

Journal of the Senate

THIRTY-FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 22, 2005—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-nine senators present.
Senator Wysong was excused.
Invocation by Chaplain Fred S. Hollomon:

The prayer I am about to pray was George Washington's birthday prayer for the United States exactly as it is preserved in the chapel at Valley Forge.

Almighty God:

We make our earnest prayer that Thou wilt keep the United States in Thy holy protection; that thou wilt incline the hearts of the citizens to cultivate a spirit of subordination and obedience to the government, and entertain a brotherly affection and love for one another and for their fellow citizens of the United States at large. And finally that Thou wilt most graciously be pleased to disclose us all to do justice, to love mercy, and to demean ourselves with that charity, humility, and pacific temper of mind which were the characteristics of the Divine Author of our blessed religion, and without a humble imitation of whose example in these things, we can never hope to be a happy Nation. Grant our supplication, we beseech Thee, through Jesus Christ our Lord.

AMEN

George Washington's prayer was copied from *One Quiet Moment*, a book written by Lloyd John Ogilvie, former Chaplain of the U.S. Senate. Harvest House Publishers, Eugene, Oregon)

GUESTS

Senator Barone rose on a Point of Personal Privilege to acknowledge Pittsburg State University Students representing the Student Senate on Pittsburg State Day on the Hill. The students were here to learn and observe the process.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 276, An act concerning real estate appraisers; relating to licensure; amending K.S.A. 58-4109 and repealing the existing section, by Committee on Ways and Means.

SB 277, An act concerning school districts; relating to defined terms; relating to preschool-aged at-risk pupils; amending K.S.A. 2004 Supp. 72-6407 and repealing the existing section, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

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

Assessment and Taxation: **HB 2082**.

Commerce: **HB 2141**, **HB 2164**.

Federal and State Affairs: **SB 274; SCR 1608.**
 Financial Institutions & Insurance: **HB 2205; Sub HB 2276.**
 Judiciary: **HB 2168, HB 2206, HB 2314, HB 2327.**
 Public Health and Welfare: **HB 2156.**
 Utilities: **HB 2084.**
 Ways and Means: **SB 275.**

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2118, HB 2157, HB 2178, HB 2252, HB 2268, HB 2297, HB 2330, HB 2336.**

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2118, HB 2157, HB 2178, HB 2252, HB 2268, HB 2297, HB 2330, HB 2336 were thereupon introduced and read by title.

FINAL ACTION ON CONSENT CALENDAR

SB 175, SB 176 having appeared on the Consent Calendar for the required two full legislative days without objection from any member, were considered on final action.

SB 175. An act concerning insurance companies; relating to securities held by insurance companies; amending K.S.A. 40-2a27 and 40-2b28 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson.

Absent or Not Voting: Wysong.

The bill passed.

SB 176. An act concerning insurance; relating to new terminology for insurance brokers; amending K.S.A. 40-37a01, 40-37a02, 40-37a03, 40-37a04, 40-37a05, 40-37a06 and 40-4502 and K.S.A. 2004 Supp. 40-2,131 and repealing the existing sections.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson.

Absent or Not Voting: Wysong.

The bill passed.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

SR 1820. A resolution Requesting the United States supreme court to grant certiorari and reverse the Kansas supreme court's ruling in State v. Marsh, was considered on final action.

On roll call, the vote was: Yeas 38, Nays 1, Present and Passing 0, Absent or Not Voting 1.

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Hensley, Huelskamp, Jordan, Journey, Kelly, Lee, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson.

Nays: Haley.

Absent or Not Voting: Wysong.

The resolution was adopted.

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **SB 256** be passed.

Also, **SB 192** be amended on page 5, in line 4, by striking “or other forms of energy”; after line 8, by inserting the following:

“*Twelfth.* For all taxable years commencing after December 31, 2001, all personal property actually and regularly used predominantly to produce landfill gas and to transport landfill gas from a landfill to a common carrier, and the landfill gas produced therefrom.”; and the bill be passed as amended.

Committee on **Commerce** recommends **SB 55** be amended on page 5, in line 5, after the period by inserting “Chemical test shall include, but is not limited to, tests of urine, blood, saliva or hair. A positive chemical test shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein.”; in line 8, by striking “is required by and”; in line 14, after “employer” by inserting “of which the employee had knowledge”; in line 18, by striking all after “test”; by striking all in line 19; in line 20, by striking all before “positive” and inserting “or a”; in line 23, by striking “, the test” and inserting “and”; in line 28, after “employer” by inserting “of which the employee had knowledge”; in line 39, after “ployer” by inserting “of which the employee had knowledge”; in line 43, by striking the second “the” and inserting “a chemical”;

On page 6, in line 3, before the comma by inserting “or authorized by federal or state law, or a federal or state rule or regulation having the force or effect of law”; in line 5, after the first “the” by inserting “chemical”;

On page 12, after line 28, by inserting the following:

“New Sec. 2. The secretary of labor shall adopt rules and regulations to promulgate reasonable standards for the use of a breath alcohol test. The rules and regulations promulgating such standards shall be adopted in the manner prescribed by K.S.A. 77-421, and amendments thereto, after notice has been given and a hearing held in the manner prescribed by K.S.A. 77-421, and amendments thereto. The secretary may amend or alter such standards by duly adopted rules and regulations, but no person, other than the secretary, shall have authority to amend or alter the standards so adopted.”;

And by renumbering the remaining sections accordingly; and the bill be passed as amended.

Committee on **Education** recommends **SB 245** be amended on page 1, in line 26, by striking “to”; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **SB 143** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 143,” as follows:

“Substitute for SENATE BILL No. 143

By Committee on Elections and Local Government

“AN ACT concerning elections; relating to electronic and electromechanical voting systems; amending K.S.A. 25-4401, 25-4403, 25-4404, 25-4405, 25-4406, 25-4407, 25-4409, 25-4410, 25-4411, 25-4412, 25-4413 and 25-4414 and repealing the existing sections; also repealing K.S.A. 25-1307, 25-1308, 25-1309, 25-1310, 25-1311, 25-1312, 25-1313, 25-1314, 25-1315, 25-1317, 25-1318, 25-1319, 25-1320, 25-1321, 25-1322, 25-1324, 25-1325, 25-1326, 25-1327, 25-1328, 25-1329, 25-1330, 25-1331, 25-1332, 25-1333, 25-1334, 25-1335, 25-1336, 25-1337, 25-1338, 25-1339, 25-1341 and 25-1343.”;

and the substitute bill be passed.

Also, **SB 132** be amended on page 3, by striking all in lines 32 through 43;

On page 4, by striking all in lines 1 through 26;

By renumbering sections accordingly;

On page 7, in line 20, by striking all following “(g)”; by striking all in lines 21 through 24 and inserting “shall not count any votes for an office or upon a question submitted when the voter has cast more votes for such office or upon such question than the voter is entitled to cast;

(h) shall provide notification when the voter has cast more or fewer votes for such office or upon such question than the voter is entitled to cast; and

(i) shall meet the requirements of the help America vote act of 2002 and other federal statutes and regulations governing voting equipment.”;

Also on page 7, in line 30, by striking "12 and 13" and inserting "11 and 12"; in line 33, by striking "25-4605,";

In the title, in line 12, by striking "25-4605,"; and the bill be passed as amended
Committee on **Federal and State Affairs** recommends **SB 121, SB 153** be passed.

Also, **SB 77** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL No. 77," as follows:

"Substitute for SENATE BILL No. 77

By Committee on Federal and State Affairs

"AN ACT concerning racial profiling; prohibiting certain actions and providing remedies for violations.";

and the substitute bill be passed.

Committee on **Financial Institutions and Insurance** recommends **SB 140** be amended on page 1, in line 25, by striking all following "(2)"; by striking all in lines 26 and 27; in line 28, by striking all preceding the period, and inserting "No lienholder or mortgagee shall require insurance on improvements to real property that includes land value"; and the bill be passed as amended.

Also, **SB 196** be amended on page 1, following line 14, by inserting the following:

"Section 1. K.S.A. 9-2203 is hereby amended to read as follows: 9-2203. (a) Mortgage business shall only be conducted in this state at or from a mortgage company licensed by the commissioner as required by this act. A licensee shall be responsible for all mortgage business conducted on their behalf by loan originators or other employees.

(b) Mortgage business involving loan origination shall only be conducted in this state by an individual who has first been registered with the commissioner as a loan originator as required by this act. Loan origination shall only be conducted at or from a mortgage company and a registrant shall only engage in mortgage business on behalf of one mortgage company.

(c) Any person violating this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year, or a fine not exceeding \$5,000 or both *who willfully or knowingly violates any of the provisions of this act, any rule and regulation adopted or order issued under this act commits a severity level 7 nonperson felony*. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

(d) *No prosecution for any crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.*

(e) *Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute.*";

Also on page 1, in line 15, by striking "Section 1." and inserting "Sec. 2."; and by renumbering the remaining sections accordingly;

On page 7, in line 16, following "K.S.A." by inserting "9-2203,";

In the title, in line 11, following "K.S.A." by inserting "9-2203,"; and the bill be passed as amended.

SB 207 be amended on page 3, in line 6, by striking "C" and inserting "A"; and the bill be passed as amended.

SB 223 be amended on page 1, in line 33, by striking "plus a \$5 administrative fee";

On page 3, in line 6, following "interest" by inserting ", or which results in more fees, charges, or interest being paid by the consumer,"; in line 11, following "consumer" by inserting "or any other person"; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 151, SB 161, SB 258** be passed.

Also, **SB 24** be amended on page 1, in line 36, by striking all after "individual"; in line 37, by striking all before the period; in line 43, by striking all after "donation";

On page 2, by striking all in line 1; in line 2, by striking all before the period; in line 12, by striking the comma; in line 13, by striking all before the semicolon; by striking all in lines 23 through 26;

On page 5, after line 41, by inserting the following:

“(38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.

(39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.

(40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.”;

And by renumbering the remaining subsections accordingly;

On page 6, in line 12, by striking “secretary of revenue”; in line 13, by striking “or the”; in line 17, by striking “, other than criminal investigation records,”; after line 35 by inserting the following:

“(46) Any information or material received by the secretary of state pursuant to subsection (b) of K.S.A. 2004 Supp. 44-1518, and amendments thereto, except when such information is required to be submitted in an application pursuant to K.S.A. 2004 Supp. 44-1520, and amendments thereto.”;

And by renumbering the remaining subsections accordingly;

Also on page 6, by striking all in lines 36 through 43;

On page 7, by striking all in lines 1 through 6; and the bill be passed as amended.

SB 75 be amended on page 1, in line 32, after “of” by inserting “the”; also in line 32, after “federal” by inserting “food, drug and cosmetic act as of the effective date of this act”; in line 40, after “consumption” by inserting “of food”; in line 42, by striking “, and not from a single instance of consumption” and inserting “of food. For the purposes of this definition only, the term “food” shall not include a food additive (as defined in Section 201(s) of the federal food, drug and cosmetic act (21 U.S.C. 321(s)) as of the effective date of this act”;

On page 2, in line 15, by striking all after “that”; by striking all in line 16; in line 17, by striking all before the period and inserting “the individual requirements in subsection (c)(2) have been satisfied”; in line 31, by striking all before the comma and inserting “filed after the effective date of this act”; in line 33, before “This” by inserting “The provisions of this act are severable. If any portion of this act is declared unconstitutional or the application of any part of this act to any person or circumstance is held invalid, the remaining portions of the act and their applicability to any person or circumstance shall remain valid and enforceable.

Sec. 3.”;

Also on page 2, in line 34, by striking “statute book” and inserting “Kansas register”; and the bill be passed as amended.

SB 129 be amended on page 1, after line 26 by inserting the following:

“(b) For the purposes of this section, “implied warranty of workmanlike performance” means that in every written or oral contract for work or services, the supplier of such work or services has a duty to perform such work or services diligently and in a manner consistent with that level of care, skill, practice and judgment ordinarily exercised by other suppliers in performing work or services of a similar nature under similar conditions in the locale where such work or services are performed.”;

And by relettering the remaining subsections accordingly; and the bill be passed as amended.

SB 147 be amended on page 2, in line 1, by striking all before “or” and inserting “enticement of a child as defined in K.S.A. 21-3509, and amendments thereto.”; and the bill be passed as amended.

SB 215 be amended on page 2, in line 25, by striking “and”; in line 26, by striking “if” and inserting “so long as”; in line 32, after “estate” by inserting “on behalf of a broker who represented the current owner of the real estate”;

On page 3, in line 7, by striking “purchases” and inserting “takes title to”;

On page 4, in line 43, after “full” by inserting “or otherwise discharged.”;

On page 5, in line 2, after “8” by inserting “and section 14”; also in line 2, by striking “acknowl-”; in line 3, by striking “edge” and inserting “record the”; in line 4, before the period by inserting “in the office of the register of deeds of the county in which the commercial real estate is located”; and the bill be passed as amended.

Committee on **Natural Resources** recommends **SB 194** be amended on page 1, in line 13, by striking “commissioner” and inserting “commission”; in line 17, by striking “commissioner” and inserting “commission”; in line 18, by striking “commissioner” and inserting “commission”; in line 26, by striking “commissioner” and inserting “commission”; in line 28, by striking “commissioner” and inserting “commission”; in line 31, by striking “commissioner” and inserting “commission”; in line 34, by striking “commissioner” and inserting “commission”; in line 41, by striking “commissioner” and inserting “commission”; in line 43, by striking “commissioner” and inserting “commission”;

On page 2, in line 2, by striking “commissioner” and inserting “commission”; in line 6, by striking “commissioner” and inserting “commission”; in line 7, by striking “50%” and inserting “85%”; in line 8, by striking “and” and inserting “or”; also in line 8, by striking “related”; in line 9, by striking all preceding the period; in line 13, by striking “commissioner” and inserting “commission”; in line 14, by striking “Commissioner” and inserting “Commission”; in line 15, by striking “commissioner” and inserting “commission”; in line 17, by striking “commissioner” and inserting “commission”;

On page 1, in the title, in line 9, by striking “commissioner” and inserting “commission”; and the bill be passed as amended.

Committee on **Public Health and Welfare** recommends **SB 254** be amended on page 2, in line 1, by striking “, or residing on the border of a neighboring state”; in line 38, by striking all after “services”; in line 39, by striking “healing arts”; in line 40, after “practitioner” by inserting “of the healing arts”; and the bill be passed as amended.

Committee on **Transportation** recommends **SB 210** be passed.

Also, **SB 35** be amended on page 1, in line 14, by striking “adult”; following line 17, by inserting the following:

“New Sec. 2. “School crossing guard” means any person 18 years of age and older or any person under 18 years of age who is being directly supervised by a person at least 18 years of age, acting with or without compensation and who is authorized under section 3, and amendments thereto, to supervise, direct, monitor or otherwise assist school children at a street or intersection in the vicinity of a school crosswalk or bus stop.

New Sec. 3. (a) The governing body of any school district, nonpublic school, city or county is hereby authorized to appoint and equip volunteers and designated employees of such school district, nonpublic school, city or county, and may provide training to such volunteers as school crossing guards, as defined in section 2, and amendments thereto, to direct traffic at school crossings, streets and highways in the vicinity of schools and bus stops, by means of lawful orders, signs or semaphores. Such persons shall wear a distinctive garb or insignia indicating such appointment.

(b) School crossing guards shall not have the power to issue citations or the power to arrest provided to law enforcement officers.

Sec. 4. K.S.A. 2004 Supp. 8-1486 is hereby amended to read as follows: 8-1486. K.S.A. 8-1402a, 8-1414a, 8-1439c, 8-1458a, 8-1459a, 8-1475a, 8-1487, 8-1488, 8-1489 and 8-1490 and amendments thereto, and K.S.A. 2004 Supp. 8-1491, and amendments thereto, *and section 2, and amendments thereto*, shall be a part of, and supplemental to, the uniform act regulating traffic on highways.”;

By renumbering sections accordingly;

On page 7, in line 39, by striking “8-2118 is” and inserting “8-1486 and 8-2118 are”;

In the title, in line 9, preceding “amending” by inserting “authorizing school crossing guards”; in line 10, following “Supp.” by inserting “8-1486 and”; also in line 10, by striking “section” and inserting “sections”; and the bill be passed as amended.

SB 81 be amended on page 1, in line 21, preceding “persons” by inserting “including smoke or fog,”; in line 25, preceding “use” by inserting “continuous”; also in line 25, by striking “smoke, fog,”; in line 26, by striking all following “snow”; in line 27, by striking all preceding the period; and the bill be passed as amended.

REPORT ON ENROLLED BILLS

SR 1821, SR 1822 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on February 22, 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 Donovan in the chair.

On motion of Senator Donovan the following report was adopted:

Recommended **SB 56, SB 181, SB 195** be passed.

SB 13, SB 52, SB 63, SB 71, SB 72, SB 110, SB 158, SB 234 be amended by adoption of the committee amendments, and the bills be passed as amended.

SB 91 be amended by adoption of the committee amendments, and the bill be passed as amended.

A motion by Senator Haley to amend **SB 91** failed and the following amendment was rejected: as amended by Senate Committee, on page 1, in line 21, after the period, by inserting: "On or after July 1, 2005, and prior to July 1, 2011, the board shall not change any fee authorized under subsection (b) more than one time."; in line 39, by striking "500" and inserting "250"; in line 41, by striking "350" and inserting "175"

On motion of Senator D. Schmidt the Senate adjourned until 9:30 a.m., Wednesday, February 23, 2005.

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

PAT SAVILLE, *Secretary of the Senate.*

