement actions; (18) tobacco control efforts sponsored by state government agencies, including money spent to educate minors on the hazards of tobacco use; (19) recommendations for improving tobacco control efforts in the state; and (20) other information the secretary deems appropriate.”;

On page 59, by striking all of lines 12 to 19, inclusive;

On page 61, following line 21, by inserting the following:

“(m) On July 1, 2004, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$500,000 from the children's initiatives fund to the tobacco use prevention and control program fund.”

Senator Taddiken further amended **SB 538** as amended by Senate Committee, on page 79, following line 1, by inserting:

“*Provided*, That no expenditures shall be made for any contract for the customer service program relating to the electronic benefit transfer portion of the food stamp vision card program with any contractor or vendor who performs, or subcontracts or otherwise procures the services or work contracted for, at a location outside of the United States: *Provided further*, That each contractor or vendor submitting a bid to contract to provide services or work for a state agency shall certify that the services or work covered by the bid or contract will be performed at a location in the United States: *And provided further*, That no expenditures shall be made under any such contract upon a finding that the contractor or vendor, or any subcontractor thereof, during the term of the contract shifts services or work

on any such contract to a location outside of the United States and the contract shall be terminated for noncompliance: *And provided further*, That any such contract shall contain provision which allows for the employment of qualified TAF recipients to provide services under such contract.”

Senator Teichman further amended **SB 538** as amended by Senate Committee, on page 115, in line 26, preceding the period, by inserting “: *Provided further*, That, in addition to other expenditures authorized to be made from the comprehensive grant program account for the awards of Kansas comprehensive grants in accordance with the provisions of K.S.A. 74-32,120 through 74-32,125, and amendments thereto, and policies and rules and regulations adopted by the state board of regents for the administration of the Kansas comprehensive grant program, expenditures shall be made from the comprehensive grant program account for fiscal year 2005 for awards of Kansas comprehensive grants to eligible Kansas students who are enrolling or enrolled at an institution of higher education which is accredited by the American Association of Bible Colleges and which has its main campus or principal place of operation located in Kansas, and otherwise in accordance with and subject to the provisions of K.S.A. 74-32,120 through 74-32,125, and amendments thereto, and policies and rules and regulations adopted by the state board of regents for the administration of the Kansas comprehensive grant program”;

On page 118, following line 16, by inserting the following:
“*Provided*, That, in addition to other expenditures authorized to be made from the comprehensive grant program discontinued attendance fund for the awards of Kansas comprehensive grants in accordance with the provisions of K.S.A. 74-32,120 through 74-32,125, and amendments thereto, and policies and rules and regulations adopted by the state board of regents for the administration of the Kansas comprehensive grant program, expenditures shall be made from the comprehensive grant program discontinued attendance fund for fiscal year 2005 for awards of Kansas comprehensive grants to eligible Kansas students who are enrolling or enrolled at an institution of higher education which is accredited by the American Association of Bible Colleges and which has its main campus or principal place of operation located in Kansas, and otherwise in accordance with and subject to the provisions of K.S.A. 74-32,120 through 74-32,125, and amendments thereto, and policies and rules and regulations adopted by the state board of regents for the administration of the Kansas comprehensive grant program.”

Senator Morris further amended **SB 538** as amended by Senate Committee, on page 42, in line 16, by striking “July 15, 2004” and inserting “August 15, 2004”

Senator Morris further amended **SB 538** as amended by Senate Committee, on page 1, in the title, in line 10, after “ending” by inserting “June 30, 2004.”

Senator Morris further amended **SB 538** as amended by Senate Committee, on page 142, in line 34, by subtracting \$75,000 from the dollar amount which reads \$500,000 and by adjusting the dollar amount in line 34 which reads \$500,000 accordingly

Senator Steineger further amended **SB 538** as amended by Senate Committee, on page 3, in line 9, by striking “, ex-”; by striking all in line 10; in line 11, by striking all before “shall”

The following amendments offered to **SB 538** were rejected:

Senator Brownlee moved to amend the bill as amended by Senate Committee, on page 80, in line 23, preceding the period, by inserting “: *Provided further*, That \$2,000,000 from the children’s cabinet early childhood discretionary grant program account shall be expended for the Kansas department of education parent education program”;

On page 86, in line 4, by striking “65%” and inserting “50%”

Senator Steineger moved to amend the bill as amended by Senate Committee, on page 75, in line 14, by subtracting \$10,000 from the dollar amount which reads \$70,458,231 and by adjusting the dollar amount in line 14 which reads \$70,458,231 accordingly; in line 17, before the period, by inserting: “: *Provided further*, That the amount of moneys expended for the contract with Kansas children’s service league shall be reduced by \$10,000 for fiscal year 2005 to reduce the expenditure for graphic design, printing and postage expenses”

HCR 5005 be amended by adoption of the committee amendments, be further amended by motion of Senator Allen as amended by Senate Committee, on page 2, in line 8, by striking “most, three” and inserting “least, five”; also in line 8, by striking all after “elections”

and inserting "as defined in K.S.A. 25-101, and amendments thereto," and **HCR 5005** be adopted 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 536, SB 538; HCR 5005, HCR 5033** were advanced to Final Action and roll call.

SB 536. An act making and concerning appropriations for the fiscal years ending June 30, 2004, and June 30, 2005, for certain state agencies; authorizing certain transfers and capital improvement projects, imposing certain restrictions and limitations, and directing or authorizing certain receipts and disbursements and acts incidental to the foregoing.

On roll call, the vote was: Yeas 29, Nays 10, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brownlee, Brungardt, Buhler, Bunten, Corbin, Downey, Emler, Gilstrap, Goodwin, Hensley, Jackson, Jordan, Kerr, Lee, Morris, Oleen, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Clark, Donovan, Haley, Helgerson, Huelskamp, Journey, O'Connor, Pugh, Steineger, Wagle.

Absent or Not Voting: Lyon.

The bill passed, as amended.

SB 538. An act making and concerning appropriations for the fiscal years ending June 30, 2004, June 30, 2005, and June 30, 2006, for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements and acts incidental to the foregoing; amending K.S.A. 2003 Supp. 2-223, 55-193, 75-2319, 75-6702, 76-775, 79-2959, 79-2964, 79-3425c, 79-3425i, 79-34,147 and 82a-953a and repealing the existing sections.

On roll call, the vote was: Yeas 28, Nays 11, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Betts, Brungardt, Buhler, Bunten, Corbin, Downey, Emler, Gilstrap, Goodwin, Hensley, Jackson, Jordan, Kerr, Lee, Morris, Oleen, Salmans, Schmidt, Schodorf, Taddiken, Teichman, Tyson, Umbarger, Vratil.

Nays: Brownlee, Clark, Donovan, Haley, Helgerson, Huelskamp, Journey, O'Connor, Pugh, Steineger, Wagle.

Absent or Not Voting: Lyon.

The bill passed, as amended.

HCR 5005. A concurrent resolution urging Congress to modify the provisions of the National Voter Registration Act of 1993 to simplify the procedure for removal of voters from voter registration lists.

On roll call, the vote was: Yeas 36, Nays 3, Present and Passing 0, Absent or Not Voting 1.

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

Nays: Donovan, Pugh, Wagle.

Absent or Not Voting: Lyon.

The resolution was adopted, as amended.

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

On roll call, the vote was: Yeas 16, Nays 17, Present and Passing 6, Absent or Not Voting 1.

Yeas: Barnett, Barone, Betts, Bunten, Emler, Goodwin, Hensley, Jackson, Kerr, Lee, Morris, Oleen, Schmidt, Schodorf, Teichman, Umbarger.

Nays: Adkins, Allen, Brownlee, Brungardt, Buhler, Corbin, Donovan, Downey, Haley, Helgerson, O'Connor, Pugh, Salmans, Steineger, Tyson, Vratil, Wagle.

Present and Passing: Clark, Gilstrap, Huelskamp, Jordan, Journey, Taddiken.

Absent or Not Voting: Lyon.

A two-thirds constitutional majority not having voted in favor of the resolution **HCR 5033** was not adopted.

EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **HCR 5033**. Playing games with the institution of marriage is one of the most egregious things this body has done. We all know what marriage between one man and one woman means. So do the people of Kansas who will hold us accountable for what we have done today in the Kansas Senate.—KARIN BROWNLEE

Senators Clark, Gilstrap, Journey, O'Connor, Pugh and Tyson request the record to show they concur with the "Explanation of Vote" offered by Senator Brownlee on **HCR 5033**.

MR. PRESIDENT: The constitutional amendment **HCR 5033** was not necessary as Kansas law already defines marriage as a civil union between a man and a woman. The statute defines our stance and protects us from any confusion under the equal protection language in the U.S. Constitution. I vote no as this measure is redundant.—PETE BRUNGARDT

MR. PRESIDENT: Today, in a series of parliamentary maneuvers designed to hide their action, the Kansas Senate has denied the opportunity of the citizens of Kansas to protect the sacred Institution of Marriage. In an unrecorded floor amendment, these senators gutted the original intent of the Marriage Amendment. By forwarding this meaningless shell, the state Senate has attempted to thwart the will of the Kansas people. To equate the institution of marriage to civil unions and domestic partnerships - and call it a protection of marriage - is an insult to all Kansans. Let us hope and pray we can undo this action.—TIM HUELSKAMP

I vote yes on **HCR 5033**.

HCR 5033 solidifies the definition of a marriage by adding it to the Kansas Constitution. Current statutes already define marriage as a legal union between one man and one woman. Some say the statute is sufficient protection against a court allowing same sex marriage. However, in light of recent court decisions in other states, many in Kansas want to ensure that the institution of marriage is upheld as a legal union between one man and one woman. I vote AYE on **HCR 5033** because I want the citizens of Kansas to have the opportunity to express their beliefs on this important issue which involves one of the foundations of our society.—DAVE KERR

Senators Barnett, Betts, Bunten, Goodwin, Jackson, Lee, Morris, Schmidt, Schodorf, Teichman and Umbarger request the record to show they concur with the "Explanation of Vote" offered by Senator on **HCR 5033**.

MR. PRESIDENT: I vote "no" on **HCR 5033**. Today the people of Kansas have been betrayed. Through an orchestrated and tenacious series of events on the Senate floor, they were denied the right to know if their Senator is willing to allow them to vote on whether or not "marriage" should be held above all other relationships as good public policy and whether or not the rights, benefits, privileges and incidents of marriage should be granted to alternative lifestyles.

It is truly a sad day in the Kansas Senate when our actions are hidden from public scrutiny.—SUSAN WAGLE

Senator Tyson requests the record to show he concurs with the "Explanation of Vote" offered by Senator Wagle on **HCR 5033**.

REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **HB 2004** be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2004," as follows:

"SENATE Substitute for HOUSE BILL No. 2004

By Committee on Education

"AN ACT concerning school districts; relating to school finance and the sources of revenue therefor; amending K.S.A. 40-2246, 72-6405, 72-6413, 72-6414, 79-2968, 79-32,176, 79-32,190 and 79-3705a and K.S.A. 2003 Supp. 41-311, 41-501, 41-2623, 58-3935, 58-3950, 72-6407, 79-3230, 79-32,143, 79-32,197, 79-32,206, 79-32,210, 79-3603 and 79-3609 and repealing the existing sections; also repealing K.S.A. 72-6440."; and the substitute bill be passed.

Committee on **Federal and State Affairs** recommends **HB 2798**, as amended by House Committee of the Whole, be amended on page 1, by striking all in line 28; after line 28 by inserting:

“(a) “Attorney general” means the attorney general of the state of Kansas.”; in line 30, by striking “bureau” and inserting “attorney general” line 35, by striking “bureau” and inserting “attorney general”;

On page 2, in line 13, by striking “bureau” and inserting “attorney general”;

On page 3, in line 12, by striking “bureau” and inserting “attorney general”; in line 14, by striking “bureau” and inserting “attorney general”;

Also on page 3 by striking all in line 27; after line 27 by inserting:

“(12) is not in arrearage in the payment of child support payments as determined by a finding or order of a court of this state or of another state or jurisdiction.”;

Also on page 3, in line 28, by striking “director of the bureau” and inserting “attorney general”; in line 38, by striking “bureau” and inserting “attorney general”; in line 40, by striking “director” and inserting “attorney general”; in line 42, by striking “director” and inserting “attorney general”; in line 43, by striking the first “bureau” and inserting “attorney general”; also in line 43, by striking the second “bureau” and inserting “attorney general”;

On page 4, in line 3, by striking “director” and inserting “attorney general”; in line 9, by striking “director” and inserting “attorney general”; in line 15, by striking “bureau” and inserting “attorney general”; in line 20, by striking “bureau” and inserting “attorney general”;

On page 5, in line 7, by striking “bureau” and inserting “attorney general”; in line 10, by striking “bureau” and inserting “attorney general”; in line 14, by striking “bureau” and inserting “attorney general”; in line 29, by striking “director” and inserting “attorney general”; in line 35, by striking “bureau” and inserting “attorney general”; in line 40, by striking “bureau” and inserting “attorney general”; in line 41, by striking “bureau” and inserting “attorney general”;

On page 6, in line 9, by striking “bureau” and inserting “attorney general”; in line 15, by striking the first “bureau” and inserting “attorney general”; also in line 15, by striking the second “bureau” and inserting “attorney general”; in line 18, by striking “bureau” and inserting “attorney general”; in line 22, by striking “bureau” and inserting “attorney general”; in line 24, by striking “bureau” and inserting “attorney general”; in line 25, by striking “bureau” and inserting “attorney general”; in line 37, by striking “bureau” and inserting “attorney general”; in line 38, by striking “bureau” and inserting “attorney general”;

On page 7, in line 7, by striking “bureau” and inserting “attorney general”; in line 31, before the semicolon by inserting “on the day an election is held”; by striking all in lines 39 and 40 and inserting:

“(10) any athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education;

(11) any professional athletic event not related to or involving firearms.”;

By renumbering paragraphs (11) through (16) as paragraphs (12) through (17) respectively;

Also on page 7, in line 41, by striking “portion of an”; in line 43, by striking all before the semicolon;

On page 8, in line 3, by striking all after “instruction”; in line 4 by striking all before the semicolon and inserting “or attendance”; by striking all in line 16 and inserting:

“(18) any property or facility owned or leased by a city or county including but not limited to a city hall, municipal or county courthouse, parks and recreation facilities and public works buildings, provided that the premises of such buildings, parks or recreation facilities are posted, in a manner reasonably likely to come to the attention of persons entering such premises, as premises where carrying a concealed weapon is prohibited.”;

Also on page 8, in line 17, by striking “B” and inserting “A”; in line 32, by striking “bureau” and inserting “attorney general”;

On page 9, in line 15, by striking “director of the bureau” and inserting “attorney general”; in line 16, by striking “director of the bureau” and inserting “attorney general”; in line 23, by striking “director of the bureau” and inserting “attorney general”; in line 31, by striking

“Kansas bureau of”; in line 32, by striking “investigation” and inserting “attorney general”; in line 38, by striking “director of the bureau” and inserting “attorney general”;

On page 10, in line 9, by striking “director of the bureau” and inserting “attorney general”; in line 17, by striking “director of the bureau” and inserting “attorney general”; in line 19, by striking “director of the bureau” and inserting “attorney general”; in line 34, by striking “bureau” and inserting “attorney general”;

On page 15, in line 12, by striking “Kansas bureau of investigation” and inserting “attorney general”;

On page 23, in line 8, by striking “Kansas bureau of investigation” and inserting “attorney general”;

and the bill be passed as amended.

Committee on **Financial Institutions and Insurance** recommends **HB 2549** be amended on page 3, by striking all in lines 10 through 12 and inserting:

“Sec. 2. K.S.A. 2003 Supp. 58-3935 is hereby amended to read as follows: 58-3935. (a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler’s check, 15 years after its issuance;
 (2) money order, seven years after issuance;
 (3) except as provided in K.S.A. 58-3943, and amendments thereto, stock or other equity interest in a business association or financial organization, including a security entitlement under article 8 of the uniform commercial code, five years after the earlier of:

(A) The date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or

(B) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) a demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property, except that a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) money or credits owed to a customer as a result of a retail business transaction, five years after the obligation accrued;

(7) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(8) property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(9) property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(10) property held by a court, state or other government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

(11) wages or other compensation for personal services, one year after the compensation becomes payable;

(12) deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(13) property held by agents and fiduciaries in a fiduciary capacity for the benefit of another person, five years after it has become payable or distributable, unless the owner has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary;

(14) property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) *property distributable in the course of a demutualization, rehabilitation or related reorganization of an insurance company shall be deemed abandoned as follows:*

(A) *Any check or draft, two years after the date of the demutualization or reorganization, if the check or draft has not been presented for payment and the owner has not otherwise communicated with the holder or its agent regarding the property;*

(B) (i) *any other property, two years after the date of the demutualization or reorganization if instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable, or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect; and*

(ii) *the owner has not:*

(a) *Communicated in writing with the holder or its agent regarding the property; or*

(b) *otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.*

(c) *For any time more than two years after the date of demutualization or reorganization, any property which is not subject to subparagraph (A) or (B) of this paragraph (15) shall be treated under other provisions of this chapter for the specific type of property;*

(16) *all other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs; and*

~~(16)~~ (17) *any proceeds of a sale pursuant to K.S.A. 58-817, and amendments thereto, which remain after satisfaction of the lien provided by K.S.A. 58-816, and amendments thereto, that have been unclaimed by the owner for one year from receipt of the proceeds of the sale and satisfaction of the lien.*

(b) *At the time that an interest is presumed abandoned under subsection (a) any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.*

(c) *Property is unclaimed if, for the applicable period set forth in subsection (a), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or the holder's representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.*

(d) *An indication of an owner's interest in property includes:*

(1) *The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;*

(2) *owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;*

(3) *the making of a deposit to or withdrawal from a bank account; and*

(4) *the payment of a premium with respect to a property interest in an insurance policy, except that the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.*

(e) Property is payable or distributable for the purpose of this act notwithstanding the owner's failure to make demand or to present any instrument or document otherwise required to obtain payment.

(f) Any demand or savings account or matured timed deposit with a financial organization shall not be presumed abandoned if regular correspondence to an owner of the account has not been returned to the sender.

(g) Any outstanding check, draft, credit balance, customer's overpayment or unidentified remittance issued to a sole proprietorship or business association as part of a commercial transaction in the ordinary course of a holder's business shall not be presumed abandoned.

(h) A holder may not impose with respect to any property payable or distributable for the purpose of this act, including any income or increment derived therefrom, any fee or charge due to dormancy or inactivity or cease payment of interest unless:

(1) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(2) for property in excess of \$100, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has mailed written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before the effective date of this act, or for property described in K.S.A. 58-3937 and 58-3938, and amendments thereto; and

(3) the holder regularly imposes such charges or ceases payment of interest and in no instance reverses or otherwise cancels them or retroactively credits interest with respect to the property. Charges imposed because of dormancy or inactivity may be made and collected monthly, quarterly or annually except that beginning with the effective date of this act, such charges may only be imposed for a maximum of five calendar years.

(i) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone unless the agreement between the agent and the business association provides otherwise.

(j) For the purposes of this act, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

(k) Any property held by a financial organization that would otherwise be presumed abandoned under this section shall not be presumed abandoned if the apparent owner:

(1) Owns other property which is not presumed abandoned and if the financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this section at the address to which communications regarding the other property regularly are sent; or

(2) had another relationship with the financial organization concerning which the owner has:

(A) Communicated in writing with the financial organization; or

(B) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the financial organization and if the financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this section at the address to which communications regarding the other relationship regularly are sent.

Sec. 3. K.S.A. 2003 Supp. 58-3950 is hereby amended to read as follows: 58-3950. (a) Except as provided in subsection (i), a holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of \$100 or more;

- (3) an aggregated amount of items valued under \$100 each;
 - (4) in the case of an amount of \$100 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the insured or annuitant and of the beneficiary;
 - (5) in the case of property held in a safe deposit box or other safekeeping depository, a description of the property and any amounts owing to the holder;
 - (6) the date, if any, on which the property became payable, demandable or returnable and the date of the last transaction with the apparent owner with respect to the property; and
 - (7) other information that the administrator prescribes by rules and regulations as necessary for the administration of this act.
- (c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.
- (d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding. *The initial report of property distributable in the course of a demutualization, rehabilitation or related reorganization of an insurance company as of December 31, 2003, shall be due by November 1, 2004.*
- (e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this act if:
- (1) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;
 - (2) the claim of the apparent owner is not barred by a statute of limitations; and
 - (3) the value of the property is \$100 or more, or is reported under K.S.A. 58-3943 or 58-3949 and amendments thereto.
- (f) The written notice shall also contain the following:
- (1) Nature and identifying number, if any, or description of the funds or other property; and
 - (2) the amount appearing on the records of the holder to be due the apparent owner.
- (g) If the holder is not a life insurance company, the written notice shall set forth an additional statement that the funds or other property will be reported as unclaimed property to the state treasurer of Kansas no later than November 1 of the current year.
- (h) If the holder is a life insurance company, the written notice shall set forth an additional statement that the funds or other property will be reported as unclaimed property to the state treasurer of Kansas no later than May 1 of the current year.
- (i) The holder of property presumed abandoned does not need to file a report under the provisions of this section if such holder has no individual property valued over \$100 and the total value of such holder's aggregated property is under \$250, unless required to do so by the provisions of subsection (k).
- (j) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due which terminates the accrual of additional interest on the amount paid.
- (k) The administrator, in the administrator's discretion, may require that any holder of property presumed abandoned, file a report as required by this section.
- Sec. 4. K.S.A. 2003 Supp. 38-2001 is hereby amended to read as follows: 38-2001. (a) The secretary of social and rehabilitation services shall develop and submit a plan consistent with federal guidelines established under section 4901 of public law 105-33 (42 U.S.C. 1397aa *et seq.*; title XXI).
- (b) The plan developed under subsection (a) shall be a capitated managed care plan covering Kansas children from zero to 19 years which:

(1) Contains benefit levels at least equal to those for the early and periodic screening, diagnosis and treatment program;

(2) provides for presumptive eligibility for children where applicable;

(3) provides continuous eligibility for 12 months once a formal determination is made that a child is eligible subject to subsection (e);

(4) has performance based contracting with measurable outcomes indicating age appropriate utilization of plan services to include, but not limited to, such measurable services as immunizations, vision, hearing and dental exams, emergency room utilization, annual physical exams and asthma;

(5) shall use the same prior authorization standards and requirements as used for health care services under medicaid to further the goal of seamlessness of coverage between the two programs; and

(6) will provide targeted low-income children, as defined under section 4901 of public law 105-33 (42 U.S.C. 1397aa, *et seq.*), coverage subject to appropriations.

(c) The secretary is authorized to contract with entities authorized to transact health insurance business in this state to implement the health insurance coverage plan pursuant to subsection (a) providing for several plan options to enrollees which are coordinated with federal and state child health care programs, except that when contracting to provide managed mental health care services the secretary shall assure that contracted entities demonstrate the ability to provide a full array of mental health services in accordance with the early and periodic screening, diagnosis and treatment plan. The secretary shall not develop a request for proposal process which excludes community mental health centers from the opportunity to bid for managed mental health care services.

(d) When developing and implementing the plan in subsection (a), the secretary to the extent authorized by law:

(1) Shall include provisions that encourage contracting insurers to utilize and coordinate with existing community health care institutions and providers;

(2) may work with public health care providers and other community resources to provide educational programs promoting healthy lifestyles and appropriate use of the plan's health services;

(3) shall plan for outreach and maximum enrollment of eligible children through cooperation with local health departments, schools, child care facilities and other community institutions and providers;

(4) shall provide for a simplified enrollment plan;

(5) shall provide cost sharing as allowed by law;

(6) shall not count the caring program for children, the Kansas health insurance association plan or any charity health care plan as insurance under subsection (e)(1); ~~and~~

(7) may provide for payment of health insurance premiums, including contributions to a medical savings account if applicable, if it is determined cost effective, taking into account the number of children to be served and the benefits to be provided; *and*

(8) *may provide that prescription drugs, transportation services and dental services are purchased outside of the capitated managed care plan to improve the efficiency, accessibility and effectiveness of the program.*

(e) A child shall not be eligible for coverage and shall lose coverage under the plan developed under subsection (a) of K.S.A. 38-2001, and amendments thereto, if such child's family has not paid the enrollee's applicable share of any premium due.

If the family pays all of the delinquent premiums owed during the year, such child will again be eligible for coverage for the remaining months of the continuous eligibility period.

(f) The plan developed under section 4901 of public law 105-33 (42 U.S.C. 1397aa *et seq.*, and amendments thereto) is not an entitlement program. The availability of the plan benefits shall be subject to funds appropriated. The secretary shall not utilize waiting lists, but shall monitor costs of the program and make necessary adjustments to stay within the program's appropriations.

New Sec. 5. On and after July 1, 2006: (a) No insurance company, including health maintenance organizations, offering any type of accident and sickness policy covering individuals residing in this state shall print or encode an insured's social security number on or into the insured's policy card.

(b) Any distinguishing identifier assigned to the insured's policy card shall be a combination of numbers or letters or both, which is unique to the insured.

(c) An insured's distinguishing identifier assigned to such insured's policy card shall not, in any way, be based on or depend on the insured's social security number.

New Sec. 6. On and after July 1, 2006: (a) No insurance company, including health maintenance organizations, offering any type of coverage for prescription drugs or devices covering individuals residing in this state shall print or encode an insured's social security number on or into the insured's policy card.

(b) Any distinguishing identifier assigned to the insured's policy card shall be a combination of numbers or letters or both, which is unique to the insured.

(c) An insured's distinguishing identifier assigned to such insured's policy card shall not, in any way, be based on or depend on the insured's social security number.

New Sec. 7. If a federal law takes effect requiring the United States department of health and human services to establish a national unique patient health identifier program, any person or entity that complies with such federal law shall be deemed to be in compliance with the provisions of sections 5 and 6, and amendments thereto, and K.S.A. 2003 Supp. 40-4623, and amendments thereto.

Sec. 8. K.S.A. 2003 Supp. 40-4623 is hereby amended to read as follows: 40-4623. (a) A health benefit plan that provides coverage for prescription drugs or devices and issues a card for claims processing and an administrator of any such plan, including, but not limited to, a pharmacy benefits manager and a third-party administrator shall issue a card containing uniform prescription drug information to each person entitled to such card under the health benefit plan. If required for claims adjudication, the uniform prescription drug information card shall specifically identify and display the following information:

- (1) ANSI-BIN number;
- (2) processor control number or group number or both;
- (3) card issuer identifier;
- (4) prescription claims processor, if different from card issuer;
- (5) cardholder identification number;
- (6) cardholder or insured name;
- (7) claims submission names and addresses; and
- (8) help desk telephone numbers.

(b) A uniform prescription drug information card shall be issued by a health benefit plan to each person entitled to such card under the health benefit plan upon enrollment and reissued upon any change in such person's coverage that affects one or more mandatory data elements contained on the card.

(c) Notwithstanding the foregoing provision, any health benefit plan or administrator of such plan may utilize, in lieu of such card, electronic technology which contains all of the information required for claims adjudication, as long as such electronic technology is provided by the health benefit plan or administrator of such plan to the pharmacies which will adjudicate the prescription drug claims.

(d) On and after July 1, 2006: (1) No cardholder's social security number shall be printed or encoded on or into any card issued under this section.

(2) Any cardholder identification number or other distinguishing identifier assigned to the card issued to a cardholder shall be a combination of numbers or letters or both, which is unique to the cardholder.

(3) A cardholder's identification number or other distinguishing identifier assigned to such insured's policy card shall not, in any way, be based on or depend on the cardholder's social security number."

In the title, by striking all in lines 10 and 11 and inserting: "pertaining to the demutualization of insurance companies and unclaimed property resulting therefrom; pertaining to the state children's health insurance program; pertaining to the use of an insured's social security number on any policy card issued by an insurer; amending K.S.A. 2003 Supp. 38-2001, 40-2258, 40-4623, 58-3935 and 58-3950 and repealing the existing sections."; and the bill be passed as amended.

Committee on **Ways and Means** recommends **HB 2582**, as amended by House Committee of the Whole, be passed.

Also, **SB 351** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 351," as follows:

"Substitute for SENATE BILL No. 351

By Committee on Ways and Means

"AN ACT concerning emergency medical services providers; relating to financial assistance for training and certain educational expenses; amending K.S.A. 65-6111 and K.S.A. 2003 Supp. 75-1508 and repealing the existing sections."; and the substitute bill be passed.

HB 2912 be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL No. 2912," as follows:

"SENATE Substitute for HOUSE BILL No. 2912

By Committee on Ways and Means

"AN ACT providing for assessments on certain hospital providers and health maintenance organizations; creating the health care access improvement fund; establishing the health care access improvement panel; providing for administration."; and the substitute bill be passed.

SB 539 be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 539," as follows:

"Substitute for SENATE BILL No. 539

By Committee on Ways and Means

"AN ACT concerning issuance of bonds by certain state agencies to fund capital improvements for water-related infrastructure; amending K.S.A. 82a-1360, 82a-1361, 82a-1362, 82a-1363, 82a-1364, 82a-1367 and 82a-1368 and repealing the existing sections; also repealing K.S.A. 82a-1365."; and the substitute bill be reported without recommendation.

REPORT ON ENGROSSED BILLS

SB 381, SB 512 reported correctly engrossed March 25, 2004.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2571, HB 2614, HB 2627, HB 2676, HB 2705, HB 2748, HB 2752, HB 2784, HB 2898, HB 2899, HB 2900, HB 2901, HB 2902, HB 2937, HB 2939.**

Passage of **SB 399, SB 400, SB 529.**

Also, passage of **SB 9**, as amended by **House Substitute for SB 9; SB 136**, as amended by **House Substitute for SB 136; SB 256**, as amended, **SB 299**, as amended, **SB 317**, as amended, **SB 334**, as amended, **SB 350**, as amended, **SB 376**, as amended by **House Substitute for SB 376; SB 387**, as amended, **SB 396**, as amended, **SB 431**, as amended, **SB 440**, as amended, **SB 524**, as amended.

The House nonconcur in Senate amendments to **HB 2347**, requests a conference and has appointed Representatives O'Neal, Patterson and Pauls as conferees on the part of the House.

The House nonconcur in Senate amendments to **Substitute HB 2516**, requests a conference and has appointed Representatives Holmes, Sloan and Kuether as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2545**, requests a conference and has appointed Representatives Barbieri-Lightner, Dreher and Dillmore as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2563**, requests a conference and has appointed Representatives Barbieri-Lightner, Dreher and Dillmore as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2573**, requests a conference and has appointed Representatives Hutchins, Judy Morrison and Flaharty as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2597**, requests a conference and has appointed Representatives Barbieri-Lightner, Dreher and Dillmore as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2695**, requests a conference and has appointed Representatives Hayzlett, Faber and M. Long as conferees on the part of the House.

The House nonconcur in Senate amendments to **Substitute HB 2698**, requests a conference and has appointed Representatives Jim Morrison, Long-Mast and Kirk as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2760**, requests a conference and has appointed Representatives Jim Morrison, Long-Mast and Kirk as conferees on the part of the House.

The House nonconcur in Senate amendments to **HB 2795**, requests a conference and has appointed Representatives Sloan, Horst and Storm as conferees on the part of the House.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2571, HB 2614, HB 2627, HB 2676, HB 2705, HB 2748, HB 2752, HB 2784, HB 2898, HB 2899, HB 2900, HB 2901, HB 2902, HB 2937, HB 2939 were thereupon introduced and read by title.

CHANGE OF REFERENCE

The President withdrew **SB 539** from the Calendar under the heading of General Orders, and rereferred the bill to the Committee on Ways and Means.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Friday, March 26, 2004.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks*.
PAT SAVILLE, *Secretary of the Senate*.

