

Journal of the Senate

SEVENTEENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, February 1, 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,

As the legislators engage the challenges they face this session, help them to be:

Brave without being brazen
Courageous without being outrageous
Confident without being cocky
Curious without being nosey
Fair without fence straddling
Firm without being rigid
Friendly without being windy
Humble without being a door mat
Optimistic without being simplistic
Penetrating without being pushy
Smart without being smart aleck
Trusting without being gullible
Wise without being wise acres
And last but not least...
Spiritual without being sanctimonious

I ask this in the name of Jesus Christ,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and concurrent resolutions were introduced and read by title:

SB 482, An act concerning income taxation; providing checkoff for breast cancer research, by Committee on Assessment and Taxation.

SB 483, An act concerning the department of wildlife and parks; prescribing certain procedures for the acquisition and the disposition of land by such department; also concerning reporting procedures; amending K.S.A. 32-844 and repealing the existing section, by Committee on Ways and Means.

SB 484, An act concerning school districts; relating to consolidation; relating to certain state aid payments; amending K.S.A. 2005 Supp. 72-6415b and 75-2319 and repealing the existing sections, by Committee on Education.

SB 485, An act concerning school districts; relating to the suspension or expulsion of pupils; amending K.S.A. 72-8904 and repealing the existing section, by Committee on Education.

SB 486, An act creating the racial profiling commission, by Committee on Federal and State Affairs.

SB 487, An act establishing the statewide automated victim information and notification system act, by Senators Allen and Vratil, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Donovan, Emler, Gilstrap, Goodwin, Hensley, Jordan, Kelly, Lee, McGinn, Morris, Petersen, Pine, D. Schmidt, V. Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Wagle, Wilson and Wysong.

SB 488, An act concerning the county and city revenue sharing fund; relating to transfers thereto and allocations and distributions therefrom; amending K.S.A. 2005 Supp. 79-2964 and repealing the existing section, by Committee on Assessment and Taxation.

SB 489, An act concerning sales taxation; relating to exemptions; special olympics Kansas, inc.; amending K.S.A. 2005 Supp. 79-3606 and repealing the existing section, by Committee on Assessment and Taxation.

SB 490, An act concerning funding for long-term care home and community based services, by Committee on Ways and Means.

SB 491, An act concerning nursing home residents; relating to the personal needs allowance, by Committee on Ways and Means.

SB 492, An act concerning annexation; relating to the powers and duties of cities and counties; amending K.S.A. 12-519, 12-521, 12-527, 12-530, 12-531, 12-532, 12-534 and 12-535 and repealing the existing sections; also repealing K.S.A. 12-520b, 12-526, 12-536 and 12-537 and K.S.A. 2005 Supp. 12-520 and 12-520a, by Committee on Elections and Local Government.

SB 493, An act concerning eminent domain; relating to economic development; procedure; compensation; amending K.S.A. 26-513 and repealing the existing section, by Committee on Commerce.

SB 494, An act concerning crime, criminal procedure and punishment; relating to victims; implementing the victim identity protection act, by Committee on Judiciary.

SENATE CONCURRENT RESOLUTION No. 1617—

By Senators Morris, D. Schmidt and Hensley

A CONCURRENT RESOLUTION relating to the joint rules of the Senate and House of Representatives; amending Joint Rule 4 prescribing deadlines for the introduction and consideration of bills.

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That Joint Rule 4 be amended to read as follows:

Joint rule 4. Deadlines for introduction and consideration of bills. The senate and house of representatives shall observe the following schedule of deadlines in making requests for drafting and in the introduction and consideration of bills.

(a) *Bill request deadline for individual members.* Except for bills introduced pursuant to (i) of this rule, no request to draft bills, except those made by committees, through their respective chairpersons, shall be made to, or accepted by, the office of the revisor of statutes after the hour of 5:00 p.m. on January 24, 2005, during the 2005 regular session and on January 23, 2006, during the 2006 regular session.

(b) *Bill introduction deadline for individual members.* Except as provided in (i) of this rule, no bill sponsored by a member or members shall be introduced in either house of the legislature after the hour of adjournment on February 9, 2005, during the 2005 regular session and on February 8 14, 2006, during the 2006 regular session. Such deadline for the introduction of bills by individual members may be changed to an earlier date in either house at any time by resolution duly adopted by the affirmative vote of not less than a majority of the members then elected (or appointed) and qualified in such house.

(c) *Bill request deadline for certain committees.* Except for bills to be introduced pursuant to (i) of this rule, no committee except the committee on ways and means of the senate, select committees of either house when so authorized, the committee on federal and state affairs of either house or the house committees on calendar and printing, appropriations and taxation shall make a request to the office of the revisor of statutes for any bill to be drafted for sponsorship by such committee after the hour of 5:00 p.m. on February 3, 2005, during the 2005 regular session and on February 2, 2006, during the 2006 regular session.

(d) *Bill introduction deadline for certain committees.* Except as provided in (i) of this rule, no bill sponsored by any committee of either house of the legislature, except the committee on ways and means of the senate, select committees of either house when so authorized, the committee on federal and state affairs of either house or the house committees on calendar and printing, appropriations and taxation shall be introduced in either house after the hour of adjournment on February 11, 2005, during the 2005 regular session and on February ~~10~~ 14, 2006, during the 2006 regular session.

(e) *House of origin bill consideration deadline.* No bill, except bills sponsored by, referred to or acted upon by the committee on ways and means of the senate, select committees of either house when so authorized, the committee on federal and state affairs of either house or the house committees on calendar and printing, appropriations and taxation shall be considered in the house in which such bill originated after the hour of adjournment on February 26, 2005, during the 2005 regular session and on February 25, 2006, during the 2006 regular session.

(f) *Second house bill consideration deadline.* No bill, except bills sponsored by, referred to or acted upon by the committee on ways and means of the senate, select committees of either house when so authorized, the committee on federal and state affairs of either house or the house committees on calendar and printing, appropriations and taxation shall be considered by the house, not the house of origin of such bill, after the hour of adjournment on March 26, 2005, during the 2005 regular session and March 25, 2006, during the 2006 regular session.

(g) *Exceptions to limitation of (d), (e) and (f); procedure.* Specific exceptions to the limitations prescribed in subsections (d), (e) and (f) may be made in either house by resolution adopted by the affirmative vote of not less than a majority of the members of such house then elected (or appointed) and qualified.

(h) *Deadline which falls on day neither house in session; effect.* In the event that any deadline prescribed in this rule falls on a day that neither house of the legislature is in session, such deadline shall be observed on the next following day that either house is in session.

(i) *Bills introduced in odd-numbered years after deadlines; effect.* Bills may be introduced by members and committees in regular sessions occurring in an odd-numbered year after the times prescribed in (b) and (d) of this rule, but there shall be no final action thereon by either house during the session when introduced. Such bills shall be held over for consideration at the next succeeding regular session held in an even-numbered year.

(j) *Modification of schedule of deadlines for introduction and consideration of bills; procedure.* In any regular session a concurrent resolution may be adopted by the affirmative vote of not less than a majority of the members then elected (or appointed) and qualified of each house setting forth a different schedule of deadlines for introduction and consideration of bills for that session and the provisions of such concurrent resolution shall apply to such session notwithstanding provisions of this rule to the contrary.

(k) *Bill consideration deadline; exceptions.* No bills shall be considered by the Legislature after April 9, 2005, during the 2005 regular session and after April 8, 2006, during the 2006 regular session except bills vetoed by the Governor, the omnibus appropriation act and the omnibus reconciliation spending limit bill provided for under K.S.A. 75-6702 and amendments thereto. This subsection (k) may be suspended for the consideration of a specific bill or bills not otherwise exempt under this subsection by the affirmative vote of a majority of the members then elected (or appointed) and qualified in the house in which the bill is to be considered.

On emergency motion of Senator D. Schmidt, **SCR 1617** was adopted by voice vote.

SENATE CONCURRENT RESOLUTION No. 1618—

By Senators Vratil, Allen, Apple, Barnett, Barone, Betts, Brownlee, Bruce, Brungardt, Donovan, Emler, Francisco, Gilstrap, Goodwin, Haley, Hensley, Jordan, Journey, Lee, McGinn, Morris, Ostmeyer, Palmer, Petersen, Pine, Reitz, D. Schmidt, V. Schmidt, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Wagle, Wilson and Wysong

A CONCURRENT RESOLUTION memorializing the President and Congress regarding federal funding of education.

WHEREAS, The state of Kansas under the Quality Performance Accreditation (QPA) System has long pursued the goal of improving the academic performance of all students, especially students of racial and ethnic background, lower economic status, limited English proficiency and with learning disabilities or challenges; and

WHEREAS, The state of Kansas, therefore, applauds the President and the United States Congress for putting forth the same goals in the No Child Left Behind Act of 2001 and emphasizing the urgency in improving the performance of these students; and

WHEREAS, The No Child Left Behind Act of 2001 has encouraged some needed changes in public education and was initially accompanied with relatively large increases in federal funding for public elementary and secondary education; and

WHEREAS, However, the increases in federal funding since the first year of the No Child Left Behind Act have been minimal; and

WHEREAS, The federal government has decreased funding for No Child Left Behind in fiscal year 2006 by \$793,000,000, decreased funding for postsecondary education by \$166,000,000, and decreased funding for programs that serve students with disabilities by \$21,000,000; Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Kansas legislature memorializes the President and the United States Congress to make a serious commitment to improving the quality of the nation's public schools by substantially increasing its funding for the No Child Left Behind Act, the Higher Education Act, the Individuals with Disabilities Education Act and other educational related programs; and

Be it further resolved: That the state of Kansas requests that the President, United States Congress and United States Department of Education offer the various states waivers, exemptions or whatever flexibility is possible regarding the requirements of the No Child Left Behind Act in any year that federal funding for public elementary and secondary education is decreased to prevent states from spending state and local resources on activities that have not proven effective in raising student achievement and may not be the priority of an individual state; and

Be it further resolved: That the state of Kansas encourages other states to pass similar resolutions; and

Be it further resolved: That the Secretary of State send an enrolled copy of this resolution to the President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, Secretary of the United States Department of Education and each member of the Kansas legislative delegation.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Education: **SB 481; HB 2602.**

Health Care Strategies: **HB 2608.**

Judiciary: **SB 477, SB 478, SB 479; HB 2555, HB 2609.**

Ways and Means: **SB 480.**

CHANGE OF REFERENCE

The President withdrew **SB 200** from the Calendar under the heading of General Orders, and rereferred the bill to the Committee on Judiciary.

COMMUNICATIONS FROM STATE OFFICERS

KANSAS DEPARTMENT OF CORRECTIONS

January 31, 2006

In accordance with the provisions of K.S.A. 60-4117, Roger Werholtz, Secretary of Corrections, submitted the report for the Kansas Department of Corrections State Forfeiture Fund for the period of December 1, 2004 through December 1, 2005.

The President announced the above report is on file in the office of the Secretary of the Senate and is available for review at any time.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2604, HB 2628, HB 2629, HB 2630, HB 2631, HB 2662, HB 2663, HB 2692.**

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2604, HB 2628, HB 2629, HB 2630, HB 2631, HB 2662, HB 2663, HB 2692 were thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Apple introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1806—

A RESOLUTION congratulating and commending the Louisburg High School marching band.

WHEREAS, The Louisburg High School Wildcats marching band has been chosen as one of a select few high school bands to march in the 2006 National Independence Day Parade on July 4 in Washington, D. C. The band will be at our nation's capital from July 3 through 6. The band received this honor from a national selection committee which considered video and audio auditions, recommendations of state music officials, past achievements and current competition ratings; and

WHEREAS, The band is composed of 119 students in grades nine through twelve. The band represents the community at local, regional and national events. In addition to appearing at school sports events, local parades and concerts, the band has appeared at venues across the state. The marching Wildcats have performed on tour in St. Louis and Chicago, at the 2002 Cotton Bowl in Dallas and at Kansas City Royals baseball and Kansas City Comets soccer games. At their 2002 Cotton Bowl appearance the Wildcats won first-in-class in concert competition, was awarded first division ratings at the 2003 and 2005 Central States Marching Festival in Manhattan and earned first division ratings in 2004 and 2005 at the Kansas State High School Activities Music Festival; and

WHEREAS, The National Independence Day Parade stretches from 7th to 17th Streets on Constitution Avenue and will be a reflection of many American patriotic themes, historical and present. A street audience of 450,000 spectators is expected plus extensive television coverage. The National Park Service and National Independence Day Parade organization cosponsor this event. While in the nation's capital the band members will enjoy sightseeing and cultural events, and after the parade will join the audience for a performance by the National Symphony orchestra and accompanying fireworks display; and

WHEREAS, The Louisburg Wildcats marching band is directed by John Cisetti, who has led the band for 27 years, and assisted by Dean Davison: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend the Louisburg High School marching Wildcats on their selection to participate in the 2006 National Independence Day Parade, send best wishes for a safe and memorable trip, and hope that all members thoroughly enjoy this once-in-a-lifetime opportunity to visit the U.S. capital under these special circumstances; and

Be it further resolved: That the Secretary of the Senate provide five enrolled copies of this resolution to John Cisetti, Louisburg High School, 202 Aquatic Drive, Louisburg, KS 66053-0399.

On emergency motion of Senator Apple **SR 1806** was adopted unanimously.

John Cisetti, Band Director; Mrs. Cisetti; Dean Davison, Assistant Band Director and members of the marching band were recognized and welcomed with a standing ovation.

Senator V. Schmidt introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1807—

A RESOLUTION congratulating and commending the Mission Township fire department.

WHEREAS, The Topeka area finished 2005 with 48 inches of rain making 2005 the fourth-wettest year on record. On the weekend of October 1 and 2 as much as 12 inches of rain fell in areas of Jackson and Jefferson counties; and

WHEREAS, In the early morning hours of October 2 personnel from the Mission Township fire department participated in emergency water operations when individuals were surprised by flood waters placing their lives in danger. Fire Chief Anthony Buckland, acting as the water rescue team leader, entered the fast moving flood waters to rescue a family of four—father, mother and two children found clinging to a tree. Lieutenant Darin Daniels, qualified as a swift water rescue technician, left the safety of his boat on two occasions to rescue three people who had been swept from their vehicles. These seven individuals most likely would have drowned but for the heroic efforts of the Mission Township water response team; and

WHEREAS, Individuals involved in these rescue efforts were: Chief Anthony Buckland, water rescue team leader; Lieutenant Darin Daniels, swift water rescue technician; EMT Hal Moore, boat captain and EMT Roger Dahlby, primary patient care technician. Station coverage was provided by: Assistant Chief Brian Christiansen, Captain Forrest Walter, Duty Officer Erin Baker, Volunteer Captain Buford Johnson, Volunteer Captain Michael Razo and Volunteer Firefighter Nick Hilderbrand. Other participants were Duty Officer Travis Sutton, Volunteer Firefighter Travis Carlile, Volunteer Firefighter Scott Scurlock and Volunteer Firefighter Michael Keyes; and

WHEREAS, These Mission Township fire fighters responded to needs outside of their township, and because of their specialized training and unselfish acts none of the terrified individuals caught in swiftly flowing flood waters died. Because of their brave response to this emergency a county-wide water response team has been created led by Chief Buckland: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend the members of the Mission Township fire department for their heroic deeds during the early morning hours of October 2; and

Be it further resolved: That the Secretary of the Senate provide an enrolled copy of this resolution to Chief Anthony Buckland, Mission Township Fire Department, 3101 Urish Road, Topeka, KS 66614.

On emergency motion of Senator V. Schmidt **SR 1807** was adopted unanimously.

Response team members introduced and commended for their heroic deeds were Nick Hilderbrand, Board Member, Mission Township Water Rescue; Chief Anthony Buckland, Assistant Chief Brian Christiansen, Captain Forrest Walter, Captain Buford Johnson, Lieutenant Darin Daniels, Arthur Moore, Duty Officer EMTI; Roger Dahlby and Michael Keyes.

REPORTS OF STANDING COMMITTEES

Committee on **Assessment and Taxation** recommends **SB 357**, **SB 359** be passed.

Committee on **Education** recommends **SB 329** be amended on page 1, in line 18, by striking all following “(b)”; by striking all in lines 19 through 21; in line 22, preceding the period, by inserting: “The state board shall establish curriculum standards which reflect high academic standards for the core academic areas of mathematics, science, reading, writing and social studies”; in line 24, by striking all following the period; in line 25, by striking all preceding “Nothing”; in line 28, following “(c)” by inserting “The state board shall provide for statewide assessments in the core academic areas of mathematics, science, reading, writing and social studies. The board shall ensure compatibility between the statewide assessments and the curriculum standards established pursuant to subsection (b). Such assessments shall be administered at three grade levels, as determined by the board.”; also in line 28, by striking “of education”; in line 29, by striking “ex-”; in line 30, by striking “cellence” and inserting “high academic standards”; in line 31, by striking “the measure of excellence” and inserting “high academic standards”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 261** be amended on page 20, in line 18, by striking "2004"; in line 19, by striking "Supp."; in line 21, by striking "2004"; in line 22, by striking "Supp."; in line 26, by striking "2004 Supp.";

On page 23, in line 2, after the period by inserting "In determining the amount of a child support order under the revised Kansas juvenile justice code, the court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto."; by striking all in lines 3 through 16; in line 17, by striking "(c)" and inserting "(b)";

On page 33, in line 35, by striking all after the first comma; by striking all in lines 36 through 38; in line 39, by striking "of the juvenile to remain in the home." and inserting "the court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that : (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child.";

On page 35, in line 39, by striking all after "(a)"; by striking all in lines 40 and 41; in line 42, by striking "to the juvenile's welfare and" and inserting "The court shall not issue the first warrant or enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child. The court shall";

On page 36, in line 5, by striking all after "(a)"; by striking all in lines 6 through 8 and inserting "The court shall not issue the first warrant or enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child. The court shall"; in line 10, by striking "(1)" and inserting "(3)"; in line 13, by striking "(2)" and inserting "(4)"; in line 17, by striking "(3)" and inserting "(5)"; in line 32, by striking all after the semicolon; in line 35, before the period by inserting "; or

(5) the juvenile presents a risk to public safety";

On page 50, in line 21, by striking "shall," and inserting "may";

On page 64, by striking all in line 21 through 23; in line 24, by striking "venile to remain at home." and inserting "if the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child.";

On page 65, in line 7, by striking "at the hearing" and inserting "by a preponderance of the evidence"; in line 14, by striking all after "(b)"; by striking all in lines 15 through 17; in line 18, by striking "venile to remain at home." and inserting "The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child.”;

On page 68, in line 32, after the period by inserting “For an offense committed on or after July 1, 2006, such good time credits shall not exceed 15% of the placement sentence.”;

On page 82, in line 33, by striking “2004” and inserting “2005”;

On page 83, in line 19, by striking “2004” and inserting “2005”; in line 28, by striking “2004 Supp.”; in line 37, by striking “2004 Supp.”;

On page 84, in line 8, by striking “2004 Supp.”;

On page 85, in line 16, by striking “2004” and inserting “2005”;

On page 87, in line 28, by striking “2004” and inserting “2005”;

On page 88, by striking all in lines 36 through 43;

By striking all on page 89;

On page 90, by striking all in lines 1 through 30 and inserting the following:

“Sec. 95. K.S.A. 2005 Supp. 21-3520 is hereby amended to read as follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services for a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate; or

(2) the offender is a parole officer or the employee of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender; or

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such jail; or

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house; or

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility; or

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is 16 years of age or older and (A) released on conditional release from a juvenile correctional facility under the supervision and control of the juvenile justice authority or juvenile community supervision agency or (B) placed in the custody of the juvenile justice authority under the supervision and control of the juvenile justice authority or juvenile community supervision agency and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide services in a social and rehabilitation services institution and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502, and amendments thereto, lewd fondling or touching, or sodomy, not otherwise subject

to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments thereto, is a person 16 years of age or older who is a patient in such institution;

(8) the offender is a teacher or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching or sodomy is 16 or 17 years of age and a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of K.S.A. 21-3603, and amendments thereto, shall apply, not this subsection;

(9) the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services; or

(10) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision of community corrections.

(b) For purposes of this act:

(1) "Correctional institution" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(2) "inmate" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(3) "parole officer" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(4) "postrelease supervision" means the same as prescribed in the Kansas sentencing guidelines act in K.S.A. 21-4703, and amendments thereto;

(5) "juvenile detention facility" means the same as prescribed by ~~K.S.A. 38-1602~~ section 2, and amendments thereto;

(6) "juvenile correctional facility" means the same as prescribed by ~~K.S.A. 38-1602~~ section 2, and amendments thereto;

(7) "sanctions house" means the same as prescribed by ~~K.S.A. 38-1602~~ section 2, and amendments thereto;

(8) "institution" means the same as prescribed by K.S.A. 76-12a01, and amendments thereto; and

(9) "teacher" means and includes teachers, supervisors, principals, superintendents and any other professional employee in any public or private school;

(10) "community corrections" means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the Kansas juvenile justice code, K.S.A. 38-1601 et seq., and amendments thereto;

(11) "court services" means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state;

(12) "law enforcement officer" means the same as prescribed by K.S.A. 21-3110, and amendments thereto; and

(13) "juvenile community supervision agency" means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the juvenile justice authority.

(c) Unlawful sexual relations is a severity level 10, person felony.;

Also on page 90, in line 31, by striking "2004" and inserting "2005";

On page 91, in line 31, by striking "2004" and inserting "2005";

On page 92, in line 17, by striking "2004" and inserting "2005";
 On page 93, in line 20, by striking "2004" and inserting "2005";
 On page 94, in line 16, by striking "2004" and inserting "2005";
 On page 95, in line 27, by striking "2004" and inserting "2005";
 On page 96, in line 17, by striking "2004 Supp."; in line 27, by striking "2004 Supp.";
 On page 97, in line 16, by striking "2004" and inserting "2005"; in line 36, by striking
 "2004" and inserting "2005";
 On page 99, in line 9, by striking "2004" and inserting "2005";
 On page 113, in line 19, by striking "2004" and inserting "2005";
 On page 114, in line 27, by striking "2004 Supp.";
 On page 117, in line 33, by striking "2004" and inserting "2005";
 On page 118, in line 37, by striking "2004 Supp.";
 On page 125, in line 11, by striking "2002 Supp."; in line 41, by striking "2004" and
 inserting "2005";
 On page 130, in line 41, by striking "2004" and inserting "2005";
 On page 132, in line 6, by striking "2004 Supp.";
 On page 136, in line 7, by striking "2004" and inserting "2005";
 On page 142, in line 28, by striking "2004" and inserting "2005";
 On page 143, in line 13, by striking "2004" and inserting "2005";
 On page 144, in line 28, by striking "2004" and inserting "2005";
 On page 145, in line 9, by striking "2004" and inserting "2005";
 On page 146, by striking all in lines 15 through 43;
 By striking all on page 147;
 On page 148, by striking all in lines 1 through 39;
 And by renumbering the remaining sections accordingly;
 Also on page 148, in line 40, by striking "2004" and inserting "2005";
 On page 151, in line 8, by striking "2004" and inserting "2005";
 On page 155, in line 5, by striking "2004" and inserting "2005"; in line 14, by striking
 "2004" and inserting "2005"; in line 42, by striking "2004" and inserting "2005";
 On page 157, in line 43, by striking "2004" and inserting "2005";
 On page 158, after line 18, by inserting the following: 9
 "Sec. 139. K.S.A. 60-3614 is hereby amended to read as follows: 60-3614. (a) If an adult
 offender or juvenile offender has been sentenced to perform community service work by
 the court, and such offender is performing such services for a governmental entity, private
 not-for-profit corporation, or charitable or social service organization, such governmental
 entity, private not-for-profit corporation, or charitable or social service organization or any
 employee or volunteer of such entities shall not be liable for damages in a civil action for
 injuries suffered by such offender or for acts or omissions by such offender unless such
 governmental entity, private not-for-profit corporation, or charitable or social service
 organization or any employees or volunteers of such entities actions constitute willful or
 wanton misconduct or intentionally tortious conduct. The provisions of this section shall not
 apply to damages arising from the operation of a motor vehicle as defined by K.S.A. 40-
 3103, and amendments thereto.
 (b) As used in this section, "community service work" means public or community service
 performed by a person (1) as a result of a contract of diversion or immediate intervention
 entered into by such person as authorized by law, (2) pursuant to the assignment of such
 person by a court to a community corrections program, (3) as a result of suspension of
 sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed
 by court order or (5) as a condition of placement ordered by a court pursuant to ~~K.S.A. 38-
 1609~~ section 61, and amendments thereto.";
 And by renumbering sections accordingly;
 Also on page 158, in line 21, by striking "38-1610,"; in line 31, after "39-1305," by inserting
 "60-460, 60-3614,"; in line 32, by striking "2004" and inserting "2005"; in line 34, after "38-
 1609," by inserting "38-1610,"; in line 35, by striking "38-1635," and inserting "38-16,135,";
 in line 36, by striking "60-460,"; in line 37, by striking "75-6102,"; in line 40, by striking
 "July 1, 2006," and inserting "January 1, 2007,";

In the title, in line 11, after “39-1305,” by inserting “60-460, 60-3614,”; in line 13, by striking “2004” and inserting “2005”; in line 15, by striking “60-460,”; in line 16, by striking “75-6102,”; in line 19, by striking “38-1610,”; in line 29, by striking “2004” and inserting “2005”; also in line 29, after “38-1609,” by inserting “38-1610,”; in line 30, by striking “38-1635” and inserting “38-16,135”; and the bill be passed as amended.

Committee on **Transportation** recommends **SB 346, SB 347** be passed.

Also, **SB 396** be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

SB 344 be amended on page 1, in line 28, by striking “may” and inserting “shall”; and the bill be passed as amended.

SB 413 be amended on page 8, in line 3, after the first comma by inserting “golf cart,”; in line 37, by striking “or golf cart”; and the bill be passed as amended.

Committee on **Ways and Means** recommends **SB 420** be 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 Allen in the chair.

On motion of Senator Allen the following report was adopted:

Recommended **SB 348, SB 411** be passed.

SB 336 be amended by adoption of the committee amendments, and the bill be passed as amended.

SB 362 be amended by adoption of the committee amendments.

A motion by Senator Francisco to amend **SB 362** failed and the following amendment was rejected: as amended by Senate Committee, on page 10, in line 36, by striking “or” and inserting “and”; in line 37, by striking “or for”, and **SB 362** be passed as amended.

SB 371 be amended by motion of Senator Donovan, on page 1, in line 31, by striking “(g)” and inserting “(f)”;

On page 9, after line 34 by inserting the following:

“Sec. 8. K.S.A. 2005 Supp. 66-1,142b is hereby amended to read as follows: 66-1,142b.

(a) Any person violating any statute, commission orders or rules and regulations adopted by the state corporation commission pursuant to the motor carrier act and other laws relevant to motor carriers shall be subject to a civil penalty of not less than \$100 and not more than \$1,000 for negligent violations, and not more than \$5,000 for intentional violations.

(b) In construing and enforcing a civil penalty in accordance with this section, any act, omission or failure of any officer, agent or other person acting for or employed by any motor carrier while acting within the scope of such person’s employment, shall in every case be deemed the act, omission or failure of the motor carrier.

(c) Every day during which the person fails to comply with any order of the commission, or any applicable statute, rule or regulation, shall constitute a separate and distinct violation.

(d) Civil penalties shall be enforced and collected by an attorney for the corporation commission in the appropriate district court.

(e) *A civil penalty shall not be enforced under this section for a violation of an out-of-service order, if a civil penalty was enforced against a driver under subsection (a) of section (1), and amendments thereto, or against an employer under subsection (b) of section 1, and amendments thereto.*

(~~e~~) (f) Civil penalties shall be remitted in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the motor carrier license fee fund.

(~~f~~) (g) The commission is granted the power, by general order or otherwise, to prescribe reasonable rules and regulations for the assessment of administrative civil penalties and sanctions for violations of any statute, commission orders or rules and regulations adopted by the commission.”;

And by renumbering the remaining sections accordingly;

Also on page 9, in line 36, by striking “and 8-2,142” and inserting “, 8-2,142 and 66-1,142b”;

In the title, in line 12, by striking “and 8-2,142” and inserting “, 8-2,142 and 66-1,142b”, and **SB 371** be passed as amended.

SB 297 be amended by adoption of the committee amendments, be further amended by motion of Senator Brungardt, as amended by Senate Committee, on page 1, by striking all in lines 14 through 43;

By striking all on page 2;

On page 3, by striking all in lines 1 through 30 and inserting the following:

“Section 1. K.S.A. 2005 Supp. 41-719 is hereby amended to read as follows: 41-719. (a) No person shall drink or consume alcoholic liquor on the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by the club and drinking establishment act;

(2) upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(3) in a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place;

(4) in a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803, and amendments thereto, takes place; or

(5) on the premises of a microbrewery or farm winery, if authorized by K.S.A. 41-308a or 41-308b, and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes or purposes incidental thereto.

(2) In any state-owned or operated building or structure, and on the surrounding premises, which is furnished to and occupied by any state officer or employee as a residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated, and amendments thereto, or established by a city.

(4) On the state fair grounds on the day of any race held thereon pursuant to the Kansas parimutuel racing act.

(5) On the state fairgrounds, if: (A) Such liquor is domestic beer or wine or wine imported under subsection (e) of K.S.A. 41-308a, and amendments thereto, and is consumed only for purposes of judging competitions; or (B) such liquor is wine or beer and is sold and consumed during the days of the Kansas state fair on premises leased by the state fair board to a person who holds a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto, authorizing the sale and serving of such wine or beer, or both. The state fair board, in its discretion, may authorize the consumption of such alcoholic liquor on nonfair days in conjunction with bona fide scheduled events involving not less than 75 invited guests and subject to any conditions or restrictions as the board may require.

(6) In the state historical museum provided for by K.S.A. 76-2036, and amendments thereto, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(7) On the premises of any state-owned historic site under the jurisdiction and supervision of the state historical society, on the surrounding premises and in any other building on such premises, as authorized by rules and regulations of the state historical society.

(8) In a lake resort within the meaning of K.S.A. 32-867, and amendments thereto, on state-owned or leased property.

(9) In the Hiram Price Dillon house or on its surrounding premises, subject to limitations established in policies adopted by the legislative coordinating council, as provided by K.S.A. 75-3682, and amendments thereto.

(10) On the premises of any Kansas national guard regional training center, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(11) On property exempted from this subsection (c) pursuant to subsection (d), (e), (f), (g) or (h).

(d) Any city may exempt, by ordinance, from the provisions of subsection (c) specified property the title of which is vested in such city.

(e) The board of county commissioners of any county may exempt, by resolution, from the provisions of subsection (c) specified property the title of which is vested in such county.

(f) The state board of regents may exempt from the provisions of subsection (c) the Sternberg museum on the campus of Fort Hays state university, or other specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(g) The board of regents of Washburn university may exempt from the provisions of subsection (c) the Mulvane art center and the Bradbury Thompson alumni center on the campus of Washburn university, and other specified property the title of which is vested in such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(h) The board of trustees of a community college may exempt from the provisions of subsection (c) specified property which is under the control of such board and which is not used for classroom instruction, where alcoholic liquor may be consumed in accordance with policies adopted by such board.

(i) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200 or by imprisonment for not more than six months, or both.”;

Also on page 3, in line 31, by striking “2004” and inserting “2005”;

On page 5, in line 1, by striking “2004” and inserting “2005”;

In the title, in line 10, by striking “2004” and inserting “2005”, and **SB 297** be passed as further amended.

SB 412 be passed over and retain a place on the calendar.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Thursday, February 2, 2006.

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

PAT SAVILLE, *Secretary of the Senate*.

