

# Journal of the Senate

THIRTEENTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Thursday, January 26, 2006—2:30 p.m.

The Senate was called to order by President Stephen Morris.  
The roll was called with forty senators present.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

In Paul's first letter to Timothy he wrote, "I urge, then, first of all, that requests, prayers, intercession, and thanksgiving be made for everyone—for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness."

He then added, "I want men everywhere to lift up holy hands in prayer, without anger or disputing."

Help us, Lord, to pay attention  
To what the apostle wrote:  
Sometimes it's quite necessary  
To carefully take note.

We are told explicitly  
To pray and offer thanks  
To those, who in authority  
Hold a higher rank.

And yet we are bombarded  
With filthy words of hate  
Directed at the captains  
Of the Ship of State.

Paul had said it plainly  
That people everywhere  
Without anger or disputing  
Should lift our hands in prayer.

I have mentioned this before, O God,  
To those who curse and scoff,  
If you prayed as much as bad-mouthed,  
We'd all be better off.

I pray this in the Name of Jesus Christ,  
AMEN

## GUESTS

Senator Apple introduced as guests visiting the Senate, Rubie Scott, Jane Wade and Gerry Ross from Linn County.

**INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were introduced and read by title:

**SB 452**, An act concerning the civil commitment of sexually violent predators; relating to transitional and conditional release; amending K.S.A. 59-29a02, 59-29a07 and 59-29a11 and repealing the existing sections, by Senators Pine, Allen, Barnett, Barone, Bruce, Gilstrap, Jordan, Ostmeyer, V. Schmidt and Wysong.

**SB 453**, An act concerning environmental laws; relating to compliance audit privilege; immunity; lesser penalties for violations; amending K.S.A. 60-3332, 60-3333, 60-3334, 60-3336, 60-3338 and 60-3339 and K.S.A. 2005 Supp. 45-229 and repealing the existing sections; also repealing K.S.A. 60-3335, by Committee on Judiciary.

**SB 454**, An act amending the Kansas credit services organization act; concerning nonprofit entities; amending K.S.A. 50-1117 and repealing the existing section, by Senator Betts.

**SB 455**, An act concerning the Kansas offender registration act; relating to residency restrictions, by Senators V. Schmidt, Allen, Barnett, Barone, Brownlee, Bruce, Emler, Goodwin, Haley, Hensley, Jordan, Kelly, Morris, Pine, Schodorf, Umbarger, Wilson and Wysong.

**SB 456**, An act concerning records pertaining to certain holders of a commercial drivers license; relating to requests for such records, by Committee on Federal and State Affairs.

**SB 457**, An act concerning campaign finance; prohibiting the use of public funds and resources for lobbying, by Committee on Federal and State Affairs.

**SB 458**, An act concerning criminal street gangs; relating to criminal activity; amending K.S.A. 2005 Supp. 22-3901 and repealing the existing section, by Senators Schodorf and Petersen, Betts, Bruce, Donovan, McGinn, Wagle and Wysong.

**SB 459**, An act concerning wildlife and parks; relating to the issuance of licenses, by Committee on Natural Resources.

**SB 460**, An act concerning open meetings; pertaining to serial meetings; amending K.S.A. 75-4317a and repealing the existing section, by Senator Hensley.

**SB 461**, An act concerning workers compensation; relating to preexisting condition; permanent partial general disability; supplemental functional disability compensation; amending K.S.A. 44-510e and K.S.A. 2005 Supp. 44-501 and repealing the existing sections, by Committee on Commerce.

**SB 462**, An act concerning child exchange and visitation centers; relating to docket fees; amending K.S.A. 60-2001 and K.S.A. 2005 Supp. 20-367 and repealing the existing sections, by Committee on Judiciary.

**SB 463**, An act amending the Kansas consumer protection act; concerning telemarketing; amending K.S.A. 50-675a and repealing the existing section, by Committee on Utilities.

**SB 464**, An act concerning the Kansas underground utility damage prevention act; providing for rules and regulations, by Committee on Utilities.

**REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

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

Assessment and Taxation: **SB 443, SB 444.**

Commerce: **SB 449.**

Education: **SB 440.**

Elections and Local Government: **SB 447, SB 448.**

Financial Institutions & Insurance: **SB 442.**

Judiciary: **SB 441, SB 445, SB 446, SB 450, SB 451; SCR 1616.**

Ways and Means: **SB 439.**

**CHANGE OF REFERENCE**

The President withdrew **SB 417** from the Committee on Transportation, and referred the bill to the Committee on Natural Resources.

**MESSAGE FROM THE GOVERNOR**

January 23, 2006

*Message to the Senate of the State of Kansas:*

Enclosed herewith is Executive Directive No. 06-368 for your information.

KATHLEEN SEBELIUS  
Governor

The President announced Executive Directive No. 06-368, Authorizing Personnel Transactions, is on file in the office of the Secretary of the Senate and is available for review at any time.

**FINAL ACTION ON CONSENT CALENDAR**

**SB 373** having appeared on the Consent Calendar for the required two full legislative days without objection from any member, was considered on final action.

**SB 373**, An act relating to apportioned registration of fleet vehicles; concerning the enforcement thereof; amending K.S.A. 8-1,120 and repealing the existing section.

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

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, Wysong.

The bill passed.

**FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS**

**SB 201**, An act concerning juveniles; relating to the detention thereof; amending K.S.A. 38-1691 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: 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, Wysong.

The bill passed.

**SB 271**, An act concerning real estate brokers and sales persons; relating to fees; amending K.S.A. 58-3035 and 58-3063 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: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Kelly, Lee, Morris, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Huelskamp, Journey, McGinn, O'Connor, Ostmeyer, Palmer, Petersen, Pyle, Taddiken.

The bill passed, as amended.

**SB 326**, An act concerning civil actions and civil penalties; relating to false or fraudulent claims; amending K.S.A. 21-3910 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: 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, Wysong.

The bill passed, as amended.

**SB 327**, An act creating the office of inspector general within the Kansas health policy authority; providing for the appointment of the inspector general and the powers, duties and functions thereof; amending K.S.A. 46-2601 and K.S.A. 2005 Supp. 75-2973 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: 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, Wysong.

The bill passed, as amended.

**SB 342**, An act concerning medicaid fraud; relating to obstruction of an investigation and forfeiture; amending K.S.A. 60-4104, 60-4105, 60-4107, 60-4117 and 60-4119 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: 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, Wysong.

The bill passed, as amended.

**SB 372**, An act regulating traffic; concerning the width of certain vehicles; amending K.S.A. 8-1902 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: 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, Wysong.

The bill passed, as amended.

**HB 2398**, An act concerning architectural, engineering and land surveying services for state capital improvement projects; relating to convening of a negotiating committee; amending K.S.A. 75-1253 and 75-5804 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 30, Nays 10, Present and Passing 0, Absent or Not Voting 0.

Yeas: Allen, Barnett, Barone, Betts, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Kelly, Lee, Morris, O'Connor, Pine, Reitz, Schmidt D, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wilson, Wysong.

Nays: Apple, Brownlee, Huelskamp, Journey, McGinn, Ostmeyer, Palmer, Petersen, Pyle, Wagle.

The bill passed.

#### 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 Wagle in the chair.

On motion of Senator Wagle the following report was adopted:

Recommended **SB 320**, **SB 325** be passed.

**SB 317** be amended by motion of Senator V. Schmidt on page 1, in line 13, by striking “(a)”; in line 22, by striking “(1)” and inserting “(a)”; in line 24, before the semicolon by inserting “, or U.S.A. Diving, Inc.”; in line 25, by striking “(2)” and inserting “(b)” and **SB 317** be passed as amended.

The following amendment offered by Senator Ostmeier was rejected:

On page 1, by striking all in line 18; in line 19, by striking “petition” and inserting “practicing in any sport or competition sponsored by the Kansas state high school activities association”; in line 20, by striking “training”, where it appears both times and inserting “practice”; in line 21, by striking “sport” and inserting “swimming and diving”; in line 22, by striking “training” and inserting “practice”; also in line 22, by striking “train-”; in line 23, by striking “ing” and inserting “practice”;

**SB 334** be amended by adoption of the committee amendments, be further amended by motion of Senator Vratil as amended by Senate Committee, on page 3, in line 24, after “aggravated” by inserting “habitual”;

On page 21, in line 39, by striking all after the period; by striking all in lines 40 through 43.

Senator Vratil further amended **SB 334** as amended by Senate Committee, on page 4, in line 16, after the period, by inserting the following: “As used in this subsection, mitigating circumstances shall include, but are not limited to, the following:

- (1) The defendant has no significant history of prior criminal activity.
- (2) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.
- (3) The victim was an accomplice in the crime committed by another person, and the defendant’s participation was relatively minor.
- (4) The defendant acted under extreme distress or under the substantial domination of another person.
- (5) The capacity of the defendant to appreciate the criminality of the defendant’s conduct or to conform the defendant’s conduct to the requirements of law was substantially impaired.
- (6) The age of the defendant at the time of the crime.”, and **SB 334** be passed as further amended.

#### FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator D. Schmidt an emergency was declared by a ¾ constitutional majority, and **SB 317, SB 320, SB 325, SB 334** were advanced to Final Action and roll call.

An objection being made, Senator D. Schmidt withdrew his motion.

On motion of Senator D. Schmidt an emergency was declared by a ¾ constitutional majority, and **SB 317, SB 320, SB 325** were advanced to Final Action and roll call.

**SB 317**, An act concerning the Kansas state high school activities association; relating to the powers and duties thereof.

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

Yeas: Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Jordan, Journey, Kelly, McGinn, Morris, O’Connor, Palmer, Petersen, Pine, Schmidt D, Schmidt V, Schodorf, Steineger, Teichman, Umbarger, Vratil, Wagle, Wilson, Wysong.

Nays: Hensley, Huelskamp, Lee, Ostmeier, Pyle, Reitz, Taddiken.

The bill passed, as amended.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote no on **SB 317**. I don’t hate swimmers. My daughter was a cross-country member and I know the dedication and effort put forward to compete in individual sports like swimming and wrestling. I do believe it is wrong to micro-manage a situation such as this.—Ralph Ostmeier

**SB 320**, An act concerning jurisdiction of certain law enforcement officers; amending K.S.A. 2005 Supp. 22-2401a and repealing the existing section.

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

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, Wysong.

The bill passed.

**SB 325**, An act concerning aquaculture; aquaculture advisory council; amending K.S.A. 2005 Supp. 47-1902 and repealing the existing section; also repealing K.S.A. 2005 Supp. 47-1903 and 47-1904.

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

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, Wysong.

The bill passed.

On motion of Senator D. Schmidt an emergency was declared by a  $\frac{2}{3}$  constitutional majority, and **SB 334** was advanced to Final Action and roll call.

The motion failed and **SB 334** remains on the calendar under the heading of Final Action.

#### REPORT ON ENGROSSED BILLS

**SB 271, SB 326, SB 327, SB 342, SB 372** reported correctly engrossed January 26, 2006.

#### REPORT ON ENROLLED BILLS

**SR 1805** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on January 25, 2006.

#### REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 297** be amended on page 2, in line 15, by striking all after "wine"; in line 16, by striking "censees"; also in line 16, by striking "manufactured by microbrewery licensees";

On page 4, in line 29, by striking all after "wine"; in line 30, by striking all before "or"; also in line 30, by striking all after "beer"; in line 31, by striking "ees"; and the bill be passed as amended.

Committee on **Natural Resources** recommends **SB 362** be amended on page 6, in line 31, by striking "and" and inserting "or";

On page 7, in line 8, by striking "As a condition of granting" and inserting "Before issuing or renewing"; also in line 8, by striking "any" and inserting "a solid waste"; in line 9, before "disposal" by inserting "solid waste"; also in line 9, by striking "for solid waste"; in line 10, by striking the colon and inserting: "demonstrate that funds are available to ensure payment of the cost of closure and postclosure care and provide liability insurance for accidental occurrences at the permitted facility."; also in line 10, by striking "Provide" and inserting: "If the permittee owns the land where the solid waste processing facility or disposal area is located or the permit for the facility was issued before the date this act is published in the Kansas register, the permittee shall satisfy the financial assurance requirement for closure and postclosure care by providing"; also in line 10, before "surety" by inserting "a"; in line 11, before "irrevocable" by inserting "an"; also in line 11, by striking all after the last comma; in line 12, by striking all before "or" where it appears for the first time; also in line 12, by striking "(2) pass" and inserting "by passing"; also in line 12, by striking "obtain" and inserting "obtaining"; in line 14, by striking "to pay the costs of closure and postclosure care"; in line 17, after "the" by inserting "other"; in line 18, by striking "listed in (1) above"; in line 20, by striking "for closure and postclosure care"; in line 21, by striking "In addition, the" and inserting the following:

“(2) If the permittee does not own the land where the solid waste processing facility or disposal area is located and the permit for the facility is issued after the date this act is published in the Kansas register, the permittee shall satisfy the financial assurance requirement for closure and postclosure care by providing a trust fund, a surety bond guaranteeing payment, or an irrevocable letter of credit.

(3) The”;

Also on page 7, in line 21, by striking “the” where it appears for the last time and inserting “each”; also in line 21, after “permittee” by inserting: “of a solid waste processing facility or disposal area”;

and the bill be passed as amended.

Committee on **Transportation** recommends **SB 412** be amended on page 1, in line 18, after “(b)” by inserting “A motorized toy vehicle authorized to be operated on any street or highway shall be equipped with a bicycle safety flag which extends not less than five feet above the ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than 30 square inches and shall be in day-glow color.

(c)” and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 9:30 a.m., Friday, January 27, 2006.

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

PAT SAVILLE, *Secretary of the Senate*.

