

Journal of the House

SEVENTEENTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, February 2, 2005, 11:00 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 123 members present.
Rep. Shultz was excused on legislative business.

Prayer by guest chaplain, the Rev. John Tamilio III, Senior Minister, The Colonial Church in Prairie Village, United Church of Christ, guest of Rep. Owens:

Most Merciful and Loving God,

Centuries ago your prophet Micah declared to the Israelites, and, by virtue of their witness, to the nations of the world, that you require three things from us if we are to remain faithful to your will: we are to do justice, we are to love kindness, and we are to walk humbly with you, our God.

Bless this gathered body, O Holy One. Pour your Spirit down upon them. Fill their minds with wisdom and their hearts with compassion so that they may honor *all* the people they serve by doing justice, by loving kindness, and by walking humbly with you.

Inspire us to act, we pray, so that we may be agents of hope in your divine drama of reconciliation.

We lift up this prayer and we lift up our lives in your name, the name in which we rejoice to pray. Amen.

The Pledge of Allegiance was led by Rep. Novascone.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

HB 2249, An act concerning the incorporation of cities; amending K.S.A. 15-123 and repealing the existing section, by Representative Merrick.

HB 2250, An act concerning election campaign finance; prohibiting contributions in elections for the office of commissioner of insurance from certain entities; and prescribing penalties for the violation thereof, by Representative Holland.

HB 2251, An act concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; employment after retirement; requiring certain duties of state board of education; amending K.S.A. 72-5437, 72-5445, 72-7513, 74-4914, 74-4922 and 74-4939 and repealing the existing sections, by Representative Otto.

HB 2252, An act relating to school districts; concerning the changing of member district boundaries; amending K.S.A. 72-6769 and repealing the existing section, by Representative Otto.

HB 2253, An act concerning wildlife; relating to wildlife violations; amending K.S.A. 22-2908 and 32-1031 and K.S.A. 2004 Supp. 32-1032 and repealing the existing sections, by Committee on Wildlife, Parks and Tourism.

HB 2254, An act concerning elections; relating to paper verification of votes cast on electronic voting machines; amending K.S.A. 25-1308 and 25-1310 and repealing the existing sections, by Representative Holland.

HB 2255, An act concerning insurance; pertaining to changing terms of certain individual policies; amending K.S.A. 40-2257 and repealing the existing section, by Representative Holland.

HB 2256, An act concerning health care; relating to advanced registered nurse practitioners; amending K.S.A. 65-1130 and 65-2837a and K.S.A. 2004 Supp. 65-468, 65-1626, 65-4101 and 72-5213 and repealing the existing sections, by Committee on Health and Human Services.

HB 2257, An act concerning insurance; relating to inpatient coverage, by Committee on Health and Human Services.

HB 2258, An act concerning health care; establishing the patient safety act; amending K.S.A. 65-430 and repealing the existing section, by Committee on Health and Human Services.

HB 2259, An act concerning franchise tax; relating to rate; elimination; amending K.S.A. 2004 Supp. 79-5401 and repealing the existing section, by Committee on Taxation.

HB 2260, An act concerning estate taxation; concerning conformity to federal law; amending K.S.A. 2004 Supp. 79-15,101 and 79-15,102 and repealing the existing sections, by Committee on Taxation.

HB 2261, An act concerning crimes, punishment and criminal procedure; relating to searches without a search warrant; amending K.S.A. 22-2501 and repealing the existing section, by Committee on Corrections and Juvenile Justice.

HB 2262, An act concerning civil procedure; relating to legal holidays; amending K.S.A. 2004 Supp. 60-206 and repealing the existing section, by Committee on Corrections and Juvenile Justice.

HB 2263, An act concerning transmission of electricity; enacting the Kansas electric transmission authority act; amending K.S.A. 2004 Supp. 66-1237 and repealing the existing section, by Committee on Utilities.

HB 2264, An act concerning the department of health and environment; relating to the director of health; amending K.S.A. 75-5603 and repealing the existing section, by Committee on Appropriations.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

Agriculture: **HB 2239**.

Appropriations: **HB 2245**.

Commerce and Labor: **HB 2248**.

Education: **HB 2247**.

Governmental Organization and Elections: **HB 2242**, **HB 2243**.

Health and Human Services: **HB 2241**.

Higher Education: **HB 2234**.

Judiciary: **HB 2233**.

Taxation: **HB 2235**, **HB 2236**, **HB 2237**, **HB 2238**, **HB 2244**, **HB 2246**.

Utilities: **HB 2240**.

CHANGE OF REFERENCE

Speaker Mays announced the withdrawal of **HB 2129** from Committee on Judiciary and referral to Committee on Corrections and Juvenile Justice.

COMMUNICATIONS FROM STATE OFFICERS

From Darlene Osterhaus, State Coordinator, Kansas Operation Lifesaver, Annual Report for 2004.

The complete report is kept on file and open for inspection in the office of the Chief Clerk.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SCR 1601, A PROPOSITION to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, concerning marriage.

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

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

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

“(b) No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage.”

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

“Explanatory statement. There is currently no constitutional provision regarding marriage. There is a statute, enacted by the legislature, that defines marriage as a civil contract between two persons who are of opposite sex and declares all other marriages to be contrary to public policy and void.

“A vote for this proposition would amend the Kansas constitution to incorporate into it the definition of marriage as a civil contract between one man and one woman only and the declaration that any other marriage is contrary to public policy and void. The proposed constitutional amendment also would prohibit the state from recognizing any other legal relationship that would entitle the parties in the relationship to the rights or incidents of marriage.

“A vote against this proposition would not amend the constitution, in which case the current statute that defines marriage would remain unchanged but could be amended by future acts of the legislature or modified by judicial interpretation.”

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in April in the year 2005 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election, was considered on final action.

On roll call, the vote was: Yeas 86; Nays 37; Present but not voting: 0; Absent or not voting: 1.

Yeas: Aurand, Beamer, Bethell, Brown, Brunk, Burgess, Burroughs, Carlson, Carter, Col-loton, Dahl, DeCastro, Decker, Edmonds, Faber, Feuerborn, Flower, Freeborn, Gatewood, George, Goico, Grange, Grant, Hayzlett, Henderson, Henry, Holland, C. Holmes, M. Holmes, Horst, Huebert, Huff, Humerickhouse, Hutchins, Huy, D. Johnson, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Knox, Krehbiel, Landwehr, Larkin, Light, Long, Loyd, Mast, Mays, McCreary, McKinney, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O’Neal, Oharah, Olson, Otto, Pauls, Peck, Phelps, Pilcher-Cook, Powell, Powers, Ruff, Schwab, Schwartz, B. Sharp, Siegfried, Swenson, Thull, Treaster, Vickrey, Ward, Watkins, Weber, Wilk, Williams.

Nays: Ballard, Carlin, Cox, Craft, Crow, Davis, Dillmore, Faust-Goudeau, Flaharty, Flora, Garcia, Gordon, Hawk, Hill, Huntington, Jack, Kirk, Kuether, Lane, Loganbill, Mah, Menghini, M. Miller, O’Malley, Owens, Peterson, Pottorff, Ruiz, Sawyer, S. Sharp, Show-alter, Sloan, Storm, Svaty, Winn, Yoder, Yonally.

Present but not voting: None.

Absent or not voting: Shultz.

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

EXPLANATIONS OF VOTE

MR. SPEAKER: I vote **NO** ON **SCR 1601** for the following reasons:

1. It is a needless duplication of existing Kansas law.
2. It violates the Equal Protection Clause (EPC) of the United States Constitution.
3. It is subject to successful attack through the Full Faith and Credit Clause of the United States Constitution.
4. It, in no way, does what the sponsors wish it to do, namely, improve our family unit.—MICHAEL PETERSON, TOM SAWYER, LOUIS E. RUIZ, DELIA GARCIA

MR. SPEAKER: I vote no on **SCR 1601**. Part A of this amendment is redundant. Part B has no clear meaning and will cause many court cases. This amendment does not address real threats to marriage such as poverty, unemployment, domestic violence, and adultery.—GERALDINE FLAHARTY

MR. SPEAKER: Kansas already has a law that defines marriage as “a civil contract between two persons who are of the opposite sex,” and declares “all other marriages to be contrary to public policy and void.”

The constitution is for government to people relations, not people to people relations. Kansas has a long history of respecting individual freedoms. Take a moment to look at the names on this House chamber’s walls. These individuals fought to make Kansas a free state. To use the state constitution to deny rights to people will be a sorry breach of our proud Kansas heritage. Therefore I vote no on **SCR 1601**.—HAROLD LANE, SYDNEY CARLIN

MR. SPEAKER: Civility and Respect are the hallmark of a mature democracy. As Speaker, I am proud of the manner in which the House of Representatives has conducted itself with regard to this most contentious issue.

We often speak of those who have fought and died for our freedom and the debt owed to them by us, the living. As elected officials, we honor their sacrifice by, in spite of the depth of our personal feelings, observing a democratic process that gives voice to all who wish to speak.

Now we commend this into the hands of the people. May God guide their final judgment. I vote yes on **SCR 1601**.—DOUG MAYS

MR. SPEAKER: I vote No on **SCR 1601** because I believe in a government and a God that seek to promote love, support, and compassion between people of all ages, races, religions, economic needs, and partnerships. Marriage is already defined in state statute as being between men and women; with **SCR 1601**, heterosexual couples, for reasons of insurance coverage, economic status, or other conditions, will be precluded from formal recognition by the state. **SCR 1601** is not just about banning gay marriages, it is about permanently denying legal status to many heterosexual couples.—TOM SLOAN

MR. SPEAKER: Most cultures throughout the history of civilization, including all sects of the Judeo-Christian faith have celebrated the singular sanctity of marriage between one man and one woman. Only from that union are children procreated and thus can truly be defined as a family. Civilizations that have departed from that norm of conduct have soon decayed into oblivion. I urge all members of this body to vote YES on this amendment to our constitution in order to provide the highest protection for the sanctity of marriage, and for the continued well being of this great nation. I vote yes on **SCR 1601**.—FRANK MILLER, EVERETT L. JOHNSON, BILL MCCREARY, DICK KELSEY, DON DAHL, RAY MERRICK, S. MIKE KIEGERL, PEGGY MAST, BONNIE HUY

MR. SPEAKER: I vote no on **SCR 1601** for three reasons: Section B almost certainly invites a legal challenge which will cost the state millions of dollars and which we will lose; how long would it have taken to integrate the schools of Mississippi if we just “let the people vote on it?”; and I am not willing to place in our state’s constitution the doctrine of a certain minister in Topeka.

If we really want to protect the family unit, and the sanctity of marriage, why aren’t we addressing the real problem, the staggering rate of divorce in our country?—JIM YONALLY, SUE STORM, MARTI CROW, RAY COX, STEPHANIE SHARP

MR. SPEAKER: The US Supreme Court has not found this amendment unconstitutional nor will it cause the state to be unable to meet its obligation to the citizens of Kansas. Since constitutional amendments are designed for the people to decide, I vote yes on **SCR 1601**

thus letting all Kansans decide whether or not this proposal should be a part of their constitution.—DEENA HORST

MR. SPEAKER: The traditional family unit is the basic building block of society. The power to establish or destroy families is in the hands of the individuals within that society. Though limited in its ability, government must do all within its power to support and encourage this traditional family unit: a father, a mother, and the children they are blessed with, in a committed, life-long, loving relationship. I wholeheartedly vote Yes to allow the people of Kansas the choice to establish the traditional definition of marriage in our Constitution.—FORREST KNOX

MR. SPEAKER: I vote no on **SCR 1601**. We have had a law in Kansas since 1867 that defines marriage as only occurring between one man and one woman. This law has stood up to challenges in the Kansas Supreme court and protects the institution of marriage in Kansas.—BARBARA BALLARD

MR. SPEAKER: I vote No on **SCR 1601**. I do not believe this Constitutional Amendment supports marriage. Part b. of the resolution, as pointed out in hearings by legal experts, will create costly legal challenges that have already been met with out current state law that defines marriage as one man and one woman. There are likely to be many unintended consequences to this poorly drafted law that could hurt people in onther important relationships, such as grandparents and grandchildren. Each day in the House I pledge allegiance to our country with “liberty and justice for all.” I must vote the best interests of all Kansans.—TOM HAWK

PROTEST

MR. SPEAKER: Pursuant to Article 2, Section 10, of the constitution of the State of Kansas, I protest the adoption of **SCR 1601**. In 1996, Kansas passed the Defense of Marriage Act. Thus, we already have in statute, KSA 23-101, the definition of marriage. “The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void.”

Currently, Kansas does not recognize same-sex marriages and the Kansas Supreme Court has not shown the inclination to strike down the current statute. In fact, the courts have upheld our statues in *re Estate of Gardiner, 273 Kan. 191*.

The **Federal** Defense of Marriage Act permits states to not recognize same-sex unions performed in other states.

Taking the legalities of this issue into consideration, it seems logical to me that the time to consider amending a state constitution is after the U.S. Constitution is amended. Because, if the U.S. Supreme Court rules that laws against same-sex marriages discriminate, then state constitutions are ineffective.—TERRIE HUNTINGTON

PROTEST

MR. SPEAKER: Pursuant to Article 2, Section 10, of the constitution of the State of Kansas, I protest the adoption of **SCR 1601**. I come before you today in total support of marriage.

I, myself, have been married to the same man for nearly 35 years.

I think we all recognize the problems we face with the deterioration of the family unit and all the ramifications of that breakdown.

It is certainly well documented that as the family unit becomes dysfunctional, societal problems increase. It has been suggested that more than half of those joining in marriage today will result in divorce.

We also recognize that divorce is the major breakdown of the family. Therefore is it not incumbent upon us as Legislators to support this amendment stating that marriage is between one man and one woman. However, should we not add that this marriage cannot be dissolved?

The threat to our society is not what two individuals do in the privacy of their home, but when that home is broken up—that’s when the effect on our family and our society is felt.

Although I do believe it would be ridiculous to introduce an amendment eliminating divorce; I believe it is just as inappropriate to change our Constitution when everyone

recognizes it is not the definition of marriage, but the dissolution of that marriage that is ruining our society.

As many of you know I am not afraid to take a stand and face a difficult situation.

When I became a member of the Kansas House of Representatives, I swore to uphold the constitution and the laws of Our State. I do not take this responsibility lightly—even when it has meant reaping the wrath of my Party’s Governor. By not cowering to his power; we were able to install the statue on our dome and still save the taxpayers \$600,000.

Today I face another difficult decision. I sincerely believe the purpose of our Constitution is to limit the power of government and protect the rights of our citizens. I do not believe that changing our Constitution is the appropriate place to preserve the sanctity of marriage—that is why we have statutory laws.—LANA GORDON

MR. SPEAKER: Pursuant to Article 2, Section 10, of the constitution of the State of Kansas, I submit the following protest on the adoption of **SCR 1601**.

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

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

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

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

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

I believe that a relationship between two adults based on love and commitment is the foundation of our society, and I believe it is beneficial to our society to encourage people to commit themselves to each other, not create barriers to such commitment. Enacting this amendment will not “protect” marriage, and will do nothing to slow the divorce and abuse rates among heterosexual couples; instead, it attempts to permanently deny the benefits of marriage to people who want to bring themselves within its comforts and advantages.

While I respect the opinions of the proponents of this amendment, my conscience dictates that I vote no on **SCR 1601**.

I believe that the judgment of history will be that the Legislature of the State of Kansas has made a mistake today.—JEFF JACK

REPORTS OF STANDING COMMITTEES

Committee on **Environment** recommends **HB 2052** be passed.

Committee on **Health and Human Services** recommends **HB 2086** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Upon unanimous consent, the House referred back to the regular order of business, Introduction of Bills and Concurrent Resolutions.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were thereupon introduced and read by title:

HB 2265, An act concerning commerce; concerning qualified manufacturers of cellulose film, by Committee on Economic Development.

HB 2266, An act concerning explosives; enacting the Kansas explosives act, by Committee on Appropriations.

HB 2267, An act concerning state finances; relating to biennial budget estimates and appropriations; amending K.S.A. 46-155 and K.S.A. 2004 Supp. 75-3717 and 75-6701 and repealing the existing sections, by Representative Holland.

HB 2268, An act concerning the uniform interstate enforcement of domestic violence protection orders act; amending K.S.A. 2004 Supp. 21-3843 and repealing the existing section, by Committee on Judiciary.

HB 2269, An act concerning real property; relating to home inspections, by Committee on Judiciary.

HB 2270, An act concerning consumer warranties; amending K.S.A. 2004 Supp. 50-624, 50-627 and 50-639 and repealing the existing sections, by Committee on Judiciary.

On motion of Rep. Aurand, the House adjourned until 11:00 a.m., Thursday, February 3, 2005.

CHARLENE SWANSON, *Journal Clerk*.

JANET E. JONES, *Chief Clerk*.

