

Journal of the Senate

TWENTY-SIXTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 15, 2005—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-eight senators present.
Senators Brownlee and Wagle were excused.
President Morris introduced as guest chaplain, Colonel David E. McLean, US Army
Command Chaplain, Fort Leavenworth, Kansas, who delivered the invocation:

Almighty and gracious God, fill our hearts and minds with the joy of Your presence. Remind us always of the politeness of politics where the chosen carry out noble and compassionate service for the needs of Your people.

May our values reflect the sacredness of life and the tasks of servant leadership. Give Your wisdom to these whom we entrust the authority of government that there may be justice and peace and prosperity for all.

We ask Your blessings on all our endeavors so that the great pioneers of today—the members of our Armed Forces and their families—will be strengthened and empowered by our support. They carry liberty's burning torch, hope for freedom, and the true principles of American politics to a world oppressed and tyrannized by brutal dictators. Let the decisions and plans of our governing reflect our pride and appreciation of their patriotic service.

May the work that we do and the way we do it bring hope, life, and courage to all.

Let us feel a sense of holy pride and hear Your voice say to us, "well done, good and faithful servants."

AMEN

GUESTS

Guests in the Senate for observance of Armed Forces Appreciation Day in the Capitol were John Montgomery, Junction City; John Armbrust, Manhattan; Robert Lamkey, Colonel John Towers, Fort Leavenworth; Adrian Cruz, Fort Leavenworth; Lt. General (ret) Robert Arter, Fort Leavenworth and former Senator Lana Oleen of Manhattan.

REMARKS BY COLONEL JOHN TOWERS

It is our honor to represent the Combined Arms Center, Fort Leavenworth, and the United States Army, here today. On behalf of the Sailors, Soldiers, Airmen, Marines, Coast Guardsmen; Active duty, Reservist and members of the National Guard, I extend a heartfelt thank you ... to the Governor, to members of the House and Senate, and to the citizens of the State of Kansas, for setting aside this day to pay tribute to our nation's Armed Forces.

Your support to the men and women in uniform is evident through the many legislative initiatives taken to ease the hardships that face military families. The Kansas Military Bill of Rights is indicative of your deep appreciation for the sacrifices of the members of the Armed Forces, our nations Veterans and their family members.

This is a challenging time for the country, for the military and the State of Kansas. We are all very busy, but it's rewarding to know that you have taken time to acknowledge the positive contributions of the Armed Services.

I want to thank you again for supporting Fort Leavenworth and our mission in the defense of the nation.....but more importantly for supporting the troops.....for the most powerful weapon a soldier has.....is the support of the American people. Thank you.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 264, An act concerning municipalities; relating to depositories for public funds; amending K.S.A. 9-1401, 9-1408, 12-1675 and 12-1675a and repealing the existing sections, by Committee on Federal and State Affairs.

SB 265, An act concerning confined feeding facilities; relating to construction thereof; requiring licensed professional engineer; amending K.S.A. 2004 Supp. 65-171d and repealing the existing section, by Committee on Federal and State Affairs.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Federal and State Affairs: **SB 262**, **SB 263**.

Public Health and Welfare: **HB 2154**, **HB 2225**.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2042**, **HB 2045**, **HB 2047**, **HB 2130**, **HB 2171**, **HB 2172**, **HB 2187**.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2042, **HB 2045**, **HB 2047**, **HB 2130**, **HB 2171**, **HB 2172**, **HB 2187** were thereupon introduced and read by title.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 113**, **SB 219** be passed.

Committee on **Judiciary** recommends **SB 27** be amended on page 5, by striking all in lines 8 through 28 and inserting the following:

“(d) It shall be unlawful for any retailer, as defined pursuant to subsection (ff) of K.S.A. 65-1626, and amendments thereto, to sell, deliver or otherwise transfer three or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, during a single retail transaction. For the purposes of this section, “single retail transaction” means a sale by a retail distributor to a specific customer at a specific time.

(e) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines on the record that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in an accredited drug treatment program.”;

Also on page 5, in line 30, by striking all after “be”; in line 31, by striking all before the period and inserting “an unclassified misdemeanor, the sentence for which must include, but is not limited to, a minimum \$200 fine”; also after line 31, by inserting the following:

“New Sec. 4. (a) It shall be the policy of the state of Kansas to restrict access to ephedrine and pseudoephedrine for the purpose of impeding the unlawful manufacture of methamphetamine. In furtherance of this policy, the state board of pharmacy shall:

(1) Consult with the Kansas bureau of investigation and other law enforcement agencies to gather information and detect trends with regard to the types of drug paraphernalia and evidence found at crime scenes. The board shall take into consideration such information and trends in developing the recommendations required by paragraph (2); and

(2) develop recommendations concerning the most appropriate controls for all products that contain any compound, mixture or preparation containing any detectable quantity of ephedrine or pseudoephedrine, its salts, or optical isomers, or salts of optical isomers.

(b) Such recommendations shall be submitted on or before February 1 each year to the standing committee on judiciary in the senate and the standing committee on corrections and juvenile justice in the house of representatives.

Sec. 5. K.S.A. 65-4152 is hereby amended to read as follows: 65-4152. (a) No person shall use or possess with intent to use:

- (1) Any simulated controlled substance;
 - (2) any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act;
 - (3) any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the uniform controlled substances act;
 - (4) anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.
- (b) Violation of subsection (a)(1) or (a)(2) is a class A nonperson misdemeanor.
- (c) Violation of subsection (a)(3), other than as described in paragraph (d), or subsection (a)(4) is a drug severity level 4 felony.
- (d) Violation of subsection (a)(3) which involves the possession of drug paraphernalia for the planting, propagation, growing or harvesting of less than five marijuana plants is a class A nonperson misdemeanor.

(e) For persons arrested and charged under paragraph (a)(4), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in an accredited drug treatment program.

Sec. 6. K.S.A. 65-4159 is hereby amended to read as follows: 65-4159. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled substance or controlled substance analog, upon conviction, is guilty of a drug severity level 1 felony and the sentence for which shall not be subject to statutory provisions for suspended sentence, community work service, or probation.

(c) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in an accredited drug treatment program.

~~(d)~~ (d) The provisions of subsection (d) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

New Sec. 7. The provisions of this act, and any rules and regulations promulgated thereunder shall be applicable and uniform throughout this state and in all cities and counties therein. No city or county shall enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions of this act unless expressly authorized by law to do so.”;

And by renumbering the remaining sections accordingly;

Also on page 5, in line 32, after “65-4113” by inserting “, 65-4152, 65-4159”;

In the title, in line 13, after “65-4113” by inserting “, 65-4152, 65-4159”; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 91** be amended on page 2, after line 1, by inserting the following:

“New Sec. 2. As used in this section:

- (a) “Mobile dental facility or portable dental operation” means either of the following:
 - (1) Any self-contained facility in which dentistry will be practiced, which may be moved, towed or transported from one location to another.
 - (2) Any nonfacility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis at an out-of-office location, including, but

not limited to: (A) Other dentists' offices; (B) patients' homes; (C) schools; (D) nursing homes; or (E) other institutions.

(b) (1) No person shall operate a mobile dental facility or portable dental operation in this state unless registered in accordance with this section.

(2) In order to operate a mobile dental facility or portable dental operation, the operator shall be a person or entity that is authorized to own a dental practice under Kansas law and possess a current registration issued by the board.

(3) To become registered, the operator shall:

(A) Complete an application in the form and manner required by the board; and

(B) pay a registration fee in the amount established by the board pursuant to K.S.A. 65-1447 and amendments thereto.

(c) (1) The registration under this section shall be renewed on March 1 of even-numbered years in the form and manner provided by the board by rules and regulations.

(2) The registrant shall pay a registration renewal fee in the amount fixed by the board under K.S.A. 65-1447 and amendments thereto.

(d) The board shall adopt rules and regulations as necessary to carry out the provisions of this act. The rules and regulations shall include, but not be limited to, requirements relating to the official address and telephone number of the mobile dental facility or portable dental operation, the proper maintenance of dental records, procedures for emergency follow-up care for patients, appropriate communications facilities, appropriate authorizations for treatment by dental patients, follow-up treatment and services, personnel and address changes, notice to be provided on cessation of operation and such other matters as the board deems necessary to protect the public health and welfare.

(e) The board shall adopt to issue a registration under this section or may revoke or suspend a registration upon a finding by the board that an applicant or person registered under this section has failed to comply with any provision of the section or any rules and regulations adopted pursuant to this section. No order refusing to issue a registration or order of suspension or revocation shall be made or entered except after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act. Any final order of suspension or revocation of a license shall be reviewable in accordance with the act for judicial review and civil enforcement of agency actions.

(f) (1) This section applies to each operator of a mobile dental facility or portable dental operation that provides dental services except those specifically exempted by subsection (2).

(2) This section shall not apply to:

(A) Dentists providing dental services for federal, state and local governmental agencies;

(B) dentists licensed to practice in Kansas providing emergency treatment for their patients of record;

(C) dentists who are not employed by or independently contracting with a mobile dental facility or portable dental operation who provide nonemergency treatment for their patients of record outside the dentist's physically stationary office fewer than 30 days per calendar year; and

(D) dental hygienists who are providing dental hygiene services as authorized by the Kansas dental act and the board's rules and regulations.

(g) This section shall be part of and supplemental to the dental practices act.;

And by renumbering sections accordingly;

In the title, in line 9, after "concerning" by inserting "the Kansas dental board.;" also in line 9, before "amending" by inserting: "regulation of mobile dental facilities and portable dental operations.;" and the bill be passed as amended.

Committee **Transportation** recommends **SB 252** be passed.

Committee on **Utilities** recommends **SB 63** be amended on page 1, in line 12, before "The" by inserting "(a)"; in line 19, before "The" by inserting "Any lease between a landlord and tenant in effect at the time this section becomes effective shall not be affected by the provisions of this section.;" after line 22, by inserting:

"(b) The landlord shall not charge the tenant any surcharge for the installation, maintenance or any other purpose related to the use of a separate water meter.

(c) The landlord shall provide the tenant with a monthly water statement showing the computation of the amount the tenant owes, the tenant's meter reading for the current

water statement period and the tenant's meter reading for the prior water statement period." and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1813, SR 1815, SR 1816, SR 1817, SR 1818 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 15, 2005.

COMMITTEE OF THE WHOLE

On motion of Senator D. Schmidt, the Senate resolved itself into Committee of the Whole for consideration of bills on the calendar under the heading of General Orders with Senator Brungardt in the chair.

On motion of Senator Brungardt the following report was adopted:

Recommended **SB 42, SB 49, SB 58, SB 101, SB 102, SB 115** be passed.

SB 37, SB 43, SB 67 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 104 be amended by motion of Senator Wysong on page 1, after line 31, by inserting: "(c) For the purposes of this section, "affiliate" shall have the meaning ascribed to it in section 2 of the bank holding act of 1956, 12 U.S.C. §1841.", and **SB 104** be passed as amended.

SB 59 be amended by adoption of the committee amendments, be further amended by motion of Senator Journey as amended by Senate Committee, on page 8, in line 41, by inserting "knowingly" after the words "Any person who" and on page 9, line 13, by inserting "knowingly" after the words "Any person who" and **SB 59** be passed as further amended.

SB 94 be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil as amended by Senate Committee, on page 1, in line 38, by inserting after the word "bidders" "as defined in the project contract documents," , and **SB 94** be passed as further amended.

SB 45, SB 70 be passed over and retain a place on the calendar.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Wednesday, February 16, 2005.

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

PAT SAVILLE, *Secretary of the Senate.*

