

Journal of the Senate

THIRTY FIRST DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 21, 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,
Effective leaders have a vision
That has been instilled
In their heart of hearts
That it's grounded in God's will.
They then pursue that vision
Morning, noon, and night;
And when they're faced with obstacles,
Do not refuse to fight.
Give legislators Your vision, Lord,
Of what Kansas really needs.
Then give determination
To pursue it with all speed.
Inspire them to pursue it
In spite of opposition,
And not waver in pursuit;
Make it their ambition!
Don't let them be discouraged
By disappointments and delays;
And overcome temptation
To engage in devious ways.
Help them to remember
That their vision is Your will
And to pursue it when it seems
The road is all uphill!
I pray in the Name of Jesus Christ,
AMEN

POINT OF PERSONAL PRIVILEGE

Senator Haley introduced Ms. Denise Randolph, representing the Centurions (an organization of small business owners affiliated with the Greater Kansas City Chamber of Commerce) who was visiting the Capitol in order to study legislative procedures.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

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

SB 575, An act enacting the Topeka/Shawnee county riverfront authority act; creating a riverfront authority and prescribing the powers and duties thereof, by Committee on Federal and State Affairs.

SB 576, An act concerning natural gas; relating to gas gathering facilities; amending K.S.A. 55-1,101, 55-1,102, 55-1,103, 55-1,104, 55-1,105, 55-1,107, 55-1,108 and 55-1,109 and K.S.A. 2005 Supp. 66-105a and repealing the existing sections, by Committee on Ways and Means.

SENATE CONCURRENT RESOLUTION No. 1623—

By Committee on Federal and State Affairs

A CONCURRENT RESOLUTION concerning funeral picketing.

WHEREAS, Funerals are private, solemn events which should provoke expressions of respect;

WHEREAS, Military funerals should be events reflecting the dignity and honor of the deceased;

WHEREAS, The First Amendment right of free speech is a hallowed American right;

WHEREAS, Fred Phelps and his followers of Westboro Baptist Church are entitled to their exercise of this right;

WHEREAS, The message of Mr. Phelps and his followers is held by most to be extremely egregious and offensive and even more so when presented at a military or other funeral; and

WHEREAS, The American Legion Riders and Patriot Guard of Kansas are particularly helpful in protecting the mourners from the impact of Mr. Phelps and his followers: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Kansas Legislature commends the Patriot Guard and the American Legion Riders for their positive intervention at funerals where Mr. Phelps and his followers are picketing; and

Be it further resolved: That the Kansas Legislature condemns in the strongest manner possible the hateful activities of Mr. Phelps and his followers; and

Be it further resolved: That the Kansas Legislature wishes it to be known throughout the nation that the people of Kansas largely embrace a true Christian message of love for one's neighbors, rejoicing with those who rejoice and weeping with those who weep and that Mr. Phelps and his followers do not reflect the true spirit of the people of Kansas.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Education: **Sub HB 2695; HB 2722.**

Judiciary: **HB 2704.**

Public Health and Welfare: **HB 2342.**

Transportation: **HB 2709.**

Ways and Means: **SB 573, SB 574.**

CHANGE OF REFERENCE

The President withdrew **SB 322, SB 539** from the Committee on Financial Institutions and Insurance, and referred the bills to the Committee on Ways and Means.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2562, HB 2606, HB 2610, HB 2616, HB 2617, HB 2626, HB 2665, HB 2716, HB 2735, HB 2824.**

The House concurs in Senate amendments to **HB 2284.**

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2562, HB 2606, HB 2610, HB 2616, HB 2617, HB 2626, HB 2665, HB 2716, HB 2735, HB 2824 were thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

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

SENATE RESOLUTION No. 1813—

A RESOLUTION urging divestiture of investments in Sudan.

WHEREAS, The world was horrified by the genocide practiced in Nazi Germany and more recently in Bosnia-Herzegovina and Rwanda; and

WHEREAS, The Darfur region of Sudan is suffering cataclysmic internal strife that has been called “ethnic cleansing” but which is better described as genocide; and

WHEREAS, Investments of American dollars have been used by the government of Sudan to support this genocidal killing; and

WHEREAS, The United States government divested from the Sudanese oil fields in 2000; and

WHEREAS, Multinational corporations such as PetroChina, Sinopec, ABB and Tatneft are still sending American dollars to Sudan; and

WHEREAS, The Kansas Public Employees Retirement System (KPERs) currently has invested in 39 Sudanese companies; and

WHEREAS, Those KPERs investments total \$365,305,079.14, while the Kansas City Police Employees’ Retirement (KCPER) currently has invested \$29,979,944.90 in nine Sudanese companies; and

WHEREAS, The policy of divestiture of investments from South Africa was a powerful tool in the effort to end apartheid in that country: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Treasurer of the State of Kansas is urged to examine the state’s investments to determine whether Kansas funds are invested in Sudan and in multinational corporations such as PetroChina, Sinopec, ABB, Tatneft, and any others that are supporting the genocide in Darfur; and

Be it further resolved: That the Treasurer of the State of Kansas consider a policy of divestiture from such investments; and

Be it further resolved: That the comptrollers of KPERs and KCPER also consider such a policy.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture** recommends **SB 389** be amended on page 1, in line 19, by striking “\$160,000” and inserting “\$200,000”; in line 20, after the period, by inserting: “In no event shall the total amount of credits allowed under this section exceed \$2,000,000 for any one fiscal year.”;

On page 2, in line 7, by striking “Biofuels” and inserting “Qualified biofuels”; in line 9, before the semicolon, by inserting: “prior to delivery to a retail facility. Each qualified biofuels mixing facility shall have at least one tank for ethanol or one tank for biodiesel”; in line 10, by striking “, but not limited to.”; after line 10, by inserting:

“(3) “biodiesel” means mono-alkyl esters derived from vegetable oil, recycled cooking oil or animal fat and shall conform with the specification D6751-02, issued March 2002, by the American society of testing and materials or a later version as adopted by rules and regulations;

(4) “ethanol” means denatured fuel ethanol that meets ASTM 4806-99;”;

Also on page 2, in line 11, by striking “(3)” and inserting “(5)”; in line 13, by striking “(4)” and inserting “(6)”; and the bill be passed as amended.

Committee on **Assessment and Taxation** recommends **SB 535** be passed.

Committee on **Education** recommends **SB 305** be amended on page 2, in line 6, by striking all following “the” and inserting “Association for Biblical Higher Education”; in line 8, following the period by inserting “The provisions of clause (4) shall expire June 30, 2011.”; and the bill be passed as amended.

Committee on **Elections and Local Government** recommends **SB 497** be passed.

Also, **SB 419** be amended on page 2, in line 18, by striking “and”; in line 19, following “(C)” by inserting “member of the commission on judicial qualifications;

(D) member of any supreme court nominating commission;

(E) law clerk of a judge of the court of appeals or justice of the supreme court; and

(F)”;

Also on page 2, preceding line 24, by inserting:

“(k) For the purposes of this act, for the persons listed in subsection (j) term “statement of substantial interests” shall mean the judicial financial disclosure report required by the supreme court.”;

On page 4, following line 13, by inserting:

“Sec. 5. K.S.A. 46-221 is hereby amended to read as follows: 46-221. (a) “State officer or employee” means (1) any individual who is an elected or appointed state officer, (2) any individual who is in the classified service or unclassified service of the Kansas civil service act, (3) all officers and employees of the legislative branch and of the governor’s office, irrespective of how compensated or period of employment, and (4) any individual who receives monthly or semimonthly compensation for services from the state or any state agency. State officer or employee does not include any justice or commissioner of the supreme court or judge of the judicial branch or employee or officer of the judicial branch or any member of a board, council or commission who is appointed by the supreme court or who is elected or appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch, *except that each person listed in subsection (j) of K.S.A. 46-247, and amendments thereto, shall be considered to be a state employee for the purposes of this act notwithstanding any language in this section to the contrary.* Also, state officer or employee does not include any appointed member of an advisory council, commission or board, who serves without compensation other than amounts for expense allowances or reimbursement of expenses as provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto, when such member is engaged in performing a function or duty for such council, commission or board.

(b) “Candidate” means an individual who: (1) Appoints a treasurer or a candidate committee; (2) makes a public announcement of intention to seek nomination or election to state office; (3) makes any expenditure or accepts any contribution for the purpose of influencing such person’s nomination or election to any state office; or (4) files a declaration or petition to become a candidate for state office.

(c) “State officer elect” means an individual who has been elected to state office or appointed to fill a vacancy in a state office but who has not yet taken the oath of office.”;

By renumbering the remaining sections accordingly;

Also on page 4, in line 14, following “K.S.A.” by inserting “46-221.”;

In the title, in line 11, following “K.S.A.” by inserting “46-221.”; and the bill be passed as amended.

SB 457 be amended on page 1, in the title, in line 10, by striking “and resources”; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **SB 486** be amended by substituting a new bill to be designated as “Substitute for SENATE BILL No. 486,” as follows:

“Substitute for SENATE BILL No. 486

By Committee on Federal and State Affairs

“AN ACT concerning the task force on racial profiling; amending K.S.A. 2005 Supp. 22-4607 and repealing the existing section.”;

and the substitute bill be passed.

Also, **SB 403** be amended on page 1, in line 16, after “officer” by inserting “pursuant to K.S.A. 22-2408, and amendments thereto.”; by striking all in lines 25 and 26; in line 27, by striking “control” and inserting “served, the notice to appear shall be void and unenforceable”; and the bill be passed as amended.

SB 421 be amended on page 1, in line 39, by striking all after “means”; in line 40, by striking all before the period and inserting “any ceremony, procession or memorial service in connection with the death of a person”; in line 42, by striking “or church” and inserting “, church or other location where a funeral is held or conducted”;

On page 2, in line 2, after “to” by inserting “: (1)”; in line 4, by striking “or mortuary” and inserting “, mortuary or other location where a funeral is held or conducted”; in line 5, by striking “or me-”; in line 6, by striking all before the period and inserting “, except on public streets, public sidewalks or other public spaces; or

(2) obstruct or prevent the intended uses of a public street, public sidewalk or other public space while engaged in picketing or a directed protest, as described in subsection (1).”; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 361** be amended on page 1, in line 31, by striking “exclusive” and inserting “original”;

On page 3, in line 23, by striking “exclusive” and inserting “original”; and the bill be passed as amended.

Also, **SB 408** be amended on page 1, after line 14 by inserting the following:

“New Section 1. Whenever an offender is convicted of cruelty to animals as described in subsection (a)(1) of K.S.A. 21-4310, and amendments thereto, and sentenced to imprisonment in the county jail, the department of corrections shall reimburse the county for the cost of maintenance of such offender. The reimbursement shall be paid from funds made available by the legislature for that purpose. Such cost of maintenance shall not exceed the per capita daily operating costs, not including inmate programs, for the department of corrections.”;

And by renumbering the remaining sections accordingly;

Also on page 1, in line 17, by striking “or recklessly”; in line 28, after “(5)” by inserting “intentionally”;

On page 2, in line 6, before the semicolon by inserting “, including the normal and accepted practices for the slaughter of such animals for food or by-products”; in line 14, by striking “or”; in line 15, before the period by inserting “; or

(10) the killing of any animal by a law enforcement officer if such animal is posing a treat to such officer while serving a warrant”;

Also on page 2, in line 23, after “(d)” by inserting “(1)”; in line 26, by striking “\$1,500” and inserting “\$500 nor more than \$5,000”; also in line 26, by striking all after “and”; in line 27, by striking all before the period and inserting “have a psychological evaluation prepared for the court”; also in line 27, by striking “Cruelty” and inserting “(2) The first conviction of cruelty”; in line 29, after the period by inserting “The second or subsequent conviction of cruelty to animals as described in subsection (a)(2), (a)(3), (a)(4) and (a)(5) is a severity level 10, nonperson felony, and the offender shall be sentenced to not less than five days imprisonment as a condition of probation.

(e) For purposes of this section, “animal” shall have the meaning ascribed to it in K.S.A. 21-4313, and amendments thereto.

Sec. 3. K.S.A. 2005 Supp. 21-4311 is hereby amended to read as follows: 21-4311. (a) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of K.S.A. 21-4310, and amendments thereto, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the animal for adoption or euthanize the animal at any time after 20 days after the owner or custodian is notified or, if the owner or custodian is not known or reasonably ascertainable after 20 days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the county clerk of the county where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Upon receiving such petition,

the court shall determine whether the animal may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal.

(b) The owner or custodian of an animal placed for adoption or killed pursuant to subsection (a) shall not be entitled to recover damages for the placement or killing of such animal unless the owner proves that such placement or killing was unwarranted.

(c) Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (a), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime. *If no such conviction results, the animal shall be returned to the owner or keeper and the court shall order the county where the animal was taken into custody to pay to the animal shelter all expenses incurred by the shelter for the care, treatment and boarding of such animal, including any damages caused by such animal, prior to its return.*

(d) Upon the filing of a sworn complaint by any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility alleging the commission of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto, the county or district attorney shall determine the validity of the complaint and shall forthwith file charges for the crime if the complaint appears to be valid.

(e) If a person is adjudicated guilty of the crime of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.”;

And by renumbering the remaining sections accordingly;

On page 3, in line 32, by striking “undergo psy-”; by striking all in line 33; in line 34, by striking “gram” and inserting “have a psychological evaluation prepared for the court”;

On page 7, after line 41 by inserting the following:

“Sec. 7. K.S.A. 2005 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in ~~this~~ *the Kansas offender registration act*, unless the context otherwise requires:

- (a) “Offender” means: (1) A sex offender as defined in subsection (b);
 - (2) a violent offender as defined in subsection (d);
 - (3) a sexually violent predator as defined in subsection (f);
 - (4) any person who, on and after the effective date of this act, is convicted of any of the following crimes when the victim is less than 18 years of age:
 - (A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;
 - (B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or
 - (C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;
 - (5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:
 - (A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;
 - (B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;
 - (C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;
 - (D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;
 - (E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendments thereto;
- or
- (F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;
 - (6) any person who has been required to register under any federal, military or other state’s law or is otherwise required to be registered;
 - (7) any person who has been convicted of an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in subsection (4) or (5),

or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection (4) or (5); **or**

(8) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (4) or (5); *or*

(9) *any person convicted of subsection (a)(1) of K.S.A. 21-4310, and amendments thereto.*

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

(b) "Sex offender" includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c) or is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime set forth in subsection (c).

(c) "Sexually violent crime" means:

- (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;
- (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;
- (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;
- (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;
- (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;
- (6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;
- (7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;
- (8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;
- (9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;
- (10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;
- (11) aggravated incest as defined by K.S.A. 21-3603 and amendments thereto; or
- (12) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for an offense that under the laws of this state would be a sexually violent crime as defined in this section;
- (13) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; *or*

(14) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(d) "Violent offender" includes any person who, after the effective date of this act, is convicted of any of the following crimes:

- (1) Capital murder as defined by K.S.A. 21-3439 and amendments thereto;
- (2) murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;
- (3) murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;
- (4) voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;
- (5) involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto; or
- (6) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in this subsection, or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; *or*

(7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(e) "Law enforcement agency having jurisdiction" means the sheriff of the county in which the offender expects to reside upon the offender's discharge, parole or release.

(f) “Sexually violent predator” means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 *et seq.* and amendments thereto.

(g) “Nonresident student or worker” includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) “Aggravated offenses” means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(i) “Institution of higher education” means any post-secondary school under the supervision of the Kansas board of regents.

Sec. 8. K.S.A. 47-1706 is hereby amended to read as follows: 47-1706. (a) The commissioner may refuse to issue or renew or may suspend or revoke any license or permit required under K.S.A. 47-1701 *et seq.*, and amendments thereto, for any one or more of the following reasons:

(1) Material misstatement in the application for the original license or permit, or in the application for any renewal of a license or permit;

(2) willful disregard of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder, or any willful aiding or abetting of another in the violation of any provision of the Kansas pet animal act or any rule and regulation adopted hereunder;

(3) permitting any license or permit issued hereunder to be used by an unlicensed or unpermitted person or transferred to unlicensed or unpermitted premises;

(4) the conviction of any crime relating to the theft of *animals* or a *first conviction of cruelty to animals*;

(5) substantial misrepresentation;

(6) misrepresentation or false promise, made through advertising, salespersons, agents or otherwise, in connection with the operation of business of the licensee or permittee;

(7) fraudulent bill of sale;

(8) the housing facility or the primary enclosure is inadequate; or

(9) the feeding, watering, sanitizing and housing practices at the licensee’s or permittee’s premises are not consistent with the Kansas pet animal act or the rules and regulations adopted hereunder.

(b) *The commissioner shall refuse to issue or renew and shall suspend or revoke any license or permit required under K.S.A. 47-1701 et seq., and amendments thereto, for the second or subsequent conviction of cruelty to animals, K.S.A. 21-4310, and amendments thereto.*

~~(b)(c)~~ Any refusal to issue or renew a license or permit, and any suspension or revocation of a license or permit, under this section shall be in accordance with the provisions of the Kansas administrative procedure act and shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

~~(c)(d)~~ Whenever the commissioner denies, suspends or revokes a license or permit under this section, the commissioner or the commissioner’s authorized, trained representatives shall seize and impound any animals in the possession, custody or care of the person whose license or permit is denied, suspended or revoked if there are reasonable grounds to believe that the animals’ health, safety or welfare is endangered. Except as provided by K.S.A. 21-4311, and amendments thereto, such animals may be returned to the person owning them if there is satisfactory evidence that the animals will receive adequate care by that person or such animals may be sold, placed or euthanized, at the discretion of the commissioner. Costs of care and services for such animals while seized and impounded shall be paid by the person from whom the animals were seized and impounded, if that person’s license or

permit is denied, suspended or revoked. Such funds shall be paid to the commissioner for reimbursement of care and services provided during seizure and impoundment. If such person's license or permit is not denied, suspended or revoked, the commissioner shall pay the costs of care and services provided during seizure and impoundment.”;

And by renumbering the remaining sections accordingly;

Also on page 7, in line 42, after “21-4317” by inserting “and 47-1706”; also in line 42, after “21-4310,” by inserting “21-4311,”; also in line 42, by striking the second “and” and inserting a comma; in line 43, after “21-4704” by inserting “and 22-4902”;

In the title, in line 10, after “21-4317” by inserting “and 47-1706”; in line 11, after “21-4310,” by inserting “21-4311,”; also in line 11, by striking the second “and” and inserting a comma; also in line 11, before “repealing” by inserting “22-4902 and”; and the bill be passed as amended.

SB 431 be amended on page 1, after line 13, by inserting the following:

“Section 1. K.S.A. 2005 Supp. 8-1013 is hereby amended to read as follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto, and this section:

(a) “Alcohol concentration” means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(b) (1) “Alcohol or drug-related conviction” means any of the following: (A) Conviction of vehicular battery or aggravated vehicular homicide, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-1567 and amendments thereto; (B) conviction of a violation of a law of another state which would constitute a crime described in subsection (b)(1)(A) if committed in this state; (C) conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b)(1)(A), whether or not such conviction is in a court of record; or (D) conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-1567, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state.

(2) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence: (A) “Alcohol or drug-related conviction” also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b)(1) *and such agreement was entered into during the immediately preceding 12 years*, including a diversion agreement entered into prior to the effective date of this act; and (B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.

(c) “Division” means the division of vehicles of the department of revenue.

(d) “Ignition interlock device” means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.

(e) “Occurrence” means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest *occurring in the immediately preceding 12 years*, including an arrest which occurred prior to the effective day of this act.

(f) “Other competent evidence” includes: (1) Alcohol concentration tests obtained from samples taken two hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(g) “Samples” includes breath supplied directly for testing, which breath is not preserved.

(h) “Test failure” or “fails a test” refers to a person's having results of a test administered pursuant to this act, other than a preliminary screening test, which show an alcohol concentration of .08 or greater in the person's blood or breath, and includes failure of any such test on a military reservation.

(i) “Test refusal” or “refuses a test” refers to a person's failure to submit to or complete any test, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.

(j) "Law enforcement officer" has the meaning provided by K.S.A. 21-3110, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of K.S.A. 8-1567, and amendments thereto, if committed off a military reservation in this state.

Sec. 2. K.S.A. 2005 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program

pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(k) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(l) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(m) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) ~~any convictions occurring during a person's lifetime~~ *only convictions occurring in the immediately preceding 12 years* shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender, *but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offender;*

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(o) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation.

Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the

convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

(q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

(r) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(s) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-4165, and amendments thereto.

(t) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.";

And by renumbering sections accordingly;

Also on page 1, in line 35, before "driving" by inserting "a violation of K.S.A. 8-1567, and amendments thereto;

(3)";

And by renumbering the remaining paragraphs accordingly;

On page 2, in line 7, by striking all after “(c)”; by striking all in lines 8 and 9; in line 10, by striking “(d)”;

And by relettering the remaining subsections;

On page 5, by striking all in lines 32 through 43;

By striking all on pages 6 through 10;

On page 11, by striking all in lines 1 through 17;

And by renumbering sections accordingly;

Also on page 11, in line 18, after “Supp.” by inserting “8-1013, 8-1567 and”; also in line 18, by striking “and 21-4619”;

In the title, in line 10, after “Supp.” by inserting “8-1013, 8-1567 and”; also in line 10, by striking “and 21-4619”; and the bill be passed as amended.

SB 505 be amended on page 4, in line 35, by striking “performs” and inserting “is appointed by the court to perform”;

On page 5, in line 31, after the comma, by inserting “who is appointed by the court to perform services for an indigent person and”; by striking all in lines 34 through 43;

On page 6, by striking all in lines 1 through 13;

And by renumbering the remaining sections accordingly;

Also on page 6, in line 14, after “22-4506” by striking the comma and inserting “and”; also in line 14, by striking all after “22-4507”;

On page 1, in the title, in line 11, after “4506” by striking the comma and inserting “and”; also in line 11, by striking “and 74-9304”; and the bill be passed as amended.

SB 507 be amended on page 2, in line 23, after “requested” by inserting “in a civil case”; and the bill be passed as amended.

Committee on **Transportation** recommends **HB 2732**, as amended by House Committee, be passed.

Committee on **Ways and Means** recommends **SB 513** 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 Barnett in the chair.

On motion of Senator Barnett the following report was adopted:

Recommended **SB 442**, **SB 499**, **SB 550**, **SB 555** be passed.

The committee report on **SB 149** recommending a **Sub SB 149** be adopted, and the substitute bill be passed.

The committee report on **SB 338** recommending a **Sub SB 338** be adopted, and the substitute bill be passed.

SCR 1618 be adopted.

SB 350, **SB 404**, **SB 436**, **SB 444**, **SB 498**, **SB 544**; **HB 2485** be amended by adoption of the committee amendments, and the bills be passed as amended.

HB 2590 be amended by adoption of the committee amendments, be further amended by motion of Senator Apple, as amended by Senate Committee, on page 7, preceding line 24, by inserting:

“Sec. 12. K.S.A. 2005 Supp. 12-5325 is hereby amended to read as follows: 12-5325. The secretary shall administer the provisions of the wireless enhanced 911 act and shall be responsible for administration and management of the fund. The secretary is hereby authorized to:

(a) Enter into binding commitments for the provision of grants in accordance with the provisions of this act;

(b) review applications of eligible municipalities for grants and select the projects for which grants will be made available; and

(c) adopt rules and regulations necessary for effectuation of the provisions of this act, *including, but not limited to, assessing monetary penalties against wireless carriers and voice over internet service providers that fail to comply with provisions of this act. Any monetary penalties and interest collected from wireless carriers or voice over internet service providers shall be deposited with the local collection point administrator and subsequently routed back to the corresponding PSAP and shall be used solely for those expenses allowed by this act”;*

By renumbering sections accordingly;

On page 13, in line 30, after "12-5323," by inserting "12-5325,";

In the title, in line 16, after "12-5323," by inserting "12-5325," and **HB 2590** be passed as further amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Wednesday, February 22, 2006.

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

PAT SAVILLE, *Secretary of the Senate*.

